

(1988) 04 CAL CK 0041
In the Calcutta High Court
Case No : C.O. No. 12290 (W) of 1987

Pradip Kumar Hazra

APPELLANT

Vs

The Managing Director, Durgapur State Transport Corporation
and Others

RESPONDENT

Date of Decision : 15-04-1988

Acts Referred:

West Bengal Services (Classification, Control and Appeal) Rules, 1971 — Rule 10(10)

Citation : (1988) 2 CALLT 359

Hon'ble Judges : Mahitosh Majumdar, J

Bench : Single Bench

Advocate : Pramatha Nath Chatterjee and Utpal Kanti Mondal, for the Appellant; Tapan Kumar Sengupta and Debayan Bera, for the Respondent

Judgement

Mahitosh Majumdar, J.—This writ application is directed against the charge-sheet, as contained in page 34 of the Writ application, which was issued to this effect that while the petitioner was performing his duties in the Vehicle on the Durgapur Puri Route, the vehicle was checked by the Flying. Checking Squad at Baleswar Bus Stand and it was detected that the petitioner had allowed seven passengers of different states to travel in the said bus without tickets till the time of checking and the amount realised from these passengers against the tickets issued subsequently under the Order of the Checking Squad was Rs. 107.35. After receipt of the charge-sheet the petitioner made his reply thereto. Thereafter, the enquiry proceeding was commenced, continued and concluded and the petitioner was found guilty. The petitioner came up before this Court against the Order of suspension and also the second Show Cause Notice. On September 12, 1986 this Court disposed of the writ petition by setting aside and quashing the second Show Cause Notice and liberty was granted to the petitioner to join his duties in the same post as he was occupying prior to the issuance of the Order of suspension. Against the said Order the respondents preferred an appeal and the Appeal Court allowed the appeal by setting aside the Order passed by the learned Trial Judge on September 12, 1983.

2. Pursuant to the Order passed by the Court of Appeal on June 8, 1987, the Managing Director of the Durgapur State Transport Corporation passed the final Order as contained in annexure "Q" to the writ application, stating, inter alia that the petitioner had been found guilty once before and was dismissed from service. He was reinstated on mercy petition and it was rather unfortunate that the petitioner had not rectified his misconduct and his present offence was more severe and detrimental to the interests of the Corporation and he be dismissed from service with immediate effect. His suspension period was confirmed and he should not earn anything more except, the subsistence allowance allowed to him during the period of suspension.

3. From a reference to the said Order it appears that the past service of the petitioner was taken into account. There is no such mention of the past record either in the charge-sheet or during the course of the charge-sheet. Even though there is no mention of the said past record in the Charge-sheet.

4. Mr. Pramatha Nath Chatterjee, the learned Advocate appearing on behalf of the writ petitioner, claimed and contended that the entire enquiry proceeding was vitiated by the departure from the West Bengal Services (Classification, Control and Appeal) Rules, 1971 (hereinafter referred to as the Rules) which was duly adopted by the Durgapur State Transport Corporation.

5. From a reference to the second Show Cause Notice as also the final Order it would appear that the past record of the petitioner was taken into account.

6. Mr. Chatterjee seriously assailed the action of the respondents in taking into account the past record of the petitioner which did not find place in the Charge-sheet. Mr. Chatterjee further challenged the second Show Cause Notice and the findings of the Enquiry Officer as also the final Order on the ground that Sub-rule 10 of Rule 10 of the Rules was not properly considered. Sub-rule 10 of Rule 10 says that the Disciplinary Authority shall consider the record of the Enquiry and record its findings on such charge. The Disciplinary Authority did not record its findings on the charge nor there was any discussion on the evidence or the defence of the petitioner. Similar infirmities also crept in the second Show Cause Notice. Apart from above, the other grievances of the petitioner are also of paramount importance. It was fit and proper that the concerned Disciplinary Authority before passing the order ought to have recorded its findings on each article of charges.

7. Now, turning back to the Charge-sheet and the Order of removal, there is no charge of corrupt practices. The Disciplinary Authority did not record reasons in support of its disagree merit with the findings of the Enquiry Officer. It is not permissible.

8. Mr. Chatterjee referred to the judgments of the Supreme Court in the case of the State of Mysore Vs. K. Manche Gowda, and the State of Punjab v. Baktiar Singh 1972 SLR 85 as well as the judgment of the Appeal Court in the case of Collector of Customs, Calcutta v. Biswanath Mukherjee 1974 CLJ 251. The

principles as laid down in the aforesaid judgments are, in my view, applicable in this case, particularly, the judgment of the Supreme Court in the case; of the State of Mysore v. Manchande Goud (Supra) deprecates reliance of the Disciplinary Authority on the past record. Such reliance was admittedly made on the facts of the case.

9. Mr. Tapan Kumar Sengupta, the learned Advocate appearing on behalf of the Corporation, seriously joined the issue on the questions as raised by Mr. Chatterjee and claimed and contended that there was no infirmity in the proceedings. The enquiry proceeding was held properly, legally and bona fide and the petitioner was accorded all reasonable opportunities for the purpose of defending his case. Mr. Sengupta further submitted that no exception could be taken to the Order impugned in the writ application.

10. Considering the facts and circumstances of the case as also the infirmities as were detailed by Mr. Chatterjee I am of the view that the contentions of Mr. Sengupta by reasons of the incurable defect crept in the proceedings cannot be accepted. Reliance on the past record is wholly impermissible. There is a clear breach of the sub-rule (10) of Rule 10 of the Rules by reason of the fact that the concerned Authority did not record its findings as such article of Charges; nor did it consider the case of the defence. The enquiry report also to certain extent is my view, is based on, materials, partly relevant and partly irrelevant. The Enquiry Officer also recommended lesser punishment. The Disciplinary Authority did not record its disagreement by a reasoned order. That being the position, all orders impugned in the Writ application excepting the Charge-sheet and the Order of suspension stand set aside.

11. The respondents are directed to hold a departmental enquiry de novo from the stage of the Charge-sheet. The petitioner shall be accorded all reasonable facilities for defending his case. The respondents are further directed not to allow the petitioner to join his duties. The petitioners shall not be paid the backlog of his Salaries and Allowances till the completion of the departmental proceeding to be initiated de novo and the payment of the backlog of the Salaries and Allowances shall be decided by the concerned Authority after the proceeding is completed.

12. The Charge-sheet and the Order of suspension shall remain operative till such determination.

13. The respondents are directed to pay the Subsistence Allowance at the enhance rate of seventy five percent for the period beginning from January 1938 to March 1988 and thereafter shall go on paying the same strictly in accordance with the rules.

14. The petitioner shall also be at liberty to raise his grievances as are reserved to him for his effective defence.

15. The writ application is allowed to the extent as indicated above.