

(1998) 01 CAL CK 0027

In the Calcutta High Court

Case No : Constitutional Writ Jurisdiction C.R. No. 9800 (W) of 1982, With C.R. No. 9799 (W) of 1982

Rajeswar Das

APPELLANT

Vs

Durgapur State Transport Corporation

RESPONDENT

Date of Decision : 07-01-1998

Acts Referred:

Citation : (1998) 2 CALLT 32

Hon'ble Judges : Vinod Kumar Gupta, J

Bench : Single Bench

Advocate : Mr. Swadesh Ranjan Bhunia and Mr. Pinaki Ranjan Mitra, for the Appellant; Mr. Tapan Kumar Sengupta and Mr. Debayan Bera, for the Respondent

Judgement

V.K. Gupta, J.—The petitioner was working as a Bus Conductor with the Durgapur State Transport Corporation at the relevant time. He was served with a charge sheet on 19th December, 1981 whereby he was accused of having committed an act of misconduct. It was alleged in the charge sheet that on 21st November, 1981 while he was performing his duty as a Bus Conductor in Vehicle No. WMH 3542 on Durgapur Shikarpur route, his vehicle as checked by the flying squad and an amount of Rs. 38.35 paise was recovered in excess of the ticket amount from his cash bag. The charge meant that the excess amount was over and above the amount which reflected the sale of tickets by the petitioner. The petitioner in the reply to the charge sheet submitted, even though pleading not guilty to the charge, yet admitted the recovery of the said amount. The petitioner's explanation was that the excess amount recovered was actually his personal money which he accidentally carried with him at the time of Joining his duty on that date and which he forgot to report to the Driver. An enquiry was held into the matter and after considering all aspects of the case and the depositions of the witnesses etc, the Enquiry Officer submitted a report to the Disciplinary Authority in which the petitioner was held guilty of the charge. Based upon the enquiry report, a second show cause notice was Issued upon the petitioner in which he was called upon to explain as to why the punishment of

dismissal from service be not imposed upon him. After considering his reply to the second show cause notice and after referring all other relevant factors, the Impugned order dated 24th August, 1982 was passed by the competent authority removing the petitioner from service with Immediate effect.

2. Learned Advocate for the petitioner has assailed the Impugned order of removal from service primarily on the ground that the proceedings were initiated against the petitioner in terms of West Bengal Service (Clarification, Control and Appeal) Rules, 1971 and that these Rules were not applicable to the Durgapur State Transport Corporation at the relevant time. Learned advocate for the respondents referred to a Judgment of a Division Bench of this court in F.M.A.T. No. 433 of 1986 in the case of General Manager, Durgapur State Transport Corporation v. Syed Jamir Hussain (case decided on 29.8.86). In this Judgment, the Bench even though held that the 1971 Rules were not applicable as such in the case, yet the Corporation was entitled to take disciplinary action against its employees and that enquiry and the disciplinary proceedings were conducted consistently with the principles of natural justice. The submission of the learned advocate for the petitioner that in the absence of the relevant disciplinary rules formulated by the Corporation and because of the non-applicability of 1971 Rules, the Corporation could not take any action against the petitioner for any act of misconduct is wholly devoid of any merit and totally untenable in law. Even if no rules have actually been either formulated, framed or made applicable regulating the procedure for [Imposing major penalty against the delinquent employees, the Corporation cannot be estopped from taking disciplinary action against an employee for an act of misconduct if an employee commits an act of misconduct, he cannot be allowed to go unpunished; the Corporation is always entitled even in the absence of Rules to proceed against the employee. The only requirement is that the proceedings initiated for disciplinary action should be consistent with the principles of natural Justice and the employee should be afforded effective, reasonable and adequate opportunity of defending himself in the proceedings. In the case before us, it is quite clear that 1971 Rules were invoked for initialing proceedings against the petitioner. Even though the Division Bench judgment (supra) suggests that 1971 Rules were not applicable to Durgapur State Transport Corporation at the relevant time, following the ratio in that Judgment I find that the disciplinary proceedings against the petitioner were conducted in accordance with the principles of natural Justice. The petitioner was served with the charge sheet to which he submitted his reply. An Enquiry Officer was appointed in the matter. Evidence was taken and recorded during the presence of the petitioner and he was afforded opportunity to cross-examine witnesses. He was also allowed to lead evidence in defence which of course he did not avail of. The petitioner was also served a second show cause notice after the submission of the report of the Enquiry Officer, Based upon all such material, the appropriate Disciplinary Authority came to a finding that the petitioner was guilty of the charge and ordered his removal from service. In the aforesaid sequence of events and the procedures followed, It is difficult to hold that the

principles of natural Justice were not followed in this case.

3. It was next argued by the learned Advocate for the petitioner that the quantum of punishment was not commensurate with the act with which the petitioner was charged, The petitioner was working as a conductor and if it was found by his employer that he was indulging in an act which amounted to misappropriation of public money, in the sense that he was charging fare money from the passengers without issuing any tickets to them, it is difficult to hold that the punishment Imposed was not commensurate with the gravity of the offence.

4. For the foregoing reasons, therefore. I am of view that the impugned order does not call for any interference. In the result, therefore, the petition is dismissed and the Rule is discharged but without any order as to costs.

5. Petition dismissed