

(1988) 07 CAL CK 0054**Calcutta High Court****Case No:** F.M.A.T. No. 1010 of 1988

Steel Authority of India Ltd. and

APPELLANT

Another

Vs

Ujjal Kumar Bhowmick

RESPONDENT

Date of Decision: July 26, 1988**Citation:** 93 CWN 376**Hon'ble Judges:** S.N. Roy, J**Bench:** Single Bench**Advocate:** D. Pal, S. Gome and S.K. Dutta, for the Appellant; Bhaskar Ghosh, for the Respondent**Judgement**

S.N. Roy, J.

This appeal is directed against the judgment and/or order passed by the learned trial Judge allowing the writ petition of the respondent No. 1 and setting aside the order of dismissal passed by the appellants in the impugned disciplinary proceeding initiated against the writ petitioner. It appears from the imputation of charges that the departmental authority had stated that no material was taken out from the store on the basis of the S. I. V. Slip of 150 bandsaw blades. The delinquent employee admitted the said fact by giving reply to the charge sheet that he had not taken out such blades although S. I. V. Slip was issued by him in anticipation of requirement of such blades in the sub-store. It, however, transpires that it is the case of the department that although S. L. V. Slip for 150 blades on a particular day was issued by the delinquent employee such blades were not removed from the store on such day but such blades had been removed earlier and S. L. V. Slip for 150 blades was issued for misappropriation of Government property already removed. Unfortunately in the chargesheet such case has not at all been made. If the case of the department is that the delinquent employee had in fact not removed any blade on a particular day on the basis of S. L. V. Slip issued by him but he had unauthorisedly removed such blades earlier and only to cover up such unauthorised

removal and misappropriation of Government property, S. L. V. Slip for 150 blades was issued by him, the department should have issued specific charge-sheet containing such allegation or any other allegation intended to be proved in the disciplinary proceeding. It is not permissible to allege a fact not intended to be proved. A disciplinary proceeding should succeed or fail on the basis of the charge-sheet issued and not on the basis of any other fact not alleged in the charge-sheet. In the circumstances, it does not appear to us that disciplinary action can be sustained on the aforesaid charge issued to the delinquent employee. The learned counsel for the appellant has, however, submitted that since an order of dismissal was passed in the departmental proceeding initiated on the basis of this charge sheet against the delinquent employee, the other disciplinary proceeding on the basis of another charge sheet was not proceeded with. Liberty has been asked for by the learned counsel for the appellant to proceed with the disciplinary proceeding initiated on the basis of the other charge-sheet issued to him. We do not think that there is any necessity to grant such liberty. In view of setting aside of the order of dismissal on this charge sheet, the delinquent employee must be deemed to be in service and as such the, department will be free to take steps for proceeding with the other disciplinary proceeding. The learned counsel for the appellant has also submitted, that the learned trial Judge has given liberty to the appellant to proceed afresh from the stage of the charge-sheet concerning the instant case. The learned counsel has submitted that if the charge-sheet is defective and does not contain the allegation intended to be proved, no useful purpose will be served by proceeding afresh with such defective charge-sheet. The learned counsel has, therefore, submitted that in the special facts of the case, liberty should be given to the appellants to amend this charge-sheet and to proceed afresh with the departmental proceeding on the basis of the proposed amended charge-sheet. Since the dismissal order on the basis of the instant charge-sheet has been set aside by the learned trial Judge, we think that no injustice will be made to the delinquent officer if liberty is given to the appellants to amend this charge-sheet and to proceed afresh with the departmental proceeding on the basis of the proposed amended charge-sheet. Since the dismissal order on the basis of the instant charge-sheet has been set aside by the learned trial Judge, we think that no injustice will be made to the delinquent officer if liberty is given to the appellant to issue proper charge-sheet in connection with the instant case and thereafter to proceed afresh in accordance with Jaw. Accordingly this appeal is disposed of by treating the same as on day's list by giving liberty to the appellants to amend the charge-sheet in respect of the proceeding in question in this writ proceeding and thereafter to proceed with the departmental proceeding in accordance with Jaw. There will be no order as to costs.

2. In view of the disposal of this appeal, liberty is given to the appellants to make payment of the arrear salaries in terms of the judgment of the learned trial Judge within a month from today.

Let the certificate copies of this judgment be given to the parties if applications for urgent certified copies are made therefore.

Pabitra Kumar Banerjee, J.

I agree.