(1993) 10 CAL CK 0001

In the Calcutta High Court

Case No : C.O. No. 2765 (W) of 1992

Ganesh Chandra Das APPELLANT

Vs

South Bengal State Transport Corporation and Others RESPONDENT

Date of Decision : 07-10-1993

Acts Referred:
Constitution of India, 1950 — Article 226, 311(2)

Citation : (1994) 1 CALLT 102

Hon'ble Judges : Gitesh Ranjan Bhattacharjee, J

Bench : Single Bench

Advocate : S.K. Gupta and M.K. Kundu, for the Appellant;J.K. Sengupta and D. Bera, for the Respondent

Judgement

Gitesh Ranjan Bhattacharjee, J.—The petitioner was a bus conductor of South Bengal State Transport Corporation. On 19-2-90 while he was performing duty in Vehicle No. WMH plying in Durgapur-Krishnanagar route, his cash bag was checked by the Squad Checking Staff at Krishnanagar between 11-45 and 12-15 hours and on such checking an excess of Rs. 61.35p. was found in his cash bag. Thereafter the petitioner was placed under suspension; and departmental proceeding was started against him on the three charges mentioned below ;

(1) Excess collection of Rs. 61.35p. on a sale of Rs. 893.30p.

(2) Performing duty negligently and carelessly and all these constituting gross misconduct.

(3) Violating the provision, of Regulation 25(2) of SBSTC Employees Service Regulations.

2. The petitioner was directed to submit explanation. One Shri B. Ghosh, Labour Officer, SBSTC was engaged as Enquiry Officer to enquire into the charges framed against the petitioner. After conclusion of the enquiry, the Enquiry Officer submitted his report dated 30-5-91 which is Annexure-E to the writ application. Thereafter the Disciplinary Authority, the Managing Director, SBSTC after going

through the enquiry proceedings, by his order conveyed under Memo No. 2754 dated 9-7-91 dismissed the petitioner from service with immediate effect. The petitioner then preferred a departmental appeal before the Chairman of the SBSTC. The Appellate Authority by order dated 31-1-92 as conveyed under Memo No. 712/5 dated 7-2-92 being Annexure-G to the writ petition confirmed the dismissal of the petitioner from service. The petitioner has thereafter moved this writ petition challenging the disciplinary proceeding as well as the order of his dismissal as passed by the Disciplinary Authority and confirmed by the Appellate Authority.

3. That an excess collection of Rs. 61.35p. was found in the cash bag of the petitioner by the Squad Checking Staff is indeed an admitted fact. The petitioner''s defence was that the excess collection of Rs. 61.35p. was not any intentional or motivated act on his part. He also pointed out that at the time of checking no passenger without ticket was found in the vehicle. He further pointed out that in the past! some conductors had occasion to come across discrepancies in the numbering of tickets in the bunch of tickets and such discrepancies were also reported to the authorities and that, in his case also the apparent excess collection might have been due to any such undetected discrepancy, the possibility of which cannot be ruled out. It was simultaneously pointed out by the petitioner that even there might have been bona fide mistake also on the part of the conductor in returning changes to the passengers, thereby unwittingly causing excess collection. The petitioner''s contention in gist is that the excess collection was not any intentional act on his part and he had absolutely no bad motive in the matter and the same might have occurred due to bona fide mistake on the part of the petitioner in returning changes to the passengers, particularly when the conductors have to work under adverse and trying circumstances and it might also have been caused by reason of any error in the numbering of tickets in a bunch. In the enquiry report, the Enquiry Officer has recorded that, to quote his own language, on considering ''the whole picture of the episode of the conductor''s duty, co-operation with the checking squad, amount of revenue collected on that route on the said date, rush of passengers in the bus in the said service, honest co-operation of the delinquent during enquiry and the statement of fact given by the PWs give enough scopes to believe that the error'' occurred without any ill-intention. The Enquiry Officer also took note of the fact that no passenger was found unbooked during checking and all were having valid tickets. The Enquiry Officer took note of the plea taken by the conductor that excess collection might have occurred during exchange of amount with passengers or for error in the ticket bunch. As regards the charge Nos. 2 and 3 which are also related to charge No. 1 the Enquiry Officer opined that ''the records and evidence confirmed that the delinquent was not fully at fault''. In fine, the Enquiry Officer recorded his opinion that as regards the charge No. 1 relating to excess collection there was enough scope to believe that the ''error'' occurred without any ill motive on the part of the petitioner and as regards the charge Nos. 2 and 3 the conductor was not fully at fault.

4. There is no doubt that the Disciplinary Authority is not bound by the findings of the Enquiry Officer. There is also no doubt that the error or irregularity of making excess collection through oversight or mistake, even without any ill-motive on the part of the conductor may, in the particular facts and circumstances, constitute ''a good or sufficient'' reason for imposing appropriate penalty under Clause 36 of the Durgapur State Transport Corporation Employees'' Service Regulations applicable to the case, but then the Disciplinary Authority must consider the records of the proceedings including the enquiry report with circumspection, showing application of mind to all relevant factors including the points of defence taken by the delinquent and the findings in the enquiry report as well as the reasons assigned in support of such findings by the Enquiry Officer, and then record his own reasons for his independent findings after traversing the vital and relevant points as raised in the defence and/or projected in the enquiry report. It is needless to mention that even if the Disciplinary Authority, in the background of any particular facts and circumstances, holds that any unintentional irregularity, error or mistake on the part of an employee constitutes a, good or sufficient reason for imposing penalty, in that case also the Disciplinary Authority has to consider, by weighing in the scale of proportion, as to the punishment that should be inflicted for such lapse on the part of the concerned employee. It is needless to mention that punishment should be commensurate with the magnitude of the mistake or lapse. Every lapse or negligence on the part of an employee may not in all circumstances amount to misconduct. But even then there may be lapse or negligence which, though not misconduct, may still constitute ''a good or sufficient'' reason for imposition of appropriate penalty. In such case also the penalty must however be proportionate to the lapse or negligence and must not be indiscriminately harsh beyond proportion.

5. In the present case the order of the Disciplinary Authority namely, the Managing Director is very slip-shod and cryptic which indicates non-application of mind notwithstanding the ritualistic verbosity about perusal of the enquiry proceedings, etc. In the second paragraph of his order the Disciplinary Authority records that he is inclined to agree with the critical observation of the Dy. Managing Director (TR) who has concluded that all the charges have been established beyond doubt. This is highly improper. The Disciplinary Authority is required to consider himself the records of the proceedings, the defence plea and the findings and reasons recorded by the Enquiry Officer and he cannot assign this job to the Dy. Managing Director. Any consideration of the report of the Dy. Managing Director by the Disciplinary Authority amounts to consideration of an extraneous material which is not permissible. We do not know what was the critical observation of the Dy. Managing Director which the Disciplinary Authority considered in finding the petitioner guilty and therefore we are also not in a position to know whether the assessment made by the Dy. Managing Director was tenable or not, particularly for the purpose of superseding or super adding to the findings of the Enquiry Officer. Then again, the finding of the Disciplinary

Authority that ''since it is an admitted fact that the delinquent had an excess of Rs. 61.35p. only in his cash bag, there cannot be any controversy that the amount was collected without issuance of proper tickets and with the ulterior motive of misappropriating the same'' deserves scrutiny. In arriving at this finding about the ulterior motive of misappropriation the Disciplinary Authority seemingly displayed no application of mind whatsoever to the plea taken by the petitioner that the excess collection might have occurred due to mistake in returning the changes to the passengers or due to error in the ticket bunch, nor did the Disciplinary Authority advert his attention to the finding of the enquiry officer that there was reason to believe that the petitioner had no ill-intention in the matter. The decision of the Disciplinary Authority to inflict the punishment of dismissal upon the petitioner is professedly based upon his finding that the petitioner attempted to misappropriate the amount and collected the same with the ulterior motive of misappropriating the same. Since the finding of the Disciplinary Authority regarding the motive of misappropriation behind the excess collection is not visibly sustained by any critical analysis of the relevant materials and factors, the rendering of such a finding assumes the character of an arbitrary act.

6. Anything done by an employee which is improper, if done intentionally with or without any ill motive, may constitute a misconduct, and misconduct per se will be a ''good or sufficient'' reason for warranting penalty in the departmental proceeding. But the question whether something, which though improper, has occurred not by reason of any ill motive but by reason of lapse, negligence or error, can constitute a good or sufficient reason for warranting penalty will depend upon a number of factors, such as the nature of the lapse, negligence or error and the impact thereof, the nature of the duty and the degree of responsibility required or expected to be discharged, the attending facts and circumstances, etc. If the collection of the excess amount is a simple act of negligence, error or lapse on the part of the employee, without any bad motive behind it, the Disciplinary Authority will have to consider next, by application of mind to the relevant materials and factors,-which, he did not do-as to whether such negligence, error or lapse constitutes a good or sufficient reason for imposing any penalty and if so what penalty should be imposed for such negligence, error or lapse keeping in mind the principle of proportionality in the matter of inflicting penalty. The finding of the Disciplinary Authority about the nature of the delinquency, or for that matter about delinquency, not being visibly associated with any consideration of all the relevant aspects including the plea taken in defence and the aspects highlighted by the Enquiry Officer in his report, stands condemned for the vice of arbitrariness, besides being bad for resting on consideration of extraneous material, namely, the undisclosed critical observation of the Dy. Managing Director (TR). The finding of the Disciplinary Authority about the nature of the delinquency including the motive attributed to it by the Disciplinary Authority is arbitrary because of visible non-consideration and visible non-application of mind to the relevant materials and factors having vital bearing

on the matter. The order of the Appellate Authority, not having visibly considered all those aspects and rather mechanically confirming the order of the Disciplinary Authority, suffers from the same vice as the order it confirms.

7. In the circumstances, both the orders of the Disciplinary Authority and the Appellate Authority as they stand are found to be arbitrary and the same must therefore be quashed. Accordingly the order of the Appellate Authority dated 31-1-92 confirming the order of the petitioner''s dismissal which is Annexure G to the writ petition and the order of the Disciplinary Authority dated 9-7-91 dismissing the petitioner from service which is Annexure-D to the writ petition are hereby quashed. The respondents are directed to treat the petitioner to be in continuous service. The respondents will however be at liberty to proceed with the departmental proceeding against the petitioner from the stage of consideration of the matter by the Disciplinary Authority and the Disciplinary Authority will be at liberty to consider the matter afresh in accordance with law from the stage subsequent to the submission of the report of enquiry by the Enquiry Officer and will be at liberty to pass appropriate order in accordance with law keeping in mind the observations made in this order and after applying his mind to all relevant materials and factors. Such order shall be passed by the Disciplinary Authority desirably within two months from the date. The writ application stands disposed of accordingly. No costs is however ordered.