**(1976) 04 CAL CK 0017**

**Calcutta High Court**

**Case No:** Civil Rule No. 11330 (W) of 1975

| | | |
|---|---|---|
| Satya Ranjan Dhar | | APPELLANT |
| | Vs | |
| Life Insurance Corporation of India and Others | | RESPONDENT |

**Date of Decision:** April 9, 1976

**Acts Referred:**

- Constitution of India, 1950 - Article 20(3), 311(2)
- Evidence Act, 1872 - Section 132
- Penal Code, 1860 (IPC) - Section 120B, 409

**Citation:** 80 CWN 998

**Hon'ble Judges:** M.N. Roy, J

**Bench:** Single Bench

**Advocate:** Somenath Chaterjee, Mohitosh Majumder and K.K. Chakravorty, for the Appellant;Sukiran Mohey Respondent No. 1., Sankardas Banerjee and P.N. Chunder for the Respondent Nos. 2 to 4, for the Respondent

**Judgement**

M.N. Roy, J.

This rule is directed against proceeding under Regulations 36 and 39 of the Life Insurance Corporation of India (Staff) Regulations 1960, dated 21st June 1974 and 10th April 1975 respectively. By the first order, the petitioner was suspended from his post of Development Officer and by the subsequent order, he was dismissed from the services of the Life Insurance Corporation of India. The petitioner was originally appointed in the year 1935, as an Inspector under the erstwhile Hindusthan Insurance Co-operative Society Limited, at a pay of Rs. 150/- per month: The said Society, in terms of the Life Insurance Corporation of India Act, was taken over in the year 1955 and thereafter, pursuant to such taking over, he became the employee under the said Corporation. In September 1956, the petitioner was confirmed in the post of Inspector under the said Corporation. Thereafter, in or about January 1958, the petitioner was promoted to the post of Development Officer

and was posted in the Barrackpore Branch Office of the said Corporation and at the material time, he was posted at Naihati Branch of the said Corporation and he was working as a Development Officer.

2. On or about 21st June 1974, the petitioner was served with a Memo dated 21st June 1974 (Annexure A) whereby, he under orders issued by the officiating Senior Divisional Manager, of the said Corporation, Respondent No. 2, was placed under suspension with immediate effect and was directed to be on such suspension until further orders, on account of some disciplinary proceeding contemplated against him. It appears that during the pendency of the said disciplinary proceeding, the said Respondent No. 2, who initiated the same, also lodged a First Information Report (Annexure B), to the Superintendent of Police, 24 Parganas, Alipore, for taking immediate steps. It appears from the said First Information Report, that on allegations made therein, the said Respondent No. 2 contended that a fraud was committed on the said Corporation, by the petitioner, to the extent of Rs. 26,213.88 P. In the said First Information Report, it has further been alleged that on receipt of an information from the Naihati Branch Office of the said Corporation, it appeared, that although a death claim was paid in respect of Policy No. 32595324, the holder of the said Policy, Sri Nakul Chandra Dey, was alive and on investigation, it further appeared that the said Sri Dey requested the petitioner to get the term of his Policy changed from 25 years to 15 years and the petitioner, on the pretext of doing the needful, collected the original policy documents and the 1st premium receipt from the said Sri Dey and thereafter an intimation of death stating that the policy holder had died on 28th December 1973, purported to have signed by one Sm. Durga Rani Dey, wife of the policy holder and also nominee of the Policy in question, was filed in the office. It has also been stated in the said First Information Report that on the basis of the submissions as above, a death claim was duly registered in the books of the said Corporation and they were requested that the claim forms be issued to the said Sm. Dey, for completion and return, along with the official certificate of the death of the policy holder. Such claim was filed by the Sm. Durga Rani Dey, which was duly attested by the petitioner and the said form was also accompanied by the death certificate issued by the Halishahar Municipality in the prescribed form and under their seal. It has further been stated, that on the representations as aforesaid about the proof of death and identity of the life assured, the claim was admitted, and accordingly, a form of discharge was issued by the said Corporation and the same was taken delivery of from the office of the said Corporation by the petitioner personally. It has been alleged, that meanwhile, a letter changing the address of the nominee from her original address i.e. C/o Durga Bhander, P.O. Kanchrapara to Jader Bux Lane, Kanchrapara, 24 Parganas, was also received by the Corporation and on receipt of the necessary form of discharge, a cheque was duly issued on 13th May 1974, which has also been duly encashed through the Current A/c No. 4/2382, maintained at the United Bank of India, Naihati Branch, on 17th May 1974. It has further been stated in the said First Information Report, that the wife of the assured

was contacted at 104, Spalding Road, Kanchrapara, 24 Parganas, which was and is the original address of the deceased policy holder, and on such enquiry, it appeared that the said Sm. Dey was not aware of the happenings as mentioned above and furthermore, she affirmed that she did not put forward any claim in respect of the policy held by her husband. It has further been alleged that investigation was initiated at No. 1 Jader Bux Lane viz., the subsequently changed address and it was found that the inhabitants of that house were none other than the petitioner and the members of his family and nobody in the name of Sm. Durga Rani Dey was actually residing there. It has also been alleged in the said First Information Report, that the petitioner further obtained a fresh proposal of assurance form for Rs. 25,000/- on the life of the said Nakul Chandra Dey on 2nd February, 1974, and submitted the same with the recommendations and for acceptance and the said proposal was ultimately effected into policy bearing No. 32989730. It has been alleged that the petitioner was found to be involved in some other similar cases of fraud, for which necessary enquiries were in progress. In the said report, the said Respondent No. 2 has also further alleged that the petitioner was contemplating to leave for Bangladesh, for the purpose of avoiding any police action and as such it was prayed that immediate steps be taken for investigating the matter. The petitioner has stated that after the filing of the said First Information Report, the matter has been referred to the Officer-in-charge, Bizpur P. S. District-24 Parganas and Bizpur P. S. Case No. 25 dated 23.6.74, u/s 409|120B of the Indian Penal Code, has been started and such proceeding is pending. There is also no dispute that the petitioner was arrested by the Bizpur Police in connection with the said case and was produced before the Subdivisional Judicial Magistrate, Barrackpore on 24th June 1974 and his prayer for bail was rejected pending a further investigation. The petitioner was of course enlarged on bail on 24th July, 1974.

3. The petitioner has alleged that during the pendency of the said Criminal proceeding, the said respondent No. 2 by another letter dated 18th July 1974 (Annexure C), levelled numerous charges against him and directed him either to admit his guilt to the subsequent charges or put in his written statement together with such documents as he proposed to rely in support of his defence, within 15 days from the date of such notice and he was further informed that failing compliance with the same, ex parte proceeding will be taken. The petitioner has stated in reply to the said letter, that he informed the said Respondent No. 2 that since a Criminal case has been started against him in respect of the self same charges and in view of the pendency of such proceeding, at that stage, no departmental proceeding should be drawn up against him and furthermore he cannot legally be forced to disclose his defence before the Enquiry Committee, when the connected criminal case, for the self same proceeding is still pending. Such reply was given by the petitioner by his representation dated 5.8.74 (Annexure D). Thereafter, the said Respondent No. 2 further served a letter on the petitioner (Annexure D1), requiring him to appear before the Enquiry Officer Mr. D. B. Roy. The

said letter was followed by another communication dated 8th October 1974 (Annexure E), from the office of the said Enquiry Officer, whereby the petitioner was informed about the dale and venue of the enquiry and was requested to appear with his supporting documents and witnesses, if any, and he was further informed that in case of his failure to attend the said enquiry, ex parte decision would be taken. In reply, the petitioner, by his representation dated 15th October, 1974 (Annexure F), informed the Enquiry Officer concerned that the charges levelled against him being the same and identical with the charges in the said pending Criminal case, the enquiry in question cannot proceed and the more so when the matter was sub judice. In that view of the matter, the petitioner prayed that the departmental enquiry in question should not be continued. Thereafter, by his memo of 21st October 1974 (Annexure J), the Enquiry Officer again directed the petitioner to attend the enquiry proceeding on the specified date and time and he was also warned that consequent to his failure, the matter would be proceeded with ex parte. It appears that by his further representation dated 18th November 1974 (Annexure H), the petitioner reiterated the stand which has been indicated hereinbefore. The petitioner caused the said letter to be addressed by his learned lawyer and the same was duly replied to by the Solicitor and Advocate for the said Corporation on 16th December 19/4 (Annexure I) and it was further intimated that the question of keeping the enquiry pending, would be considered by the Corporation on receipt of the chargesheet in the said criminal case from the petitioner. It is also on record, that by a letter of 27th December 1974, the learned lawyer for the petitioner, informed the learned lawyers for the said Corporation, that the chargesheet submitted by the said Respondent No. 2 was identical with the case as was sought to be initiated in the manner as stated hereinabove.

4. The Respondents in their return to the Rule contended that the order of suspension (Annexure A) was passed duly and properly, as from the facts of the case, there would be no room for doubt that the petitioner fraudulently induced the said Corporation to honour the claim in respect of the policy in question, while in fact the policy holder was still alive. They have further alleged that there was or has been, a prima facie case of misappropriation of about Rs. 1, 11,722,28 P. against the petitioner, on account of death claims, which were fraudulent. The filing of the First Information Report as referred to by the petitioner has been admitted by them. The said Respondents have contended the issue of the charge sheet as due, bonafide and legal. They have of course denied the contentions of the petitioner that he cannot be forced or asked to disclose his case at that stage against the charge sheet in question as that would virtually and in effect mean discloser of his defence in the connected Criminal proceeding. The Respondents have further claimed that since the said Criminal proceeding and the concerned Departmental proceeding, are two distinct and separate proceedings, so there was no validity or justification of the petitioner''s purported defence. The said Respondents have further contended that the fact that the Respondent No. 2 has filed the First Information Report, would be

no bar to his power and authority to make any investigation in the matter of the domestic enquiry or to pass orders imposing punishment under the Staff Regulations. It has also been contended by the said Respondents that the scope of the Criminal investigation and that of the Domestic enquiry were different inasmuch as the Domestic enquiry was for fraud, committed in respect of one of the policies whereas the complaint before the police was in respect of the other offences committed by the petitioner. In short, the charge sheet against the petitioner was independent of and different from the complaint as lodged with the police and the said Domestic enquiry was completed before any charge was framed by the learned Magistrate. The said Respondents have further stated that in the instant case there was no denial of any principles of natural justice and in fact the petitioner himself was responsible for having the enquiry to be held ex parte on the untenable and baseless grounds as mentioned hereinbefore. The said Respondents have further contended that no charges having been framed at the relevant time against the petitioner in the said Criminal proceeding, it would not be proper for him to contend that the Domestic enquiry was held on the same charges. It has also been asserted that the impugned order was duly issued on April 30, 1975 and was sought to be communicated to the petitioner on the same day. They have stated that although the said letter, as appears from the remarks of the Postal department, was presented to the petitioner at least on eight occasions, but the same could not be served on him as he was informed to be not available and only on May 12, 1975, the petitioner refused to accept the said letter by his endorsement "not claimed". The Respondents have further stated that although the order of dismissal became effective from April 30, 1975, long thereafter and more particularly on May 5, 75, they were informed about the issue of the order of injunction and the Rule by this Court.

5. On the pleadings as aforesaid, Mr. Majumder, appearing in support of the Rule, has contended firstly, the charge sheet itself was defective inasmuch as the same contained an expression of prejudiced and prejudged mind or opinion and/or a closed mind. He further submitted that as in the charge sheet itself the petitioner was in fact found to be guilty of the offences charged or at least an opinion to that effect was prima facie available, so the same was void and in fact no useful purpose could be served by the same or on the basis thereof.'' Mr. Majumder, secondly argued, relying on the theory that a person cannot be the judge and prosecutor at the same time, that the entire proceeding as initiated was void and of no effect since Respondent No. 2, who himself had filed the First Information Report in question for the self same offence was required to judge and decide the issue involved in the Departmental proceeding. Thirdly, Mr. Majumder argued that since the Criminal proceeding as initiated on the basis of the First Information Report in question, for the self same offence, was pending, so during the pendency of the same, the Respondents could not force or ask the petitioner to file his written explanation to the Departmental proceeding as initiated by the charge sheet, as such disclosure

would virtually mean the disclosure of his defence in the said Criminal proceeding, as charges in the said two and parallel proceedings, are practically the same and fourthly, it was argued by Mr. Majumder that the entire departmental proceeding was void and ineffective for violation of principles of natural justice.

6. In support of his first branch of argument, Mr. Majumder referred to the charge sheet dated July 18, 1974 and submitted that the conclusions arrived at therein in respect of the items of the charges would make the same bad, void and irregular, as such conclusions are nothing but are findings, which would certainly have some bearing at the enquiry stage and the ultimate finding. In particular, he referred to the portion of the charge sheet which reads as:-

Thus it is evident that you had deliberately acted in a manner prejudicial to your good conduct and detrimental to the interest of the Corporation by causing to submit the claim papers on the above death claim and inducing the Corporation to believe that the said Policy holder was dead while in fact he was alive and thereby fraudulently induced the Corporation to pay the proceeds of the death claims on the above policies.

and submitted that the said concluding portions of the charge sheet in question, was enough to establish a prejudiced or closed mind. In support of his contentions, Mr. Majumder first relied on the case of The Collector of Customs and Ors. v. Md. Habibul Haque, 1973(1) S.L.R. 321. In that case it has been observed by o Bench decision of this Court that non-supply of the copy of written brief of arguments would amount to denial of reasonable opportunity though the same is not contemplated in the Rules.

Thus, the determination in that case, in my view is of no assistance to the submissions under consideration and as made by the petitioner. The next case on the point, which was relied on by Mr. Majumder, is the decision of S.C. Ghose J. in the case of Meena Janah v. The Deputy Director of Tourism & Ors. 1974(2) S.L.R. 466. In that case the petitioner was placed under suspension pending drawal of proceedings against her on charges of disobedience of order passed by superior officers and ultimately a charge sheet was issued in the following terms : -

Whereas the duties which have been specified for the job of the Hostees in Govt. Order creating the post and whereas while holding the post you were bound by Govt. rules to carry out such duties, and whereas you disobeyed to carry out such orders as per attached Schedule given to you by competent authority, you are charged against disobedience to carry out orders. And under such circumstances you may place your explanation why you will not be discharged from service.

You may submit your explanation to Shri K. Sinha, Asstt. Director of Tourism, 2, Brabourne Road, who has been appointed as Enquiry Officer and or may appear before him. Any copy of document needed by you for framing your explanation may be had from this office on your request considered eligible by the Enquiry Officer.

In that case because of petitioner''; refusal to perform her duties, the Deputy Director of Tourism, who was the disciplinary authority first addressed a letter to the petitioner and thereafter, he placed her under suspension and thereon the charge sheet as mentioned above was issued. Before the learned Judge it was argued that (i) the charge sheet was not a notice to show cause against any charges framed against the petitioner, (ii) the same was a notice to show cause against a proposed punishment and (iii) the charge sheet in that respect contravened Article 311(2) of the Constitution of India, inasmuch as it, prejudged the issue which was due to be the subject matter of enquiry by the Enquiring Officer. The said charge sheet was found to be void and invalid because the same showed that the Disciplinary authority had already come to the conclusion that the duties of the petitioner i.e. of a Hostees, which she was bound to carry out, were not carried out by her and asked her to explain why she should not be discharged from service. Thereafter, Mr. Majumder relied on the Bench decision of this Court in the case of State of West Bengal v. Sati Prasad Roy, 79 C.W.N. 39. In that case the order of suspension and the charge sheet were issued to the employee on August 19, 1988 to the following effect: -

Order of suspension.

Government of West Bengal,

Directorate of Health Services,

Writers'' Buildings, Calcutta.

No. 22962 Calcutta, the 19.9.68.

ORDER

Sri Satiprosad Roy, clerk attached to Karimpore Primary Health Centre, Nadia is hereby, placed under suspension with immediate effect as he has been found prima facie guilty of several charges for which departmental proceedings are being drawn up separately.

Sri Roy is entitled to one half of his basic pay plus full D.A. and other admissible allowances in full as subsistance grant during suspension period, provided he submits a certificate to the Chief Medical Officer of Health, Nadia to the effect that he is not engaged in any other employment, business profession or vocation.

Charge-sheet.

Government of West Bengal,

Directorate of Heath Services,

Writers'' Buildings, Calcutta.

Calcutta, the 19.9.68.

No. 22963

To

Shri Sati Prosad Roy,

Clerk attached to Karimpore Primary Health Centre, Nadia.

Whereas it has been made to appear to the undersigned that you Sri Satiprosad Roy, clerk attached to Karimpore Primary Health Centre, Nadia serving under the administrative control of the Directorate of Health Service, West Bengal have been found guilty of :-

1. Gross misconduct: -

(a) by being in the habit of defying the order of the Medical Officer of Karimpur Primary Health Centres.

(b) by instigating the local people against the staff including medical officer of the said Health Centre.

(c) by lodging false complaint against the same Medical Officer and the other staff of the Health Centre to the local police.

(d) by removing hospital records without the knowledge of anybody.

(e) by refraining himself from his allotted duties since 31.7.68.

(f) cross in subordination by not complying with the order No. HC/E/2/5712 dt. 23.7.68 of the Chief Medical Officer of Health, Nadia.

Details shown in the statement of Government;

And whereas for the aforesaid reasons you are prima facie unsuitable to be retained in the service of Government;

And whereas on the grounds set forth above it is proposed to impose upon you the penalty of dismissal from the Civil Service of Government under Clause (vii) of Rule of the Bengal Subordinate Services (Discipline & Appeal) Rules, 1936.

Now, therefore, in pursuance of the Bengal Subordinate Services (Discipline & Appeal) Rules, 1936, the undersigned hereby requires to put in before - Dr. M.L. Dutta Roy, Chief Medical Officer of Health, Jalpaiguri who has been appointed as an enquiring officer for holding enquiry into the aforesaid charges against you within fifteen days from the date of receipt of this order, a written statement of your defence and representation that you may desire to make stating whether you desire to be heard in person or call any witness or to produce any document in your defence and showing cause why the penalty of dismissal from the Civil Service of Government or such other penalty as may be deemed fit shall not be imposed upon you.

A statement of allegations on which the charges are based, is enclosed.

and thereafter, the orders as mentioned hereunder were passed :

ORDER

No. 2315.

Calcutta, the 10th February, 1969.

Whereas departmental proceedings were drawn up against Sri Satiprosad Roy, clerk (under suspension) attached to Karimpore Primary Health Centre, Nadia in this directorate Memo No. 22963 dated 19.9.68 read with this Directorate Memo No. 259660 dated 30.10.68 on the charges contained therein.

And whereas the charges were enquired into by Dr. J. Nath Chief Medical Officer of Health, Hooghly, who after enquiry submitted his report wherein he has recommended that Sri Roy is not suitable to be retained in service any longer and the period from 31.7.68 to 29.8.68 should be treated as extra ordinary leave without pay.

And whereas after careful examination of the Enquiring Officer''s report and other evidence on record including statement of witness I the Director of Health Services. West Bengal agree with the enquiring officer to his findings and find him guilty of the charges contained in this Directorate Memo, referred to above beyond all reasonable doubt.

Now, therefore, I the Director of Health Service, West Bengal being the appointing authority propose to impose upon him the following penalties.

(1) That he shall be dismissed from Govt. service with immediate effect.

(2) That no pay and allowances beyond subsistence grant be paid to him during the period of his suspension.

(3) That the period of suspension shall be treated as the period spent on suspension.

(4) That the period from 31.7.68 to 29.8.68 shall be treated as Extraordinary leave without pay.

Sri Roy, therefore, directed to show cause as to why the proposed penalties should not be imposed upon him, within fifteen days from the date of receipt of this order. The reply should be submitted through proper channel.

A copy of the enquiring officer''s report is enclosed.

ORDER

I, the Director of Health Services, West Bengal after careful examination of the representation submitted on 25.2.69 by Sri Sati Prasad Roy. Clerk (under suspension), Karimpore Primary Health Centre. Nadia in reply to this Directorate

Order No. 2314 dated 10.2.69 the enquiring officer''s report and other documents on record, find no reasons to alter the previous decision that he is guilty of the charges contained in this Directorate Memo No. 22966 dated 19.9.68.

New, therefore, I the Director of Health Services, West Bengal being the appointing authority do hereby impose upon him the penalty of ''Removal'' from the service of the Government with immediate effect and further order.

1) That no pay and allowances beyond subsistance grant during such pension period be paid to him.

2) That the suspension period shall be treated as the period spent on suspension.

3) That a note to this effect shall be recorded in his service book."

and it was held that :

On various expressions in the charge-sheet about the guilt of the petitioner with the proposal for the dismissal of the petitioner and the final order of dismissal, the apprehension of the petitioner that his case was prejudiced and prejudged was reasonable and further in view of such expression the enquiry officer being an officer subordinate was likely to be prejudiced leading to the deflection of justice.

The enquiry officer''s recommendation of dismissal from service was also no part of the duties enjoined under the rules on the enquiry officer.

Mere proposal of several punishments, major or minor, in the charge sheet will not by itself indicate that the disciplinary authority was biased or prejudiced against the delinquent as it indicates the flexibility and openness of mind of the disciplinary authority. This will not vitiate the disciplinary proceeding where in fact the enquiry is held according to the rules and principles of natural justice. It is however desirable that punishments should not at all be mentioned in the charge-sheet consistent with provisions of Art. 311(2), since proposal for punishment arises only after charges are established. The position however will be different when in the charge-sheet the disciplinary-authority proposes the penalty of dismissal or other major penalties which may indicate the closed mind of the disciplinary authority and his prejudice against the delinquent. Expressions of such proposals for punishments in the charge-sheet before the start of the enquiry may cause reasonable apprehension in the mind of the delinquent that his case has been prejudged which will vitiated enquiry.

7. Mr. Banerjee, appearing for Respondent Nos. 2 to 4, in reply, placed the charge sheet in the instant case and submitted that the same or the charges contained therein are clearly distinctive and distinguishable from the charges and the charge sheets in the case of Meena Janah v. The Deputy Director Tourism & Ors., (supra) and State of West Bengal v. Sati Prosad Roy (supra). He further submitted that the charge sheet in a disciplinary proceedings should not be interpreted very technically

and legalistically as in the charge sheet in a Criminal proceeding. But the same should be, as has been found in the case of Collector of Customs, Calcutta v. Biswanath Mukherjee, AIR 1972 Calcutta 401, interpreted in a common sense way to see that there is a plain statement of the thing complained of as wrong so that the party complained against may be put on his defence to meet the allegation.

8. In that case in a disciplinary proceedings under the Customs Act, the words in the charge sheet were that:

Sri Biswanath Mukherjee, who had been functioning as Preventive Officer, Grade I, during the period between 20.12.58 and 31.12.59, was found on 1.1.60 to be in possession of assets which are disproportionate to his known sources of income to the extent of about Rs. 61,000|-giving rise to the presumption that the aforesaid Sri Biswanath Mukherjee acquired the said disproportionate assets by obtaining pecuniary advantage to himself by corrupt and illegal means and thereby he had failed to maintain absolute integrity and devotion to the duty as a public servant.

and the learned trial Judge quashed the order in the disciplinary proceedings on the ground that the word "found" and "giving rise to presumption" indicated bias of the Collector, who himself was the punishing authority and the whole proceedings were vitiated as the charge was defective: and was in violation of principles of natural justice. P.B. Mukherji C.J., speaking for the Court, while remanding the case for determinations on the points as formulated, observed that the two words "found" and "giving rise to the presumption" were not, enough by themselves to make the charge in this case in limini bad and void on the ground of violation of the principles of natural justice. The above mentioned case has also been referred to and relied on in another Bench decision of this Court in the case of Reserve Bank of India v. R. N. Dutt & sons, AIM. 1975 Calcutta 48, where on the facts of the case relying on the show cause notice at page 51 of the report, it was argued that the show cause notice indicated a closed and predetermined mind. Sabyasachi Mukherji J., speaking for the Court has observed, relying on the earlier Bench decision in the case of Collector of Customs v. Biswanath Mukharji (supra) and reading the said show cause notice, that from the common sense point of view, the said show cause indicated neither a closed nor predetermined mind.

9. Thus the proposition on the point as stands is that the proper way of interpreting the charge sheet in a disciplinary proceeding is not to be technically and legalistically strict as in the case of a charge sheet in Criminal proceedings. The charge sheet should be fairly and reasonably interpreted in a common sense way to see that there is a plain statement of the thing complained of as wrong, so that the party complained against may be put on his defence to meet the allegation, since such view as expressed in the case of Collector of Customs, Calcutta v. Biswanath Mukherjee (supra), has not been dissented from in the case of State of West Bengal v. Sati Prosad Roy (supra), but has been followed in the case of Reserve Bank of India v. R. N. Dutt & Sons., (supra). From the determinations in the cases as cited

hereinbefore, it appear that before making any determination, the Courts will have to be satisfied from the text and language of the relevant documents or records purporting to initiate the proceedings, whether in fact opinion as to the guilt of the delinquent has been expressed or whether same can possibly be inferred from a common sense point of view. The charges containing in the charge sheet in the case of Collector of Customs, Calcutta v. Biswanath Mukherjee (supra) has been found to be, in the language of the Court, "a far cry" from the charge sheet in the case of State of West Bengal v. Sati Prosad Roy (supra). Perhaps by such expression, Their Lordships in the case of State of West Bengal v. Sati Prosad Roy (supra) intended that there was great dissimilarity between the two charge sheets in those two cases inasmuch as in the earlier case the disciplinary authority stated in the charge sheet that in view of the assets of Rs. 61,000|- found with the delinquent, there was a presumption that the same was obtained by unlawful means, but in the latter case, in the charge sheet itself there was a prima facie finding of guilt. The terms of the charge sheets in the aforementioned cases and also in the case of Meena Janah v. The Deputy Director of Tourism & Ors., (supra), wherein the expression and finding of guilt was also made, would be available from those records, which have been purposefully quoted hereinbefore in extenso. Apart from the cases as mentioned hereinbefore, Mr. Majumder made a further reference to a Bench decision of the Patna High Court in the case of Karam Chand Mehata v. The State of Bihar & Ors., 1974(1) S.L.R. 461, where it has been observed that :

In case the punishing authority prejudges the issue and suffers from a prejudice against a delinquent Government servant, the order of punishment which is ultimately passed is bound to be illegal as being not the product of an impartial enquiry. The question whether a punishing authority has suffered in a particular case from any bias or that it has prejudged an issue in the proceeding is essentially a question of fact and has to be decided on the basis of facts and circumstances in every case, a general rule cannot be laid down that, divorced from the evidence, facts and circumstances, in such cases, an inference of bias is irresistible.

The determinations in that case seems to be in the same line with the determinations in the cases of State of West Bengal v. Sati Prosad Roy (supra) and Meena Janah v. The Deputy Director of Tourism & Ors., (supra) and has not in fact held anything contrary to the principles as enunciated in the case of Collector of Customs, Calcutta v. Biswanath Mukherjee (supra)

10. Thus relying on the tests as propounded in the above mentioned cases, in the light of the facts of the present case and more particularly, the statements as contained in the charge sheet in question, I find that the balance in the present case tilts more towards the determination and the test as laid down in the case of The Collector of Customs, Calcutta v. Biswanath Mukherjee (supra) and as such, I hold that the point as sought to be raised by Mr. Mukherjee has no substance.

11. On the second branch of his submissions, Mr. Majumder first relied on the order of suspension in Annexure "A", the complaint in the form of a First Information Report in Annexure "B", the charge sheet in Annexure "C", and the order in Annexure "K", proposing the punishment, all issued on diverse dates by the Senior Divisional Manager (Officiating). Respondent No. 2, who admittedly is the disciplinary authority, and contended that if those records are read and considered together, there would be no room for doubt that such authority did not act fairly and with open mind, since the said Respondent No. 2, being in the position of a prosecutor or complainant, in view of his report or complaint in the said Annexure "B", could not be expected to act in the said manner as required. He further submitted that in view of the position as indicated above the acts and actions of the said Respondent No. 2 was found to be full of bias and prejudice and furthermore in such circumstances the petitioner had a reasonable apprehension in his mind that he would not get justice and such apprehension, was enough to set aside, quash and cancel the pretended proceedings. To substantiate his contentions Mr. Majumder, in particular relied on the following words :

Thus it is evident that you had deliberately acted in a manner prejudicial to your good conduct and detrimental to the interest of the Corporation by causing to submit the claim papers on the above death claim and inducing the Corporation to believe that the said Policy holder was dead while in fact he was alive and thereby fraudulently induced the Corporation to pay the proceeds of the death claims on the above policies.

as appearing in the charge sheet in Annexure "C" as issued by the said Respondent No. 2 and also to the punishment as proposed in the following terms;

Concurring with the findings of the Enquiry Officer and keeping in view the seriousness of the charges proved, I propose to dismiss you from the services of the Life Insurance Corporation of India.

as appearing in the order in Annexure "K", which has also been issued by the said Respondent No. 2. Apart from the arguments as noted above, Mr. Majumder alleged malafide action and use of the power in bad faith by the said Respondent No. 2.

12. In support of his contentions and for the purpose of substantiating the same, Mr. Majumder first relied on the case of and the determination in State of U. P. v. Mohammad Nooh, AIR 1958 S.C. 86. In that case in a departmental "trial" against a police constable, before a Deputy Superintendent of Police, the Deputy Superintendent of Police himself gave evidence to contradict the testimony of a prosecution witness and such an act was held to be in violation of natural justice. It has been further observed that the said act of the Presiding Officer in having his own testimony recorded in the case indubitably evidences a state of mind which clearly discloses considerable bias against the constable and such action was shocking to the notices of judicial propriety and fair play. Mr. Majumder, next placed

reliance on the case of S. Parthasarthi Vs. State of Andhra Pradesh, . The appellant in that case was appointed as Clerk-cum-typist in 1940. On 7th June, 1952 he was posted as Office Superintendent and was confirmed in that post in 1956. During the period from 1956-1957, the Deputy Director of Information and Public Relations Department, was one Narsingh Rao Man-vi. It was contended by the appellant that the said Deputy Director was inimical towards him. The said Deputy Director became the Director-in-Charge on 1st August 1957 and he caused the appellant to be suspended from service and thereafter he framed certain charges against him. The appellant protested to such action and contended that the said officer should not conduct the enquiry on the basis of the charges for the reason that he had bias against him. The appellant further prayed for certain documents and records and all his prayers having been rejected, be did not participate in the enquiry and the proceeding was conducted ex parte. When the matter ultimately went to the Supreme Court, it has been observed in the facts of that case, that the continuance of inquiry by biased officer was improper and irregular apart from being invalid. Mr. Banerjee, in reply sought to distinguish the determinations in those cases on facts and contended further that malafide, bias, bad faith or capricious use of power, which are the very basis of the petitioner''s allegations must be pleaded specifically in the petition and in fact there having no such definite assertion or pleading against the said Respondent No. 2, the petitioner should not be allowed to argue them and in fact there is no basis or any evidence of such allegations before this Court. In fact Mr. Banerjee has submitted that since in the instant case there has been no evidence to show that either the said Respondent No. 2 has given any evidence in the proceeding or testified in support of the charges and there is no evidence of his bias against the petitioner, the determinations in the cases of Stale of U. P. v. Mohammad Nooh (supra) and S. Parthasarathi v. State of Andhra Pradesh (supra) have no application at all.

13. Mr. Banerjee further relied on Regulation 39 of the (Staff) Regulations, 1960 of the Life Insurance Corporation of India dealing with penalties which can be inflicted in an offence for which the petitioner was charged and also to Schedule I of the said Regulations for the purpose of showing, the authorities who could competently inflict such penalties, for the purposes of establishing that not only the petitioner was given all and every opportunities to defend his case and all the procedure and formalities as laid down were complied with, but the action in the instant case was also duly taken by a competent authority in due and statutory exercise of duty and in bona-fide use of power. Mr. Banerjee submitted further that since there is no evidence contrary to the above, it must be held that the statutory authority like the Respondent No. 2 has acted bonafide and in that case, no interference in this jurisdiction is required or contemplated and the more so when there is no evidence of such exercise of power in bad faith.

14. In support of his contentions, Mr. Banerjee first relied on the case of K. T. Chancy v. Mansa Ram Zada, 1974 (1) L.L.J. 278. In that case notice was issued by the

Hindusthan Steel Ltd., to the Respondent employee, intimating their intention to terminate his services in terms of his letter of appointment. The employee filed a suit for declaration that the notice was illegal and without jurisdiction. There was no interim order of injunction issued in the suit and during the pendency of the same, the services of the employee was terminated on payment of 3 months wages in lieu of notice. The point arose for consideration as to whether such action amounted to contempt. High Court returned the answer in the positive and in favour of the employee and such finding was reversed and set aside by the Supreme Court holding that the Company had a right under the contract to terminate the services of the employee, so there was no contumacious act on their part. It was further submitted by Mr. Banerjee that since initiation of the proceedings such steps have been taken in good faith and in bonafide discharge of the statutory duties by the Respondent No. 2, so no interference should be made, as such statutory exercise of duty would mean bonafide use of power. Mr. Banerjee then relied on the case of Jang Bahadur Singh Vs. Baij Nath Tiwari, . That was also a case under the Contempt of Courts'' Act, 1952. The appellant was a Manager of a College of which the Respondent was the Principal. There was a dispute over some payment of scholarship to a class of students by the Respondent, for which an explanation was called for by the District Inspector of Schools. The Respondent filed his reply to the queries made and ultimately the Managing Committee, on consideration of the matter resolved to take disciplinary action against the Respondent. Thereafter, the appellant passed an order suspending the Respondent, pending enquiry. The Respondent then filed a writ petition for quashing the order of suspension alleging that the appellant had no authority to pass the order in question and the same was passed in bad faith. He also obtained an ex parte order of stay. The High Court vacated the stay order, whereupon a charge sheet was issued to the Respondent. The Respondent, instead of filing his reply to the said charge sheet filed a petition for committal of the appellant for contempt of Court because the charge in question was the subject matter of enquiry in the pending writ petition and the authority concerned was thus guilty of contempt as he initiated a parallel enquiry.

15. The High Court found favour with such contentions and on appeal the Supreme Court has observed that:

An enquiry by a domestic tribunal, in good faith in exercise of powers statutorily vested in it (in this case under the U. P. Intermediate Education Act (2 of 1921) and the Regulations framed thereunder), into the charges of misconduct against an employee does not amount to contempt of court merely because an enquiry into the same charges is pending before a civil or a criminal court. The initiation and continuation of disciplinary proceedings in good faith do not obstruct or interfere with the course of justice in the pending court proceeding. The employee is free to move the court for an order restraining the continuance of the disciplinary proceedings. If he obtains a stay order, a wilful violation of that order would of course amount to contempt of court. In the absence of a stay order the disciplinary

authority is free to exercise its lawful powers.

16. Apart from the aforementioned decisions, which were under the Con tempt of Courts Act, and were cited for the purpose of establishing that no exception can or should be taken, when power has been exercised or invoked in good faith and more particularly not in bad faith, if rules contended that no interference should be made with such exercise of power, Mr. Banerjee also relied on the case of Tata Oil Mills Co. Ltd. Vs. Its Workmen, , for the proposition that the pendency or even filing of a Criminal complaint is bar on the employer''s right to initiate and continue with the domestic inquiry. In the facts of that case it has been held that:

It is desirable that if the incident giving rise to a charge framed against a workman in a domestic enquiry is being tried in a criminal court, the employer should stay the domestic enquiry pending the final disposal of the criminal case. It would be particularly appropriate to adopt such a course where the charge against the workman is of a grave character because in such a case, it would be unfair to compel the workman to disclose the defence which he may take before the criminal court. But to say that domestic enquiries may be stayed pending criminal trial is very different from saying that if an employer proceeds with the domestic enquiry in spite of the fact that the criminal trial is pending, the enquiry for that reason alone is vitiated and the conclusion reached in such an enquiry is either bad in law or malafide.

17. Apart from the aforementioned submissions, Mr. Banerjee further submitted that the trial in a Criminal Court is different from an inquiry before a domestic Tribunal and in any event, when no action has as yet taken on the complaint as referred to above, there was absolutely no bar in initiating the departmental proceeding. Those apart, Mr. Banerjee also submitted that since there was no denial to the charges or any answer to them and more particularly, when no objection was taken against the appointment of Shri D. B. Roy, as Enquiry Officer, by the order dated 20th|21st August, 1974 (Annexure D), so the submissions as made now are only baseless and untenable but they are more after thoughts, and all the more so when admittedly the enquiry in the instant case was admittedly not held by the said Respondent No. 2 but the same was held by the Respondent No. 3 i.e. the said Shri D. B. Roy, against whom there has also been no allegation of malafide or bias. Mr. Banerjee, relying on the determination in the case of Manak Lal Vs. Dr. Prem Chand, , wherein the tests as to how bias has to be established has been laid down, further submitted that following such tests it would be evident that the allegations of bias has not at all been established and more particularly when there has been no such allegation against the enquiry officer viz., Respondent No. 3.

18. There is no dispute that bias, malafide, prejudice or capricious use of power by the Respondent No. 2 has not specifically been pleaded by the petitioner and there has also been no allegation of bias or malafide against the Inquiry Officer, Respondent No. 3. In fact allegations, if any, in the petitioner on that account are

vague, insufficient, indefinite and devoid of particulars. In that view of the matter, I am of the view that the petitioner cannot and should not be allowed to advance these points in the present proceedings. Apart from that fact, since Respondent No. 2 has not held the inquiry but the Respondent No. 3 did and there has been admittedly no allegations of any bias or malafide action against him, I am also of the view that there is no basis or justification of the allegations by the petitioner and the pretended apprehension in his mind is baseless and without any substance. There is also no doubt that the Respondent No. 2, in terms of the Regulations as mentioned hereinbefore, had and has a statutory duty in the instant cases and when he takes such steps viz., filing the complaint or directing initiation of a departmental proceeding or issues a show cause against the punishment proposed, on a set of charges in discharge of such statutory functions, such action cannot be termed or considered as malafide or an instance of bias. When such an authority bona-fide and in good faith discharges the statutory obligations, the same cannot also be said to be acting in a malafide manner or in bad faith unless such bad faith or malafide action is specifically pleaded and established. In the facts of the present case read with the pleadings, I am of the view that the charges or allegations, which are the very basis of Mr. Majumdan''s contentions, have neither been established nor proved, and as such there is also no substance in those submissions. Whether the Respondent No. 2 had any bias against the petitioner is essentially a question of fact and it is not possible for this Court to answer the same in this jurisdiction and on the materials as available from the pleadings of the parties and more particularly so in the absence of proper and appropriate pleadings by the petitioner.

19. In support of his third and fourth grounds of attack, Mr. Majumder first relied on Article 20(3) of the Constitution of India and submitted that when the petitioner has been made an accused, in the manner as stated hereinbefore, then he could not be forced or required and asked to submit his explanation to the charge sheet in the departmental proceeding, as that would mean that he would be compelled to be a witness against himself, since filing of such statement would virtually and in effect mean actual disclosure of his defence in the said Criminal proceeding. In further support of his contentions. Mr. Majumder also placed reliance on section 132 of the Evidence Act. These submission of Mr. Majumder, in my view, on the facts and circumstances of the case, have also no substance since no charge has yet been framed in the Criminal proceeding as purported to be initiated through the complaint in question and furthermore as there was or has been no order restraining the initiation of the departmental proceedings. Departmental proceedings would not ordinarily be barred on the mere filing of a complaint for a criminal proceeding and more particularly until a charge is framed and some order of restraint is obtained. It is true that the principle "nemo debet esse judex in cause propria sua", prevents a justice, who is interested in the subject matter of a dispute, from acting as a justice therein, but such interest in the instant case has not been duly proved and established and the more so when the Respondent No. 2 took the

necessary steps in due discharge of his statutory functions and obligations. If bias or bad faith was proved in this case beyond any reasonable doubt then certainly the petitioner would have been entitled to the benefits of the principle as quoted above. But mere allegations without necessary particular, would not entitle him the benefite of the same. In the facts of the case, the petitioner cannot also claim or maintain that there was or has been any violation of principles of natural justice. In view of the above the points as raised by Mr. Majumder fail. The application is therefore rejected and the Rule discharged. There will however be no order for costs.

The prayer for stay is refused.