

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Jay Sengupta

WPA 15319 of 2013
CAN 1 of 2020 (Old No. CAN 2799 of 2020)

Subir Sinha
Versus
Calcutta State Transport Corporation & Ors.

For the petitioner	:	Ms. Susmita Dey (Basu)	Advocate
For the CSTC	:	Mr. N.C. Bihani Mr. Soumyajit Ghosh	Advocates

Heard lastly on : 31.08.2022

Judgment on : 24.11.2022

Jay Sengupta, J.:

1. This is an application under Article 226 of the Constitution of India praying for directions upon the respondents for not giving any effect to the impugned final order under Memo No. 62/CSTC (S) dated 29.06.2011 by the Managing Director and the Appellate order no. 217 (4) CSTC (S)/4A-06/11-

12 dated 22.11.2011, to cancel, rescind or quash the same and to accord all back wages and service benefits to the present petitioner.

2. The petitioner was an employee of the Calcutta State Transport Corporation. He worked for gain as a conductor of the respondent no. 1. He had been appointed on compassionate ground in 1988 in relaxation to the normal rules of recruitment in place of his deceased father. Suddenly, the petitioner was charge-sheeted vide Memo No. 554/CSCT (S) dated 08.03.2011 by the respondent no. 3. The charges levelled against the petitioner were that while he was on duty on 17.02.2011 in the route of Kakdwip-Kolkata-Dhamakhali in W.B. 04/D-8266, he failed to maintain correct and proper balance in his cash bag for a sum of Rs. 59, failed to book the passengers of the vehicle for his personal gain and failed to perform his duty with due devotion, care, diligence and sincerity. He submitted his written statement on 15.03.2011. On 27.05.2011 the Enquiry Officer furnished his enquiry report. Thereafter, the petitioner made a representation against the enquiry report. However, the final order was passed on vide Memo No. 62/CSTC(S)/Pro. File dated 29.06.2011 by reducing the pay of the petitioner to the basic grade and by transferring the petitioner from Taratala to Garia Depot. The petitioner preferred an appeal on 16.07.2011 under Regulation 41 of the Calcutta State Transport Corporation Employees' Service Regulation. But, the respondent no. 2 dismissed the appeal preferred by the petitioner on 22.11.2011.

3. Learned counsel for the petitioner submitted as follows. The petitioner was appointed in the year 1988 on compassionate ground on the premature

death of his father. Subsequently, he was charge-sheeted for making a deficit collection while he was on duty as a bus conductor. On 17.02.2011 in vehicle no. WB-04/D-8266 on the Kakdwip-Kolkata-Dhamakhali route. On that particular occasion the petitioner had to take the vehicle to Kakdwip first, they had to stay at Gajiwara at night and thereafter on the next date he took the vehicle to Dhamakhali for performing the duty in the long strenuous route. He had to take Rs. 60 from collection for food and he took permission from the on duty officer. For a deficit collection, the amount found to be deficit is to be recovered from the on duty conductor either or from his pay or from his person. In fact, the amount of Rs. 59 found deficit on 17.02.2011 was recovered from the pay of the petitioner for the month of March 2011. The same has been denied in the opposition in the operative portion of the final order for similar instances were and it was alleged that the petitioner failed to mend his ways such consideration by the disciplinary authority was not a part of the charge-sheet and accordingly the writ petitioner had no occasion to controvert the same. It is settled law that when a stigma is cast or an adverse remark is made, the person against whom the same is done ought to be given an opportunity of hearing. The writ petitioner was never given an opportunity of hearing regarding his past record. In the present case, a major punished was inflicted upon the petitioner for a deficit collection of Rs. 59. The punishment took away 23 years of service and the petitioner was placed in the minimum scale as if he were a new entrant in the service. The punishment was grossly disproportionate. Regulation 36 of the CSTC Employees Service Regulations deals with the penalties arising out

of the disciplinary authority. The petitioner was not only inflicted punishment as prescribed in Regulation 36 (iii) (iv), but he was also subjected to a penal transfer which was not permitted by law. The appellate order is a half a line order which simply said “cannot be considered”. This is contrary to the requirements for Regulation 42 which stated that the appellate authority shall consider whether the facts on which the order is passed had been established and whether the facts established sufficient ground for taking action and whether the penalty was excessive, adequate or inadequate. Reliance was placed on the decisions reported at (2017) 15 SCC 719; (2018) 13 SCC 219; (2015) 17 SCC 541; (2014) 14 SCC 411; (2014) 16 SCC 392.

4. Learned counsel appearing on behalf of the Calcutta State Transport Corporation submitted as follows. First, it had been admitted by the petitioner that he was compelled to take away Rs. 60 from the sale of the tickets. As such, the charges framed against him were sustainable and maintainable in law. In the reply/written statement dated 15.03.2011, the petitioner submitted that he took Rs. 60 from the only after prior permission of the supervisors and officers on duty. However, during the hearing, the petitioner did not disclose the names of the officers or supervisors from whom he had taken permission. Rather, the petitioner merely stated that he informed the Deputy Traffic Manager, Maniktala about the fact, that too towards the end of the cash bag checking. It was the duty of the petitioner to maintain the proper balance in the cash bag. He admittedly failed to do so and acted without due care and diligence. The entire proceeding right from

the framing of charges to the passing of the impugned order was concluded in accordance with law and the petitioner was given sufficient opportunity of hearing. The petitioner was not at all subjected to double jeopardy. Regulation 36 made it clear that there was no restriction upon the authority to impose any other penalty. On this reliance is placed on the decisions reported at 2012 7 SCC 621, 2015 3 SCC 779 2001 9 SCC 212, AIR 1953 SC 325 AIR 1954 SC 375. The past records of the petitioner had actually not been taken into consideration for the purpose of determining the punishment and had merely been referred to. The position is clear from the final order, which had taken a lenient view. However, the past conduct of a delinquent employee could be taken into consideration while imposing a penalty. On this, reliance was placed on the decision reported at (2017) 4 SCC 507. The appellate authority had nothing much to consider as the only contention of the petitioner was that he had obtained the prior permission before taking the sum of Rs. 60 from the cash bag. Therefore, the appellate authority could not be faulted for passing a short order. The scope of judicial review was indeed limited the Court ought not to be concerned with the decision, but with the decision making process. On this reliance was placed on the decisions reported at (2016) 14 SCC 1, (2009) 8 SCC 310 and (2019) 4 SCC 660.

5. I heard the learned counsels for the parties and perused the writ petition, the affidavits and the written notes of submissions.

6. The petitioner got an employment at the Calcutta State Transport Corporation on compassionate ground in the year 1988. On 17.02.2021 on

route Kakdwip-Kolkata-Dhamakhali in a bus, he allegedly failed to maintain the correct balance in his cash book to the tune of Rs. 59. An enquiry was done. By an order dated 29.06.2011 his pay was reduced to the basic grade and he was transferred from Taratala to Garia depot. He preferred an appeal under Regulation 41 of the CSTC Service Regulation. But, the same was rejected. During the proceeding certain earlier acts of similar nature were referred to although no formal charge was framed on that.

7. First, it does not appear that there is a provision of penal transfer under the relevant law. Therefore, the transfer was bad in law.

8. Secondly, without there being specific provision to take into consideration past conduct, the alleged past incidents of similar nature involving similar trivial sums ought not to have been taken into consideration by the disciplinary authority. As per Regulation 39, if any other circumstance was proposed to be taken into consideration, the same had to be communicated to the employee. Thus, the correct procedure was not followed in this regard.

9. The petitioner had time and again said that he had undertaken travel in a long route and had to take out a paltry sum for buying some snacks. Although he could not prove that he had taken permission for the same, he was able to show that immediately after the incident at the time of checking he volunteered to intimate the facts to the available authority.

10. The facts constituting the alleged wrongful act are so trifling that they hardly deserve to be litigated around. Besides, the due process was not followed during the proceeding.

11. Even the appellate authority did not take much pain while rejecting the appeal. It was done in the shortest possible words. This is despite the fact that Regulation 42 requires that the appellate authority considers whether the facts on which the order was passed had been established, whether the facts established sufficient ground for taking action and whether the penalty was excessive, adequate or inadequate.

12. *Les Mis'érables (The miserable ones)...*

La vie est encore mis'érable (Life is still miserable).

13. If this Court fails to interfere with this pathetic treatment of a poor bus conductor, the whole system of administration of justice would be blamed for having become elitist where as if the rich and the powerful could employ the best of resources to enjoy the legal remedies available, but the poor receive the stick in a jiffy, as in the instant case, for purportedly taking out Rs. 59/- from the cash box for having tiffin and for being unable to sufficiently prove that he had taken permission for the same.

14. In view of the above discussions, the impugned original and the appellate orders cannot be sustained and are therefore, quashed and set aside. The petitioner shall be entitled to applicable benefits of promotion and back wages.

15. The connected application being CAN 1 of 2020 accordingly stands disposed of.

16. Urgent photostat certified copies of this judgment may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(Jay Sengupta, J.)

S.M