

(2002) 06 CAL CK 0030
In the Calcutta High Court
Case No : Writ Petition No. 16191 of 1997

Achintya Kumar Ghosh

APPELLANT

Vs

South Bengal State Transport Corporation and Others

RESPONDENT

Date of Decision : 19-06-2002

Acts Referred:

Constitution of India, 1950 — Article 19, 21, 226

Citation : (2002) 3 CALLT 45 : (2003) 2 LLJ 27

Hon'ble Judges : Ashim Kumar Banerjee, J

Bench : Single Bench

Advocate : Manas Kumar Kundu, Prabir Banerjee and Anjan Bhattacharjee, for the Appellant; Debayan Bera, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Banerjee, J.—The writ petitioner was a conductor of South Bengal State Transport Corporation. On a surprise check in the subject vehicle where the petitioner was acting as conductor on 9th June, 1982 a sum of Rs. 115.05 was found excess in the bag of the delinquent. It also revealed that from 20 passengers the delinquent realised Rs. 340.20 without issuing any ticket to them. The writ petitioner was put under suspension with effect from 11th June, 1982 and thereafter proceeded departmentally. The enquiry officer by his report dated 19th January, 1984 held the writ petitioner guilty of the charges brought against him. In reply to the second show cause notice the writ petitioner by a letter dated 31st January, 1984 admitted the charges and prayed for mercy. Such reply was duly considered by the disciplinary authority and he was removed from service with immediate effect. The order of the disciplinary authority passed on 22nd March, 1984 by the Managing Director of the said corporation was impugned in a writ proceeding being Civil Order No. 6222(W) of 1985 which was disposed of by this Court by judgment and order dated September 20, 1988. The order of this Court is quoted below :--

"This writ application is directed against the chargesheet, disciplinary

proceedings, second show cause notice and final order. In my view, the disciplinary authority before passing the order ought to have considered as to whether there was a compliance of Sub rule (9) of Rule 10 of the West Bengal (Classification, Control and Appeal) Rules. That is the basic grievance of the petitioner that the order passed by the disciplinary authority is not valid and legal. The disciplinary authority also committed an incurable error by shifting the burden of proof upon the petitioner. West Bengal (Classification, Control and Appeal) Rules does not provide that the delinquent shall disprove the charge. This could only be done in the case where the delinquent is faced with a trial before the special Court under the Prevention of Corruption Act. But this is a disciplinary proceeding. The disciplinary authority should not have reached the conclusion that the delinquent could not bring any evidence to the contrary. Apart from above, the admission of guilt is not the conclusive proof of guilt. The view that I have taken on this aspect finds support from the judgment of the Supreme Court in the case of K.S. Srinivasan Vs. Union of India (UOI), . In that view of the matter, the second show cause notice and the order of disciplinary authority cannot be sustained and are set aside. The concerned authority is directed to proceed from the stage of consideration of the enquiry report and they shall secure the compliance of the rules contained in West Bengal (Classification, Control and Appeal) Rules, 1971.

The application is allowed in part to the extent indicated above.

The petitioner shall be paid subsistence allowance from the month of September, 1988."

2. It appears from the said order that the order of the disciplinary authority was quashed on three grounds :-

(i) The impugned order suffered from incurable error by shifting the burden of proof upon the petitioner;

(ii) Admission of guilt is not the conclusive proof;

(iii) No finding was there as to compliance of Rule 10(9).

3. On the aforesaid grounds the order of disciplinary authority was quashed with a direction to start de novo proceeding from the stage of consideration of the enquiry report. It was further ordered that the authority must secure compliance of the rules prevalent at that time.

4. In terms of the said order a fresh second show cause notice was issued on 17th November, 1993 and ultimately the delinquent was awarded punishment of termination of serviced The order of the disciplinary authority passed on 1st March, 1996 being annexure-H to the writ petition appearing at page 36 to 37 thereof has been impugned herein.

5. Mr. Manas Kumar Kundu, learned counsel for the petitioner, assailed the impugned order on four grounds :-

(i) The incurable error found out by the learned judge while quashing the earlier order of the disciplinary authority by shifting the burden on the petitioner was repeated in the order impugned;

(ii) There had been a contrary finding on the fourth charge;

(iii) The second show cause notice was issued in a close mind which was apparent from the tenor of the said notice;

(iv) The Appellate Authority acted as a disciplinary authority taking away the right of the petitioner to prefer an appeal.

6. On the first ground I do not find any justification in the contention of Mr. Kundu. I have perused both the disciplinary orders, one passed in the year 1984 and the other in 1996. I do not find any repetition at all. In the order impugned herein the respondent authority had considered the evidence and came to a conclusion that all the four charges had been fully established. There was no shifting of burden contained in the impugned order of the disciplinary authority. Mr. Kundu, however, tried to contend that the enquiry report submitted by the enquiry officer suffered from various illegalities. This question, in my view, is now res integra in view of the fact that this Court by the earlier order directed proceeding to start de novo from the stage of consideration of the enquiry report. Although the prayer for quashing of the said enquiry proceeding was prayed for by the delinquent the same was rejected by the learned judge and no appeal was preferred from the said order. Hence, the petitioner was not entitled to raise any issue pertaining to the enquiry proceeding or the report submitted therefor. In view of the above first contention of Mr. Kundu is rejected.

7. With regard to the second issue, I do not find any relevance. Even if I accept the contention of Mr. Kundu in this regard the situation would not have been different in view of the fact that the other three charges were sufficient enough to support the order of termination.

8. On the third issue Mr. Kundu had drawn my attention to the second show cause notice. The relevant portion of the said notice is quoted below :-

"Whereas, it appears from the report of the enquiry officer and the records of the enquiry that the charges brought against him vide T.O. Memo No. 4639-DSTC/82 dated 37.7.82 have been established. Since, the charges are grave in nature, he is liable to be removed from the service of the Corporation.

He is therefore directed to explain in writing before the undersigned within 10 (ten) days of the receipt of this memo as why he should not be removed from service on the established charge of gross misconduct."

9. The disciplinary authority by the said notice intimated the delinquent that the said authority had agreed with the finding of the enquiry officer and suggested the proposed punishment to be awarded to the delinquent and asked for his comments on the same. Mr. Kundu in this regard relied on the following

decisions :-

Kesoram Cotton Mills Ltd. Vs. Gangadhar and Others, .

10. Para 15 of the said judgment was relied on by Mr. Kundu wherein the Apex Court reiterated its consistent view to the effect that a disciplinary proceeding must not violate the principle of natural justice. In the instant case how the said proposition of law is relevant, is not intelligible to me. This Court by earlier order directed de novo proceedings from the stage of consideration of the enquiry report. Accordingly, show cause notice was issued and the disciplinary authority upon consideration of the enquiry report as well as reply to the second show cause notice passed the final order. Question of violating the principle of natural justice during enquiry as discussed by the Apex Court in the subject paragraph is not at all relevant herein. In view of the above, the third contention of Mr. Kundu is also rejected.

11. The fourth and the last ground taken by the petitioner is also not tenable in the facts and circumstances of this particular case. No. 1984 when the first final order was passed by the disciplinary authority at that time there was no disciplinary rules framed by the Corporation. The then managing director passed the final order which was quashed by this Court directing the said authority to consider the matter afresh. Hence, in terms of the said direction of this Court the Managing Director considered the matter and passed the order impugned. It is however true that by this time the disciplinary rules were framed and the Divisional Manager was designated as the disciplinary authority in case of the delinquent. Since earlier order was passed by the Managing Director and the said authority was directed by this Court to reconsider this issue the Managing Director had rightly reconsidered the matter and passed the final order. Mr. Debayan Bera, learned counsel appearing for the respondent authority, assured this Court that since the Managing Director had passed the impugned order any appeal preferred by the delinquent would be considered by the Chairman of the Corporation.

12. Mr. Kundu in this regard relied on three following decisions :-

(i) Surjit Ghosh Vs. Chairman and Managing Director, United Commercial Bank, and others, ;

(ii) 2000. II, C L J 393 (Jyotish Chandra Biswas v. Life Insurance Corporation of India and Ors.);

(iii) 2001 . I C L J 24 (Shyomananda Jha v. State of West Bengal and Ors.);

13. Since the two later decisions of the Division Bench and the single Bench of this Court respectively followed the Apex Court decision in the case of Surajit Ghosh (supra) I intend to discuss the Apex Court judgment.

14. Paragraph 5 of the Apex Court judgment in the case of Surajit Ghosh (supra) was relied on by Mr. Kundu. In the said case it was contended by respondent

bank that since the appellate authority acted as a disciplinary authority no appeal was available to the delinquent under the concerned regulations. Such contention of the respondent bank was rejected by the Apex Court on the ground that the higher authority should not have passed the order taking away the right of appeal prescribed under the regulation. In the instant case, it was neither contended on behalf of the respondent that no appeal was available to the petitioner nor was it the fact that the appeal so filed by the petitioner was rejected on such ground. In fact the delinquent did not prefer any appeal from the order of the disciplinary authority and approached this Court without availing such remedy available to him. Reason for acting as the disciplinary authority by the Managing Director which was the prescribed Appellate authority under the rules have been discussed by me hereinbefore. I have recorded the contention of Mr. Bera that in case an appeal is filed it would be considered by the Chairman of the Corporation. Hence, the decision of the Apex Court has no application in the facts and circumstances of this case. I, therefore, reject the said contention of Mr. Kundu.

15. It was also contended by Mr. Kundu that there was no compliance of Rule 10(9) and Rule 10(10)(i) of the disciplinary rules prevalent there for. Rule 10(9) prescribed preparation of the enquiry report. As I have just now held that I can not look beyond the submission of the second show cause notice, question as to whether the enquiry report was properly prepared or not was an issue which had already been foreclosed. With regard to 10(10)(i), I find that there had been substantial compliance of the said rules which directed consideration of the record of the enquiry and recording finding on each charge by the disciplinary authority. Hence. I hold that there had been no violation of the subject rules pointed out by Mr. Kundu.

In the result the writ petition fails and is hereby dismissed. There would be no order as to costs.

Urgent xerox certified copy will be given to the parties, if applied for.