

**(2007) 04 CAL CK 0042****Calcutta High Court****Case No:** F.M.A. 149 of 2003

Hari Bhakta Ghosh

APPELLANT

Vs

W.B.S.E.B.

RESPONDENT

**Date of Decision:** April 27, 2007**Acts Referred:**

- Constitution of India, 1950 - Article 226
- West Bengal State Electricity Board Employees Service Regulations - Regulation 38, 59, 61, 61(1), 61P

**Citation:** 111 CWN 397 : (2008) 1 ILR (Cal) 19**Hon'ble Judges:** Pranab Kumar Chattopadhyay, J; Arunabha Basu, J**Bench:** Division Bench**Advocate:** L.C. Bihani, N.C. Bihani and Md. Asique Rosul, for the Appellant; Mitali Bhattacharyya, for the Respondent**Final Decision:** Allowed**Judgement**

Arunabha Basu, J.

This appeal is directed against the judgment and order passed by the learned single judge in connection with W.P. No. 9401 (W) 1997 whereby and whereunder the learned single judge dismissed the writ petition.

2. The Appellant / writ Petitioner challenged the disciplinary proceeding initiated against him, whereby the disciplinary authority after conclusion of the enquiry proceeding found the Appellant guilty to the charges framed against him and order of removal from service was passed by the disciplinary authority.

3. At the material point of time, the Appellant was posted as Station Superintendent, Gazole Group Electric Supply within the district of Malda under the Malda Operation and Maintenance Division. He was charge sheeted for dereliction of duty for accepting bribe from one Ashoke Sarkar to the tune of Rs. 15,334/- and ultimately refunded the amount to the said Ashoke Sarkar in presence of witnesses Naren

Saha, Prabir Sarkar and Subhas Roy. Appellant was also charged for other misconduct as detailed in the Article of charge.

4. During the Enquiry Proceeding, Enquiry Officer recorded both oral and documentary evidence and in his report found the Appellant guilty to all the charges.

5. On consideration of the report of the Enquiry Officer the disciplinary authority agreed with the finding of the Enquiry Officer and impose the penalty of removal from service with immediate effect.

6. Learned advocate for the Appellant during the course of his elaborate submission pointed out various discrepancies in the evidence recorded by the Enquiry Officer and submitted that after taking into account the totality of the evidence against the Appellant, the charge framed against him can not be said to have been established.

7. Shri Bihani, learned senior counsel for the Appellant submitted that charge for taking bribe to effect electricity connection by the Appellant in his capacity as Station Superintendent cannot be said to have been proved. With regard to other charges, learned senior counsel submitted that the same cannot be taken as misconduct even to justify departmental proceeding against the Appellant.

8. In reply, learned advocate for the Respondent submitted that the Court exercising writ jurisdiction does not sit in appeal over the decision of the disciplinary authority. It is also contended that the standard of proof in departmental proceeding should not be equated with charge in connection with a criminal trial, as because the standard of proof in departmental proceeding is preponderance of probability whereas in criminal trial the charge is required to be proved beyond all reasonable doubt.

9. Learned advocate for the Respondent has also contended that it is not the duty of the Court to reappraise the evidence considered by the disciplinary authority and if there is some evidence in support of the charge then the Court should restrain itself from interfering with the finding of the disciplinary authority.

10. Learned advocate for the Respondent has referred to the following decisions of the Hon"ble Supreme Court in support of his contention:

R.S. Saini Vs. State of Punjab and Others, where the Hon"ble Supreme Court held,

The rule that the Court while exercising writ jurisdiction will not reverse a finding of the inquiring authority on the ground that the evidence adduced before it is insufficient. If there is some evidence to reasonably support the conclusion of the inquiring authority it is not the function of the Court to review the evidence and come to its own independent finding.

In State of Haryana and Another Vs. Rattan Singh, the Hon"ble Supreme Court held,

In a domestic enquiry all the strict and sophisticated Rules of the Evidence Act may not be applied.

11. Learned advocate for the Respondent also referred to the following decisions in support of his contention:

1. [Devendra Swamy Vs. Karnataka State Road Transport Corpn.,](#)
2. [Divisional Controller, KSRTC \(NWKRTC\) Vs. A.T. Mane,](#)
3. [Lalit Popli Vs. Canara Bank and Others,](#)
4. [State of Rajasthan Vs. B.K. Meena and others,](#)

12. It is the contention of the learned advocate for the Respondent that while exercising jurisdiction under Article 226 of the Constitution, the High Court does not act as an appellate authority. The jurisdiction of the High Court is limited in judicial review to correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice. Judicial review is not akin to adjudication of the case on merits as an appellate authority.

The charges framed against the Appellant is reproduced below:

Articles of charges against Shri Hari Bhakta Ghosh, Station Superintendent (under suspension)

#### CHARGE I

Whereas it appears that Shri Hari Bhakta Ghose was posted at Gazole E/S as Station Superintendent and as Station Superintendent he was responsible for all activities of that Group Electric Supply as Station-in-Charge. It was the responsibility of Shri Ghosh to dispose of the pending service connection of Gajole Gr.E/Supply besides other jobs.

AND

Whereas it appears from the statements of Shri Asoke Sarkar, one of the intending consumers under Gajole Gr. E/S, that Shri Hari Bhakta Ghosh, had taken bribe of Rs. 15,334/- from Shri Asoke Sarkar for effecting his industrial service connection No. G/I/1711 but failed to effect service connection within time. Shri Ashoke Sarkar then intimated the local people of that area, who pressurised Shri Hari Bhakta Ghosh to refund the money which had been taken illegally. Further, it appears that being pressurised from the local people Shri Ghosh refunded the entire sum of Rs. 15,334/- to Shri Asoke Sarkar in two instalments of Rs. 10,000/- and Rs. 5,334/- in presence of Shri Naresh Saha, Shri Prabir Sarkar and Shri Subhas Roy, local villagers of Gajole.

AND

Whereas it appears that the entire aforesaid activities of Shri Hari Bhakta Ghosh had been published in the local newspaper "Gour Barta" dt. 4-12-1993 published from Malda which tarnished the image of WBSEB which is also detrimental to the interest of the Board.

Thus it appears that Shri Hari Bhakta Ghosh indulged in corrupt practices by taking bribe from Shri Ashoke Sarkar, a prospective consumer which is totally detrimental to the interest of the Board and against the canons of good behaviour and discipline.

Such conduct of Shri Ghosh, if proved, is unbecoming on the part of an employee of the Board and constitutes an act of misconduct, lack of Integrity, breach of discipline and in violation of Regulations 38 and 61(P) of the WBSEB Employees" Service Regulations.

## CHARGE II

Whereas it appears from the official record of Gajole Gr. E/S that Shri Hari Bhakta Ghosh during his incumbency as Station Superintendent at Gajole Gr. E/S released and effected a new industrial service connection to Shri Aswini Kr. Saha, S/C No. G/IInd/1667 and energy meter No. UE/RPO/10496/3X30 Amp. was installed in the premises of the said consumer. It further appears that the above referred energy meter was previously installed in the premises of M/s. Gayetri Debi, S/C No. 21-Ag-I and removed from the premises of Gayetri Debi as it was defective and no final reading of the meter was recorded in the Blue Card of S/C No. 2I-Ag-I.

AND

Whereas it appears that the new service connection of M/s. Aswini Kr. Saha, S/C No. G/I/1667 was effected without approval of the Asstt. Engineer, Gajole (O&M) S/Divn. as per norms.

Thus it appears that Shri Hari Bhakta Ghosh adopted mal practices in effecting service connection to an industrial consumer by a defective meter and worked beyond his jurisdiction with ulterior motive for his personal gain. Such conduct of Shri Ghosh, if proved, is unbecoming on the part of an employee of the Board and constitute and act of misconduct, lack of integrity, breach of discipline and violation of Regulations 38, 59, 61(e) of WBSEB ES Rs.

## CHARGE III

Whereas it appears from the official record of the Gajole Gr. E/S that Shri Hari Bhakta Ghosh, S.S., during his incumbency as Station Superintendent at Gajole Gr. E/S released and effected two new service connection in favour of Shri Hari Pada Saha, S/C No. G/I/1679 and Shri Bishu Ch. Saha, S/C No. G/I/1654 respectively. It further appears that above service connections were effected by installing meters removing from the disconnected consumers without knowledge of the higher

authority and without any record. The service connection in favour of Shri Hari Pada Saha, S/C No. G/I/1679 was effected by installing the energy meter removed from the premises of Shri Pinaki Chakraborty (S/C No. 284/Ind) and the service connection in favour of Shri Bishu Ch. Saha, S/C No. G/I/1654 was effected by installing the energy meter removed from the premises of Shri Jagat Rajan Samanta (S/ C No. 305/Ind). Both the new service connections were effected without the knowledge of the Asstt. Engineer, Gajole (O&M) S/Divn. and without plastic sealing by the Asstt. Engineer. It also appears that as per procedure followed at Gajole (O&M Sub-Divn.) all the industrial connections were effected jointly by the Stn. Supdt. and Asstt. Engineer with plastic sealing of the Asstt. Engineer.

Thus it appears that Shri Hari Bhakta Ghosh adopted mal practice effected service connection by irregular manner and worked with ulterior motive. Such conduct of Shri Ghosh, if proved, is unbecoming on the part of an employee of the Board and constitute and act of misconduct, lack of integrity, breach of discipline and violation of Regulations 38 and 59 of the WBSEB ES Rs.

#### CHARGE IV

Whereas it appears that during the incumbency as Stn. Supdt. at Gajole Gr. E/S Shri Hari Bhakta Ghosh was asked to give certain information by the Asstt. Engineer, Gajole (O&M) Sub-Divn. vide his Memo No. GZL/SD/Conf/221 dt. 12-8-93. It also appears that vide his Memo. No. GES//Conf/421 dt. 25-8-93 Shri Ghosh had replied to the Asstt. Engineer, Gajole (O&M) S/Divn. and gave information as asked for. On scrutiny it appears that Shri Ghosh had given one misinformation deliberately and with ulterior motive. In his reply dt. 25-8-93 Shri Ghosh informed that new service connection in respect of S/C No. G/I/1667 was effected by installing meter removing from the S/C No. 314/I/G. But on physical verification, it had been observed that the new service connection in respect of S/C No. G/I/1667 was effected by installing defective meter No. RPO 10496 removed from S/C No. AG-I/21 of St Gayetri Dei

Thus, it appears that Shri Bhakta Ghosh failed to give full and correct information which he possessed when he was called upon to do so, and gave misinformation with ulterior motive. Such conduct of Shri Ghosh, if proved, is unbecoming on the part of an employee of the Board and constitute an act of misconduct, lack of integrity, breach of discipline and violation of Regulations 38 and 61(1) of WBSEB ES Rs.

13. The main charge against the Appellant as recorded under Charge No. I is that he accepted bribe of Rs. 15,334/- from one Ashoke Sarkar in order to effect his industrial service connection and ultimately refunded the said amount in two instalments of Rs. 10,000/- and Rs. 5,334/- in presence of witnesses.

14. In Stroud's Judicial Dictionary, Fourth Edition at page 191, the meaning of "Bribe" is,

Any money, goods, right in action, property, thing of value, or any preferment, advantage, privilege or emolument, or any promise or undertaking to give any, asked, given, or accepted, with a corrupt intent to induce or influence action, vote, or opinion of person in any public or official capacity."

Similarly the word "Bribery" means,

The offering, giving, receiving, or soliciting of something of value for the purpose of influencing the action of an official in the discharge of his or her public or legal duties.

15. In this connection, it may be pointed out that authority for reasons best known to itself did not lodge any complaint before the police against the Appellant. We must hasten to add that even in the absence of lodging any complaint the disciplinary authority was not precluded from initiating departmental proceeding but such omission on the part of the authority to set the criminal law in motion by lodging information to police against the Appellant remains totally unexplained.

16. The basis of initiation of the disciplinary proceeding against the Appellant appears to be the complaint lodged by one Ashoke Sarkar before the Divisional Engineer, West Bengal State Electricity Board, Malda Division in which it has been alleged that he applied for industrial connection in the month of February, 1993 and when he approached the Appellant, he demanded a sum of Rs. 10,000/- unofficially to expedite his" case. In the complaint it is stated that on four occasions complainant Shri Ashoke Sarkar paid Rs. 10,000/-, Rs. 3,000/-, Rs. 1,500/- and Rs. 22,000/- to the Appellant but got receipt of Rs. 21,166/- and no receipt was issued for the entire amount paid by him. It is the charge against the Appellant that he received the excess amount of Rs. 15,334/- as bribe from the said Shri Ashoke Sarkar.

17. In his report the Enquiry Officer considered the evidence of witnesses and came to finding that the delinquent asked Shri Ashoke Sarkar to pay Rs. 36,500/- and the said amount was paid in the residence of the delinquent in four instalments. It was also the finding of the Enquiry Officer that Shri Ashoke Sarkar was issued receipt for Rs. 21,166/- and the balance amount of Rs. 15,334/- was received by the delinquent in excess of the actual dues.

18. Learned advocate for the Respondent submitted that the Appellant received a total sum of Rs. 36,500/- from the complainant Shri Ashoke Sarkar in order to effect service connections in favour of Shri Ashoke Sarkar, Shri Aswini Kumar Saha and Sri Sunil Kumar Sana.

19. It is the contention of the learned advocate for the Respondent that receipt was granted only in respect of the amount of Rs. 21,166/-and as such excess sum of Rs. 15,334/- was received by the Appellant from Shri Ashoke Sarkar. Ultimately the said excess amount was refunded by the Appellant to Shri Ashoke Sarkar in presence of

local witnesses.

20. It is submitted by the learned advocate for the Respondent that there is enough evidence adduced during the course of departmental proceeding to show that Shri Ashoke Sarkar was required to pay service connection charges not only for himself but there was verbal agreement between Shri Ashoke Sarkar and Shri Aswini Kumar Saha and Shri Sunil Kumar Saha that the entire amount as detailed in the estimate to effect service connection for Shri Ashok Sarkar, Shri Aswini Kumar Saha and Shri Sunil Kumar Saha will be paid by Shri Ashoke Sarkar.

21. The learned advocate for Respondent submitted that the quotation for service connection in favour of Shri Ashoke Sarkar was Rs. 12,684/- (Exhibit 28), the quotation for service connection of Shri Aswini Kumar Saha was Rs. 5780/- (Exhibit 29) and the quotation for service connection of Shri Sunil Kumar Saha was Rs. 2702/- (Exhibit 30). The sum total of the aforesaid amount is Rs. 21166/- but there is evidence to show that the Appellant received total sum of Rs. 36,500/- from Shri Ashoke Sarkar and as such the excess amount of Rs. 15,334/- received by the Appellant is the amount of bribe he received from Shri Sarkar and ultimately he was compelled to refund the same in presence of witnesses.

22. The very basis of charge under charge No. I is that the Appellant received the aforesaid sum of Rs. 15334/- as bribe from Shri Ashoke Sarkar and was compelled to refund the same in two instalments in presence of witnesses.

23. It is evident that the case before the disciplinary authority was that the Appellant accepted money from Shri Ashoke Sarkar, who paid the amount to effect service connection not only in his favour but also in favour of Shri Aswini Kumar Saha and Shri Sunil Kumar Saha. It is not the case against the Appellant that he received the entire amount only to effect service connection in favour of Shri Ashoke Sarkar.

24. Even in the complaint lodged by Shri Ashoke Sarkar, which was the basis to initiate departmental proceeding against the Appellant, the complainant stated that he received official receipt of Rs. 21166/- . Even though as per the written complaint lodged by Shri Ashoke Sarkar, he paid Rs. 10000/-, Rs. 3000/-, Rs. 1500/- and Rs. 22000/-to the Appellant for effecting service connections.

25. Close scrutiny of the petition of complaint clearly shows that the complainant never stated that he paid the entire amount not only to effect service connection for himself but also to effect service connection in favour of Shri Aswini Kumar Saha and Shri Sunil Kumar Saha. The petition of complaint is marked as Exhibit 1. During departmental proceeding, the complainant stated in writing,

I applied for one Industrial Electrical connection most probably in the month of February 93.

26. In the petition of complaint there was no mention that the amount was paid to effect service connection not only for himself but also for other persons.

27. This omission in the petition of complaint appears to be very material and goes to the root of the entire case as because the quotation for service connection in respect of Shri Ashoke Sarkar was for Rs. 12684/- and not even for Rs. 21166/-.

28. The sum total of service connection to be effected in favour of Shri Ashoke Sarkar, Shri Aswini Kumar Saha and Shri Sunil Kumar Saha as per Exhibit 28. Exhibit 29 and Exhibit 30 will be Rs. 21166/- . But unless there is evidence to show that the complainant Shri Ashoke Sarkar was required to pay not only the amount for his own service connection but also for the amount payable by Shri Aswini Kumar Saha and Shri Sunil Kumar Saha, then the very basis of allegation raised against the Appellant becomes seriously questionable and doubtful.

29. In his evidence Shri Ashoke Sarkar only stated that he paid total amount of Rs. 36500/- in four instalments to the Appellant but was only granted receipt for Rs. 21166/-.

30. In his evidence Shri Ashoke Sarkar never stated that he paid the entire amount to effect service connection of Shri Aswini Kumar Saha and Shri Sunil Kumar Saha as well as for himself.

31. In this connection the evidence of PW 6 Shri Ajoy Kumar Pal who at the relevant point of time was posted as Assistant Engineer at Gajole and was the immediate superior officer to the Appellant will be very material and relevant.

32. The evidence of PW 6 about the realisation of money and grant of receipt to effect three service connections in favour of Shri Ashoke Sarkar, Shri Aswini Kumar Saha and Shri Sunil Kumar Saha is reproduced below:

This is office copy of money receipt book of Gajole Gr. E/S office. As per this money receipt No. OR/W/92 086558 dated. 29.4.93 an amount of Rs. 330/- was realised from Shri Ashoke Sarkar as security deposit (Exhibit 21) against service connection No. 1712/c. Against money receipt No. OR/W/ 92 086557 dated 29.4.93 an amount of Rs. 4500/- was realised from Shri Ashoke Sarkar as security deposit in respect of service connection No. 1711/1 (Exhibit 22). An amount of Rs. 7854/- was realised from Shri Ashoke Sarkar vide money receipt No. OR/W/92 086556 dated 29.4.93 in respect of house service connection in respect of service connection Nos. 1711-1 and 1712/C (Exhibit 23).

Sunil Kumar Saha and Aswini Kumar Saha were also given domestic connection from the same extended line. Rs. 240/- was realised from Sunil Kumar Saha as security deposit in respect of service connection No. 1710/D vide receipt No. OR/W/92 086555 dt. 29.4.93 (Exhibit 24). The service connection charge amounting to Rs. 2462/- was also realised from Shri Sunil Kumar Saha in respect of service connection No. 1710/ D through receipt No. OR/W/92 086555 dated 29.4.93 (Exhibit 25). An amount of Rs. 240/- was realised from Aswini Kumar Sana as security deposit in respect of service connection No. 1709/D vide money receipt No. OR/W/92 086553

dt. 29.4.93 (Exhibit 26) Rs. 5540/- was realised from Shri Aswini Kumar Saha as service connection charge in respect of his service connection No. 1709/D) vide receipt No. OR/W/92 086552 dated 29.4.93 (Exhibit 27).

33. The evidence of PW 6 as quoted above clearly shows that not only the amount as detailed in the quotation was realised from those persons namely Shri Ashoke Sarkar, Shri Aswini Kumar Saha and Shri Sunil Kumar Saha but also receipt was granted after realising the said amount. The evidence of PW 6 clearly shows that no amount was recovered from Shri Ashoke Sarkar for the quotation in respect of service connections of Shri Aswini Kumar Saha and Shri Sunil Kumar Saha. The evidence clearly shows that realisation of money was effected from all the persons and not entirely from Shri Ashoke Sarkar.

34. Learned advocate for the Respondent submitted that the evidence of Shri Aswini Kumar Saha as PW 7 and evidence of Shri Sunil Kumar Saha as PW 8 clearly shows that they never paid any amount to effect service connection in their favour.

35. PW 7 Shri Aswini Kumar Saha while adducing evidence deposed that to effect service connection to Shri Ashoke Sarkar, the electric line was required to be drawn through his land and he initially raised objection but subsequently agreed if Shri Ashoke Sarkar bears the cost of electric connection to be given in the residence of Shri Aswini Saha.

36. It is also contended by learned advocate for the Respondent that PW 8 Shri Sunil Kumar Saha stated that he gave permission for extension of line through his land to effect service connection to the house of Shri Ashoke Sarkar on the condition that Shri Ashoke Sarkar will bear the entire cost. This witness only stated that he paid an amount of Rs. 500/- and got receipt from the Appellant for such deposit. He has also stated that he did not pay any other amount.

37. Learned advocate for the Respondent submitted that the evidence of PW 7 and PW 8 clearly shows that Shri Ashoke Sarkar agreed to bear the entire cost and as such he deposited the entire money as raised in the quotation to effect service connection not only in his favour but in favour of PW 7 and PW 8.

38. We find from the cross examination of PW 7 that he has stated that he did not know who paid the money on his behalf. Similarly PW 8 also stated that he did not know who made the payment.

39. From the evidence as discussed above, it is absolutely clear that there was no evidence before the disciplinary authority to show that Shri Ashoke Sarkar paid the entire amount of Rs. 21166/-, being the amount of quotation for Shri Ashoke Sarkar, Shri Aswini Kumar Saha and Shri Sunil Kumar Saha.

40. Neither in the complaint lodged by Ashoke Sarkar nor. in the evidence of witnesses Including Ashoke Sarkar as highlighted above, there is nothing to show that Shri Ashoke Sarkar paid the entire amount as raised in the quotation of Aswini

Kumar Saha, Sunil Kumar Saha and Ashoke Sarkar. There is also no evidence to show that he alone was granted receipt for the entire amount mentioned in those quotations. On the contrary the evidence of PW 6, who is the Assistant Engineer and immediate superior officer of the Appellant, clearly shows that the quotation amount was recovered from the concerned persons under proper receipts.

41. Incidentally no receipt amounting to Rs. 21166.00 granted in favour of Shri Ashoke Sarkar could be produced during the departmental proceeding.

42. This being the position, there appears to be no evidence that Ashoke Sarkar paid the entire amount to effect service connection not only for himself but also for Aswini Kumar Saha and Sunil Kumar Saha. Even PW 7 and PW 8 specifically stated that they are not aware who paid the money for their service connection. PW 1 also did not state that he paid the entire amount not only for himself but also for PW 7 and PW 8. In absence of any evidence, the very basis of the charge, that PW 1 was granted receipt for Rs. 21166/-, even though he paid total sum of Rs. 36,500/- to the Appellant cannot be established. PW 6 categorically stated that PW 1 was granted receipt for Rs. 330/- (Exhibit 21), Rs. 4500 (Exhibit 22) and Rs. 7854/- (Exhibit 23). We are of the view that there is no evidence in support of the contention that PW 1 alone paid the entire amount of Rs 21166/- to effect service connection for himself as well for Aswini Kumar Saha and Sunil Kumar Saha and receipt was only issued to him for such payment.

43. We are aware that it is not the duty of the Court to sit in appeal over the finding of the disciplinary authority but when the Court is required to review the matter judicially, it must examine whether the evidence considered by the disciplinary authority was at all sufficient to come to a finding that the same is sufficient to establish the charge. If there is no evidence as in the present case then the finding must be held to be perverse and cannot be approved in judicial review.

44. In the Article of charge, there is specific mention that the allegation of taking bribe by the Appellant was reported in a local newspaper "Gourbarta" which tarnished the image of WBSEB.

45. The Enquiry Officer also took into consideration the news item published in the local newspaper. The said news item was marked as Exhibit 8 in the enquiry proceeding.

46. In this connection, we like to point out that newspaper report is no evidence in the eye of law and should not have been taken into consideration even during departmental proceeding.

47. With regard to alleged refund of the amount in presence of local witnesses, the enquiry officer placed much reliance on the evidence of local witnesses. In this connection our attention was invited to charge under Article No. I, in which there is clear-cut recital that being pressurised by local people, delinquent refunded the

amount.

48. In this connection, the evidence of PW 1 shows that he informed Naresh Ch. Saha (PW 2) and the matter was brought to the notice of the party leader and other local people. PW 1 has stated, "under pressure from the local people Shri Hari Bhakta Ghosh refunded Rs. 10,000/- in presence of Shri Naresh Chandra Saha." He has also stated that in presence of Prabir Sarkar, Subhas Roy and Naresh Chandra Saha, the Appellant in the month of October, 1993 refunded a further sum of Rs. 5,334/-.

49. PW 2 Shri Naresh Chandra Saha has stated that he along with PW 1 and other local people went to the house of the Appellant and under pressure Appellant refunded a sum of Rs. 10,000/-. He has also stated that after about 15 days he along with Ashoke Sarkar (PW 1), Prabir and Subhas again went to the house of the Appellant where a further sum of Rs. 5,334/- was paid.

50. PW 3 Prabir Kumar Sarkar also stated that in his presence a sum of Rs. 5,334/- was refunded by the Appellant.

51. PW 4 Shri Subhas Roy also stated that he along with others went to the house of the Appellant where a sum of Rs. 5,334/- was refunded by the Appellant.

52. None of the witnesses stated anything that PW 1 paid such amount not only for his own service connection but service connection of others also. All the witnesses categorically stated that they were not aware of such payments, as PW 1 Shri Ashoke Sarkar did not state them anything on earlier occasions about making of such payments to the Appellants. All the witness including PW 1 categorically stated that the Appellant was forced to pay the money under pressure.

53. The entire matter if taken in its totality does not and cannot lead to the conclusion that the Appellant demanded any bribe from PW 1 and that PW 1 paid any amount in excess of his service connection charge to the Appellant and ultimately the Appellant was compelled to refund the money which was alleged to have been received by him in excess of the quotation amount.

54. We find that the Enquiry Officer did not consider about total lack of evidence on this important aspect and only considered the evidence of local witnesses that they saw the Appellant refunding the money to PW 1.

55. On consideration of the entire evidence we are satisfied that the Enquiry Officer committed grave error in appraisal of evidence and did not consider that there is no evidence in support of the contention that PW 1 paid the amount to effect service connection not only in his favour but in favour of two other persons.

56. In our view, with regard to charge No. I finding arrived by the Enquiry Officer is based on no evidence and as such the said finding must be held to be perverse. The acceptance of the finding of Enquiry Officer the disciplinary authority must also be

held to be perverse and required to be quashed.

57. With regard to Article II, III and IV of the charge, it appears that the Appellant while effecting service connection acted in violation of procedure. It is alleged in charge under Article II, III and IV that he violated the practice as followed at Gajole Sub Division without approval of the Assistant Engineer and without knowledge of the higher authority.

58. In this connection, the Enquiry Officer mainly relied on the evidence of PW 5, Subhas Chandra Bhattacharjee, who was posted as Divisional Engineer in West Bengal State Electricity Board. He has stated that as per rules followed in the Division, no industrial connection could be given without presence of Assistant Engineer.

59. Our attention was drawn to the cross examination of the said witness in which he admitted that there was no Board circular imposing such restrictions. He also admitted that he issued verbal instruction after obtaining verbal concurrence of the Superintending Engineer.

60. PW 6 Shri Ajoy Kumar Pal, the Assistant Engineer, also stated that since 1992 a norm was followed in the Malda Division that industrial service connection is to be given in presence of the Assistant Engineer. During cross-examination he also admitted that there was no circular of the Board that industrial service connection is to be given by the Station Superintendent in presence of Assistant Engineer. He also admitted that the norms are followed in the Malda Division as per instruction of the Divisional Engineer. He categorically admitted that he cannot show any written order issued by the Divisional Engineer.

61. In his report the Enquiry Officer found the Appellant guilty of the charges mentioned under Article II, III and IV mainly relying on the evidence of PW 5 and PW 6 as stated above. Enquiry Officer was of the view that with regard to charges under Article II, III and IV, no mistake has been committed by the Appellant but Appellant committed misconduct in violating such verbal instructions. He mainly relied on the evidence of Assistant Engineer and Divisional Engineer in support of the charges under Article II, III and IV.

62. Admittedly neither the Divisional Engineer nor the Assistant Engineer could produce any written order / circular issued by the competent authority prescribing the norms under which the Station Superintendent shall effect service connection. During cross-examination they admitted that only verbal instruction was issued. The question now arises is whether even if it is established that the Appellant failed to carry out the verbal instruction, he can be said to have committed any misconduct justifying disciplinary proceeding.

63. It may be pointed out in this context that misconduct, if any, committed by the employee will be the subject matter of departmental enquiry and not any mistake

committed by him in discharge of his duty.

64. In this connection, Division Bench of this Hon"ble Court in Council of the [Council of the Institute of Chartered Accountants of India Vs. Somnath Basu](#), has held that any negligence in performance of duties or errors of judgment in discharging of such duties can not constitute misconduct unless ill-motive in aforesaid acts are established.

At para 61, the Division Bench of this Hon"ble Court held,

61. Misconduct arises from ill-motive and mere acts of negligence, innocent mistake or errors of judgment do not constitute the misconduct. Even if there is any negligence in performance of duties or errors of judgment in discharging of such duties, the same ? cannot constitute misconduct unless ill-motive in the aforesaid acts are established.

65. In this view of the matter, violation of any verbal instruction issued by a superior officer cannot be equated as commission of any act of misconduct when it is doubtful whether the Divisional Engineer was at all competent to issue such verbal instruction. Divisional Engineer during his evidence as PW 5 never stated that that he has the authority to issue verbal instruction.

66. On the contrary the categorical evidence of PW 5 and PW 6 show that there was no circular issued by the Board about such norms as is the subject matter of Article II, III and IV of the charge.

67. In the aforesaid circumstances, we are of the view that even if any mistake was committed by the Appellant in disobeying the verbal direction issued by the Divisional Engineer, the same cannot and does not fall within the category of misconduct even to justify initiation of departmental proceeding against the Appellant.

68. Having heard the learned Counsel of the respective parties and considering the materials available before this Court, we are satisfied that the charges were levelled against the Appellant in absence of proper materials and, therefore, the same could not be said to be established. In the facts of the present case, we are also of the opinion that the Appellant herein was victimised and made a scapegoat by or at the instance of some interested parties.

69. In view of our above discussion, we are of the view that the findings of the Enquiry Officer as accepted by the disciplinary authority cannot be sustained and liable to be quashed and the same are, therefore, quashed.

70. For the aforementioned reasons, order of removal from service passed against the Appellant by the disciplinary authority cannot be sustained and the same is also quashed.

71. Respondents are, therefore, directed to reinstate the Appellant in service without any delay but positively within a period of two weeks from the date of communication of this order with 50% of the back wages.

72. The Appellant shall also be entitled to receive all other consequential service benefits and allowances as per rules consequent to the reinstatement in service.

73. The Respondent authority is directed to calculate the arrear dues of the Appellant in terms of this order within three weeks from the date of communication of the order and disburse the same within two weeks thereafter positively.

74. In this view of the matter, the judgment and order under appeal passed by the learned Single Judge cannot be approved by us and we are unable to agree with the impugned decision of the learned Single Judge and therefore, we set aside the same.

75. This appeal thus stands allowed. There will be, however, no order as to costs.

76. Urgent Xerox certified copy of this judgment and order, if applied for, be given to the learned Advocates of the parties on usual undertaking.

Pranab Kumar Chattopadhyay, J.

77. I agree.