
(1985) 04 CAL CK 0001
In the Calcutta High Court
Case No : C.O. No. 12407.08 (w) of 1983

Bholanath Karmakar

APPELLANT

Vs

Depot Manager, Belghoria Depot

RESPONDENT

Date of Decision : 29-04-1985

Acts Referred:

Constitution of India, 1950 — Article 310(1), 311, 311(2)
Road Transport Corporations Act, 1950 — Section 45

Citation : 89 CWN 887

Hon'ble Judges : Umesh Ch. Banerjee, J

Bench : Single Bench

Advocate : K.K. Maitra and Adyanth Ghose, for the Appellant; Tapas Roy and Sumit Kr. Panja, for the Respondent

Judgement

Umesh Chandra Banerjee, J.—In this application, a short but an important question of law falls for consideration viz. whether second show cause notice in regard to the employees of the State Transport Corporation is a requirement of law, the challenge being directed against a charge-sheet and an order of suspension dated 1st August. 1983 issued by the Depot Manager, Belghoria Depot., Calcutta State Transport Corporation as also against the circular dated 7th January, 1983 issued by the Chairman, Calcutta State Transport Corporation. The petitioner, a driver in the regular cadre of drivers of the State Transport Corporation since 1st April, 1969 was placed, as a route driver under the Depot. Manager Belghoria Dept. On 1st August, 1983, the petitioner was served with a charge sheet bearing no. 1346-STB/Dr. No. 3144 BTO dated 1st August 1983 issued by the respondent no. 1. The said charge sheet is set out hereunder for convenience sake:

It has been reported that you were allotted with the vehicle No. WBS-1857 of Rt. No. S17 at about 7.45 hrs. On 18.7.83. The said vehicle caused some mech. defects due to which you were given a replaced vehicle No. WBS 2078 of Rt. No. 4B at about 8.45 hrs. At this you said "I shall not go to Rt. No. 4B and also

added.

As a result the vehicle had to be held up in the garage unnecessarily causing inconvenience to commuters and loss of revenue to the Corporation.

As you are, prima facie guilty of (i) refusing to go on route No. 4B, instead, causing unnecessary hold up of the vehicle in the garage as above (ii) inconvenience to the utility service and loss of revenue to the Corporation (iii) negligence, carelessness and dereliction in duty and (iv) misconduct, you are hereby directed to explain in writing in your defence within 7 days on receipt hereof as to why you should not be punished in the manner prescribed in Reg. 36 of the C.S.T.C. Employees' Service Regulations.

You are further directed to state in writing whether you desire to be heard in person.

Meanwhile you will remain suspended pending decision of an enquiry into the case. You will get fifty percent of the last pay drawn by you during the period of your suspension as subsistence grant.

You are directed to deposit your Identity Card and metal badge, if any, in the Office of D-M. Bel. Depot on receipt of his order failing which subsistence grant will not be drawn.

2. A reply to the Memorandum dated 1st August 1983 was submitted by the petitioner. During the pendency of the enquiry a circular letter was issued by the Chairman, Calcutta State Transport Corporation, the relevant extract of which is set out hereunder inasmuch as the main plank of the writ petitioner's contention centers round the said circular:

Disciplinary proceedings" against employees of the Corporation are conducted in accordance with the provisions contained in the Service Regulations framed u/s 45 of the Road Transport Corporation Act, 1950 read with some administrative orders/circulars issued from time to time. The service regulations do not provide for issuing a further show cause notice after completion of the enquiry against a delinquent employee (commonly called "second show cause notice") calling upon him to show cause against the proposed punishment.

2. On a review of the entire existing procedure in the Corporation regarding disciplinary proceedings against its employees, it has been decided, in supersession of all orders and circulars in this behalf, that after completion of the enquiry against a delinquent, in a departmental proceedings, where it is warranted to impose upon him one more all of the penalties mentioned in Regulation 36 of the Calcutta State Transport Corporation Employees' Service Regulations, such penalties may be imposed on the basis of evidence adduced during such enquiry, and it shall not be necessary to give such person any further opportunity of making representation on the penalty proposed, commonly called "second show cause notice.

3. This shall be made effective in respect of all departmental disciplinary proceeding cases, excepting those where second show cause notice has already been issued.

3. Admittedly the terms and conditions of the service of the writ petitioner and the other employees of the Calcutta State Transport Corporation are governed by the Calcutta State Transport Employees' Service Regulations which had the required approval of the State Government and published under Notification No. 6530-CSTC/1E/206/60-61 dated 8th of September, 1961 in the Calcutta Gazette (Extraordinary) dated 11th of September, 1961.

4. Mr. K.K. Moitra appearing in support of the petition contended that under Regulation 39 of the Service Regulations a reasonable opportunity would have to be afforded to the delinquent and a second show cause notice is implied therein, Mr. Moitra contended that as a matter of fact the authorities also read into the clause the opportunity of a second show cause notice by reason where for it was the invariable practice of the State Transport Authority to allow a further opportunity by way of a second show cause notice and it has ripened into a condition of service. It was further contended that withdrawal of a privilege which has ripened into a condition of service by way of an administrative circular is wholly without jurisdiction. The other limb of Mr. Moitra's contention is that concept of second show cause notice being a part of the Regulations and which are statutory in nature can only be revoked or withdrawn statutorily and not by a mere administrative circular.

5. There is no manner of dispute that the notification containing the regulations is of statutory nature. Preamble of the notification reads as follows:

In exercise of the power conferred by sub-section (1) read with clause (c) of sub-section (2) of section 45 of the Road Transport Corporation Act, 1950 (64 of 1950) and with previous sanction of the State Government, the Calcutta State Transport Corporation (hereinafter referred to as the Corporation), hereby makes the following regulations regulating the conditions of appointment and service and the scales of pay of officers and servants of the Corporation other than the Chief Executive Officer and the Chief Accounts Officer.

Regulation 39 reads as follows:

No order of dismissal, removal or reduction shall be passed on an employee of the Corporation (other than an order based on facts which had led to his conviction in a criminal court) unless he has been informed in writing of the grounds on which it is proposed to take action, and has been afforded an adequate opportunity of defending himself. The grounds on which it is proposed to take action shall be reduced to the form of a definite charge or charges, which shall be communicated to the person charged together with a statement of the allegations on which each charge is based and of any other circumstances which it is proposed to take into consideration in passing orders on the case. He shall be required, within reasonable time, to put in a written statement of his defence

and to state whether he desires to be heard in person. If he so desires or if the authority concerned so directs, an oral inquiry shall be held. At that inquiry oral evidence shall be heard as to such of the allegations as are not-admitted, and the person charged shall be entitled to cross examine the witness, to give evidence in person and to have such witnesses called, as he may wish, provided that the officer conducting the inquiry may, for special and sufficient reason to be recorded in writing, refuse to call a witness. The proceedings shall contain a sufficient record of the evidence and a statement of the findings and the ground"s thereof.

This regulation shall not apply where the employee concerned has absconded, or where it is for other reasons impracticable to communicate with him. All or any of the provisions of this regulation may, in exceptional cases, for special and sufficient reasons to be recorded in writing, be waived where there is difficulty in observing exactly the requirements of the regulation and those requirements can be waived without injustice to the person charged.

6. Observance of the doctrine of Audi Alteram Partem is one of the most salutary principle of law for the purpose of administration of justice except however where it is expressly or by necessary" implication excluded. Prof. Wade "On Administrative Law" observed that the requirement of natural justice must depend on the facts and circumstances of the case the nature of the enquiry and the rules under- which the tribunal is acting on subject matter to be dealt with and so forth. This view also finds support in the decision of the Supreme Court in the case of K.L. Tripathi Vs. State Bank of India and Others, .

7. Supreme Court in the case of Khem Chand Vs. The Union of India (UOI)and Others, observed that Article 310(1) provides that every person falling within it holds office during the pleasure of the President or the Governor as the case may be. But the limitations imposed on the exercise of the pleasure of the President or the Governor in the matter of dismissal, removal or reduction in rank of government servants constitute the measure of the constitutional protection afforded to the Government servant of Article 311(2). Clause 2 of Article 311 protects government servants being dismissed, removed or reduced in rank without being given a reasonable opportunity to show cause against the action proposed to be taken in regard to them. The Supreme Court in that decision summarised the law as follows:

(a) An opportunity to deny his guilt and establish his innocence, which he can only do if he is told what the charges levelled against him are and the allegations on which such charges are based.

(b) an opportunity to defend himself by cross-examining the witness produced against him and by examining himself or any other witness in support of his defence; and finally

(c) an opportunity to make his representation as to why the proposed punishment should not be inflicted on him, which he can only do if the competent

authority, after the enquiry is over and after, applying his mind to the gravity or otherwise of the charges proved against the government servant tentatively proposes to inflict one of the three punishments and communicates the same to the government servant.

In short the substance of the protection provided by rules, like R. 55 referred to above, was bodily lifted out of the rules and together with an additional opportunity embodied in S. 240(3) of the Government of India Act, 1935 so as to give a statutory protection to the government servants and has now been incorporated in Art. 311(2) so as to convert the protection into a constitutional safeguard.

8. Khem Chand's case was considered subsequently by the Supreme Court in the case of Hukum Chand Malhotra Vs. Union of India (UOI), . In the said decision the Supreme Court observed:

Let us examine a little more carefully what consequences will follow if Art. 311(2) requires in every case that the "exact" or "actual" punishment to be inflicted on the Government servant concerned must be mentioned in the show cause notice issued at the second stage. It is obvious & Art. 311(2) expressly says so, that the purpose of the issues of a show cause notice at the second stage is to give the Government servant concerned a reasonable opportunity of showing cause why the proposed punishment is dismissal it is open to the Government servant concerned to say in his representation that even though the charges have been proved against him, he does not merit the extreme penalty of dismissal, but merits a lesser punishment, such as removal or reduction in rank. If it is obligatory on the punishing authority to state in the show cause notice at the second stage the "exact" or "particular" punishment which is to be inflicted, then a third notice will be necessary if the State Government accepts the representation of the Government servant concerned. This will be against the very purpose for which the second show cause notice was issued.

9. Very recently the Supreme Court in the case of Associated Cement Companies Ltd. Vs. T.C. Shrivastava and Others, held that unless the standing order provides for second opportunity to show cause against the proposed punishment either expressly or by necessary implication no enquiry which is otherwise fair and valid will be vitiated by non-affording of such second opportunity. From facts of the Associated Cement Company's case (supra) the real question came for consideration before the Supreme Court was whether the standing order no. 17 provide for a second opportunity being given to a workman to show cause against the proposed punishment of dismissal. The standing order 17 which deals with the punishment and procedure runs as follows:

17. A worker may be suspended for a period not exceeding 4 days or fined in accordance with the Payment of Wages Act or dismissed without notice or any compensation in lieu of notice if found guilty of misconduct defined in Standing Order No. 16. All orders of suspension and fines shall be in writing setting out

the misconduct for which the punishment is awarded. No officer below the rank of the Head of Department shall award the above punishment. All dismissal orders shall be passed by the Manager who shall do so after giving the accused an opportunity to offer any explanation. Due consideration to the gravity of the misconduct and the previous record of the worker shall be given in awarding the maximum punishment. In the event of discharge or dismissal the worker shall be paid off within the second working day following the discharge or dismissal.

10. While considering the matter, the Supreme Court placed reliance on its earlier decision in *Management Shahdara (Delhi) Saharanpur Light Railway Co. Ltd. Vs. S.S. Railway Workers' Union*, wherein it was held:

As regards the modification requiring a second show cause notice, neither the ordinary law of the land nor the industrial law requires an employer to give such a notice. In none of the decisions given by the Courts or the Tribunals such a second show cause notice in the case of removal has ever been demanded or considered necessary. The only class of cases where such a notice has been held to be necessary are those arising under Article 311. Even that has now been removed by the recent amendment of that Article.

To import such a requirement from Article 311 in industrial matters does not appear to be either necessary or proper and would be equating industrial employees with civil servants. In our view, there is no justification on any principle for such equation. Besides, such a requirement would unnecessarily prolong disciplinary enquiries which in the interest of industrial peace should be disposed of in as short time as possible. In our view it is not possible to consider this modification as justifiable either on the ground of reasonableness or fairness and should therefore be set aside.

11. The Supreme Court in the decision of the Associated Company's case went to observe:

It is thus clear that neither under the ordinary law of the land nor under the industrial law a second opportunity to show cause against the proposed punishment is necessary. This, of course, does not mean that a Standing Order may not provide for it but unless the Standing Order provides for it either expressly or by necessary implication no inquiry which is otherwise fair and valid will be vitiated by non-affording of such second opportunity.

12. Considering the law as laid down by the Supreme Court in the matter of second show cause notice it will have to be considered as to whether Regulation 39, expressly or by necessary implication, contains such a provision for a second show cause notice. The language used in Regulation 39 cannot be termed to be of any ambiguity, but clear and unequivocal in nature: The regulations admittedly are statutory in nature and as such the guiding principles for interpreting statutory provisions would also have to be applied in the matter of arriving at a definite and correct interpretation of Regulation 39. Regulation 39 itself provides that the grounds on which it is proposed to take action would have

to be reduced to a definite form of charge or charges to be communicated to the person charged together with a statement of allegation on which each charge is based. Regulation 39 provides that the charge sheeted person is required to put in a written statement of his defence and a reasonable time would have to be given therefor. It further provides that if the charged person desires to be heard in person, an enquiry which is oral in nature shall be held. Full play of the requirements under the Evidence Act has been allowed viz. examination and cross-examination of the witnesses and thereafter the known procedure of law to be followed in regard to the finding of the Inquiry Officer and the latter also is under an obligation in terms of the said regulation to state the grounds of the findings. In the event the detailed procedure as laid down cannot be complied with, sufficient reasons are to be recorded in writing for waiver thereof. When a mode of inquiry and finding is specifically prescribed as in Regulation 39 there is no scope in my view for any inference by necessary implication. As detailed above, the requirements have been stated in plain lucid form which are bound to be complied with by the appropriate authority. Issuance of a second show cause notice to the charged person is not warranted and one ought not to read such a privilege in the regulation by necessary implication where the language is specific, unequivocal and incapable of any dual meaning. Statutory regulations ought to be interpreted in the same manner and method of the statute itself. While it is true that opportunity of hearing and the doctrine of Audi Alterem Partem ought to be displayed in a manner so as to bring about a feeling of security among the employees and issuance of a second show cause notice falls squarely and evenly within the said doctrine but it must be expressed in the service regulation in such a manner so as to leave no manner of doubt in regard to the existence of such a privilege to the charged officer. It must be apparently decipherable. There is no necessity of any extension of the proper connotations of the language used in the service regulations. It must be either explicitly stated or to be stated in a manner which would leave no manner of doubt that a second show cause notice is a requirement of the regulations. In that view of the matter. I am of the view that in interpreting Regulation 39, there is no scope for attributing a meaning by necessary implication and as such Regulation 39 does not warrant a second show cause notice.

13. The other limb of Mr. Moitra's contention that invariable practice has resulted in affording such an opportunity and has in fact now been taken to be a part of the service regulations, cannot, in my view, be also accepted. A mere privilege to an employee cannot be termed to be a right. The rights and obligations flow from the service conditions which are governed by the service regulations. An employer's good gesture not forming part of the service condition cannot be said to create a right, more so when the regulations are statutory in nature. One cannot add to or alter the statutory regulations governing the service conditions. The circular letter dated 7th July, 1983, in my view, cannot be termed to be without jurisdiction or of no effect. A privilege not being a condition of service and not covered under the service regulations, accorded by the employer can

also be withdrawn by the employer under the administrative power of the employer and the Chairman being the administrative head of Calcutta State Transport is, in my view, within his rights and jurisdiction to withdraw such a grant. In any event, the service Regulations admittedly are statutory in nature and the same can not in my view be altered by way of an administrative circular. This view finds support from the decision of the Supreme Court in the case of V.T. Khanzode and Others Vs. Reserve Bank of India and Another, .

14. Mr. Moitra placed strong reliance on the decision of the Supreme Court in the case of Dalmia Cement (Bharat) Ltd., New Delhi Vs. Their Workmen and Another, , The facts in that case disclose that since 1948 till shortly before the dispute arose, the company had been encashing privilege leave standing to the credit of workmen after keeping 30 days at the credit and this practice became by implication a part of the conditions of service. The company's contention however was that for some years from 1948 the company had as a matter of grace permitted encashment in other circumstances also in relaxation of rule 45. But the concession was withdrawn in 1956 and from that year when encashment was allowed it was made clear that it was not as a matter of right. On the question of leave the workers' case was that there was no reason for discrimination as between them and the clerical staff and that they should also be granted 30 days as privilege leave, 12 days casual leave and 12 days sick leave as enjoyed by the clerical staff. On both these points the Tribunal's decision were in favour of the workmen. The Supreme Court dealing with the first contention observed that the Tribunal was right in its conclusions that encashment of privilege leave had ripened into a condition of service and refusal to comply with the application by the management was without lawful reasons. On the second aspect of the matter the Supreme Court however observed that the parentary direction of the legislature cannot be disregarded. In regard to the first limb also the case before the Supreme Court is clearly distinguishable on facts from the case under consideration presently. There was no statutory service regulations. The second limb in the case before Supreme Court and the observation in regard thereto, in my view, in more apposite as statutory regulations cannot be stifled with, neither something ought to be read therein which cannot be said to exist expressly or deciphered by necessary implication. The said decision therefore is of no assistance to Mr. Moitra.

15. The other decision relied upon by Mr. Moitra is the of cited decision of the Supreme Court in the case of Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, , wherein Supreme Court observed that "it is a well settled rule of administrative law that an executive authority must be rigorously held to be the standard to which it professes into actions to be judged and it must scrupulously observed those standards on pain of invalidation of an act in violation of them. This rule was enunciated by Mr. Justice Frankfurter in Vitarelli vs. Seaton (1959 359 US 535 : 3 LED 2(d) 1012) where the learned Judge said:

An executive agency must be rigorously held to the standards by which it professes its action to be judged Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed.... This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish the sword.

16. In my view, the said decision is also of no assistance to Mr. Moitra inasmuch as there was no statutory regulation which came for consideration before the Supreme Court. The case is clearly distinguishable on facts. Two other decisions of the Supreme Court cited by Daniraiji Vrajlalji, Junagadh Vs. Vahuji Maharaj Shri Chandrababha, . (Dr. Amarjit Singh Ahluwalia Vs. The State of Punjab and Others,) and Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation, are also not of any assistance to Mr. Moitra as the same are also clearly distinguishable on facts.

17. In the premises the other limb of the petitioner's contention that the privilege granted under Regulation 39 can only be withdrawn by statutory amendments is also not tenable.

18. In that view of the matter, the issuance of a second show cause notice by the Calcutta State Transport Corporation is not a requirement of law under Regulation 39, of the Service Regulations regulating the conditions of appointment and service and scales of pay of officers and servants of the Corporation other than the Chief Executive Officer and the Chief Accounts Officer.

19. The next contention of Mr. Moitra is that the charge sheet has been issued with a closed mind. In order to appreciate the said contention the language of the charge sheet would have to be properly scrutinised. The user of the expression prima facie guilty in my view negates the contention of there being a closed mind. Mr. Moitra strenuously contended that prima facie guilt read with the last paragraph of the charge sheet wherein the petitioner was directed to deposit the identity card and metal badge unmistakably suggest that the concerned authority had a closed mind at the stage, even of the framing of charge. In this context Mr. Moitra relied on my earlier decision in the case of Subrato Bhattacharyya Vs. Bharat Process reported in 1984 (ii) CHN 185. In that decision the language of the charge sheet was by your above mentioned acts and commission you have committed fraud, dishonestly cheating breach of trust and misappropriation of company's money" and it was held by me that the insertion of the said words goes to show the state of mind of the authority which was opposed to justice equity and fair play. In that decision it was observed that the facts and circumstances are to be considered in its entirety and if the Court comes to the conclusion that there exists a reasonable basis of apprehension on the part of the delinquent officer that the charge sheet has been issued with a closed mind or that it is apparent that there exists a bias on the part of the

disciplinary authority, the court should not hesitate to strike down the charge sheet as being bad and void.

20. Considering the facts and circumstances of the present case I am of the view that question of any apprehension or any bias does not and cannot arise in the facts of the case. Subrato Bhattacharyya's case (supra) is distinguishable on facts and as such is of no relevance in the case under consideration and does not assist in any way the petitioner's point of view.

21. In that view of the matter this application fails. The Rule is discharged all interim orders are vacated. There will however be no order as to costs. In view of the judgment in Bholanath Karmakar being C.O. No. 12407 (W)/83 the other application being C.O.No. 12408 (W)|83 is also disposed of accordingly.

Operation of the order shall remain stayed for one week from date as prayed for.