

IN THE HIGH COURT AT CALCUTTA
(Constitutional Writ Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Krishna Rao

WPA 26193 of 2017

Sajal Kumar Khashnabish

Versus

N.B.S.T.C. & Ors.

Mr. Soumya Majumdar

Mr. Jakir Hossain

.....For the Petitioner

Mr. Susanta Pal

.....For the State

Mr. Amal Kumar Sen

Mr. Sabyasachi Mondal

.....For the N.B.S.T.C

Heard on : 23.02.2022

Judgment on : 24.03.2022

Krishna Rao, J.: The petitioner was appointed as Bus Conductor on 12.02.1988 on compassionate ground on account of the death of his elder brother on 03.11.1987. On 28.04.1989 the petitioner was performing his duty of Gangarampur-Dhubri Route and at about 7 p.m. at Kaliaganj Bus Station, police personnel headed by the DIB Superintendent of Police, West Dinajpur conducted search and during search five numbers of VCPs along

with remote control was seized from the rooftop of the bus as the same was hidden in egg cartoons and empty ken baskets.

The police seized the said VCPs and remote control at Kaliaganj Bus Station in presence of Station-in-Charge of the said bus station. On 03.06.1989, the Managing Director, North Bengal State Transportation Corporation (NBSTC), Cooch Behar (Disciplinary Authority) had issued a Memorandum along with Article of Charges against the petitioner with the direction to submit his written statement of defence. The Article of Charges levelled against the petitioner is as follows:-

CHARGE-I

That on 5.5.89 you were the on duty Conductor of the Gangarampur-Dhubri up Express Service. On the said date the police personnel headed by the D.I.B. Superintendent of Police, West Dinajpur, searched the said Service at Gangarampur Highway Bus Stand and seized 5 (five) V.C.Ps along with remote control from the said service.

It appears from the report of the D.I.B. Superintendent of Police West Dinajpur Camp at Gangarampur that during searching the said bus the police personnel found that 5(five) V.C.Ps with remote control were firmly tied in the chasis of the said service bus (Vehicle No. WGT-2367). Hence, you are charged for violation of Regulation No. 25, 26 & 28 of the North Bengal State Transportation Corporation Employees' Service Regulations.

CHARGE-II

Whereas it appears from the report records that the V.C.Ps could not be tied to the roof of the bus without your active connivance. You could not give any satisfactory statement to the police for carrying such contraband foreign goods and it is clear that you are involved in such clandestine business of smuggling of contraband articles.

Thus you have not only misused your power and position in NBSTU, but also by such act defamed the prestige of the Corporation. Hence, you are also by such act defamed the prestige of the Corporation. Hence, you are charged for violation of Regulation Nos. 25, 26 & 28 of the North Bengal State Transport Corporation Employee's Service Regulations.

CHARGE-III

Therefore, it appears from the relevant records that you have attempted to transport such contraband goods of the Corporation vehicle taking the advantage your position and further you are directly involved in the smuggling racket.

Hence, you are charged for violation of Regulation Nos. 25, 26 & 28 of the North Bengal State Transport Corporation Employee's Service Regulations.

CHARGE-IV

You did not submit any written statement to the Depot Authority in this respect just after completion of duties and thereby suppressed the fact.

Hence, you are charged for violation of Regulation No 26 of the North Bengal State Transport Corporation Employees' Service Regulation."

The petitioner has submitted his reply by denying the charges levelled against the petitioner. The Disciplinary Authority had issued a corrigendum intimating that in the charge memo, the date of the incident is wrongly mentioned as 05.05.1989 instead of 28.04.1989. As the petitioner denied the charges levelled against the petitioner and accordingly the Disciplinary Authority had appointed Inquiring Authority and Presenting Officer to proceed with the disciplinary inquiry initiated against the petitioner.

On completion of inquiry, the Inquiry Officer submitted his report wherein the Inquiry Officer held that Charge No – I, II and III has not proved and with regard to the Charge-IV, the petitioner is liable for Violation of Regulation No. 26 of NBSTCESR. On receipt of inquiry report, the Disciplinary Authority had passed the following order:-

"I, therefore, hold him guilty of the charge brought against him and pass following orders:

1. His pay is reduced at the lowest stage of grade pay of Conductor with effect from the date of this order and he will continue to draw increment from that stage.

2. This should be treated as a last warning.

He has already been allowed to resume his duties and the period of suspension will be treated as on punishment during which he will be entitled to subsistence allowance and nothing else.”

Being aggrieved with the order of Disciplinary Authority dt. 23.09.1991 the petitioner had preferred an appeal before the Appellate Authority i.e. the Chairman, N.B.S.T.C, Cooch Behar on 24.05.1995, the Appellate Authority had rejected the appeal preferred by the petitioner and upheld the order of Disciplinary Authority.

Being dissatisfied with the order of Appellate Authority, the petitioner had filed a writ petition before this Court being C.O. No. 11347 of 1995. The writ petition was disposed of by the Coordinate Bench of this Court on 08.09.2015 by passing the following order:-

“Since it appears that charge no. IV found to have been proved against the petitioner was omission to report the incident, about which the petitioner was found to have had no knowledge or complicity, but punishments awarded upheld by the Appellate Authority on consultation of past service record and punishments awarded earlier, this Court is of the view that the petitioner should approach the Appellate Authority to reconsider the appeal. The Appellate Authority, in the event the petitioner is successful in obtaining such reconsideration to his advantage, should grant the benefits arising thereby on and from the date of punishment order and the same should be given to him.

The Appellate Authority’s order dated 24th May, 1995 is set aside. The writ petition is disposed of.”

After the order passed by the Coordinate Bench of this Court, the petitioner had filed a representation for reconsideration of appeal. The Appellate Authority vide order dt. 30.01.2017 had disposed of the representation submitted by the petitioner by reconsidering the appeal preferred by the petitioner by passing the following order:-

“Hence, I am convinced with the observations of the Disciplinary Authority. In perspective Sri Khasnabish deserves severest and exemplary punishment even leading to the extent of termination from the service of the Corporation, allowing him opportunity to show cause in his defense. So that no one could dare to repeat such type of misconduct. It is good luck for Sri Khasnabish that the Disciplinary Authority restrained himself in taking such type of harsh action against him.

In consideration to the aforesaid findings observed as yet, there is a minus scope to refrain the undersigned from reiteration of the same disposal of the said appeal petition as was done by the erstwhile Appellate Authority & the Chairman, NBSTC which has been set aside by the Hon’ble High Court, Calcutta.

However, only because to pay respect to and in compliance of the Order, Dated 08.09.2015 passed by the Hon’ble Justice Arindam Sinha, Calcutta High Court the appeal petition is considered and disposed of in the following modified manner:-

- 1) In modification of the punishment under serial number – (1) it is ordered that his 2 (two) annual increments are withheld with cumulative effect instead of reduction of pay at the lowest stage of grade pay of Conductor; but he will get no resultant arrear benefits due to this modification of the order for the period from 22.09.1994 to till date of this order.”

Mr. Soumya Majumdar, Ld. Counsel representing the petitioner submitted that Regulation of the North Bengal State Transport Corporation Employee’s Service Regulation, 1964 is not applicable in the case of the petitioner. It is further urged that first three charges have not proved and forcefully it was held that the fourth charge proved against the petitioner.

The Ld. Counsel for the petitioner further submitted that Station-in-Charge of the Station was present at the time of search and seizure, who is the higher authority of the petitioner.

It is further urged that the parameters of duties of the petitioner, the petitioner is not required to make a report to higher authority in writing.

It is further the case of the petitioner that both the authorities have made certain observation to improve upon the charges, and both authorities went beyond the charges levelled against the petitioner.

Mr. Amal Kumar Sen, Ld. Counsel representing North Bengal State Transport Corporation submitted that the writ petition filed by the petitioner is barred by the res judicata in view of the specific observation made by the Coordinate Bench of this Court in C.O. No. 11347 of 1995 dt. 08.09.2015.

Mr. Sen further submitted that the petitioner has committed grave misconduct by not reporting the incident to his controlling authority and the same would amount to suppression of fact.

Ld. Counsel further urged that the petitioner violated the Regulation 26 of the NBSTC Employees Service Rule by not intimating the incident to the controlling authority.

It is further urged that as per the Provision of Rule 45 (V) and Rule 45 (Y) of the West Bengal Motor Vehicle Rule, the petitioner being the conductor of bus in the custodian of the bus and is duty bound to take precautions to prevent for use of the vehicle for any illegal or immoral purposes.

Considered the rival submissions of the parties and the documents available on record.

It is an admitted case of the petitioner that the petitioner was on duty on the date of incident and from the rooftop of the concern bus VCPs and remote control were seized by the police. It is admitted by the respondent that at the time of search and seizure the bus Station-in-Charge was also present.

Inquiring Officer on completion of inquiry had submitted report holding that Charge I, II and III were not proved/established but as regard Charge-IV, the Inquiry Officer submitted his report of follows:-

“Charge-IV

It transpires from the deposition of Shri Bimal Kr. Dutta, Inspector, Raiganj that on 28.04.89 Shri Sajal Kr. Khashnabish was allotted the duty as conductor Gangarampur to Dhubri up Express service. The said service returned on 30.04.89. But after completion of duty either the conductor or any other crews either verbally or in writing did not inform to him whether during up journey the said service was checked by the police & seized some contraband goods from the said service. It was the duty on the part of the said conductor to inform to the Depot Authority in writing of the said incident. But he did not do so. And thereby he not only failed to perform his duty properly, but also suppressed the fact. Hence he is liable for violation of Regulation nos. 26 of the NBSTCESR.”

The Disciplinary Authority accepted the inquiry report and awarded punishment by reducing the lowest stage of Grade Pay of Conductor with effect from the date of order and will continue to draw increment from that stage and the same be treated as last warning. The Appellate Authority has also upheld the order of punishment.

This Court while setting aside the order passed by the Appellate Authority held that there is no disagreement by the Disciplinary Authority with the Inquiry Officer’s report and this Court had given liberty to the petitioner to approach Appellate Authority for reconsideration and in the event the petitioner is successful in obtaining such reconsideration to his advantage should grant the benefits arising thereby on and from the date of order of punishment and the same should be given to him.

In compliance of the order passed by this Court, the Appellate Authority had modified the order of Disciplinary Authority as stated above.

Rule 26 and Rule 38 of North Bengal State Transport Corporation

Employees' Service Regulation states of follows:-

“Rule 26: An employee of the corporation shall faithfully perform the duty or obligation imposed on him under any law or by or under the authority of the Corporation or by any order or direction issued by an officer of the Corporation, in the interest of the Corporation.”

Rule 38: DISCIPLINE:- The following penalties may, for good and sufficient reason on and as hereinafter provided, be imposed upon employees of the Corporation namely:-

- (i) Censure
- (ii) withholding of increment or promotion, including stoppage at an efficiency bar.
- (iii) reduction to a lower post or time-scale, or to a lower stage in a time scale.
- (iv) recovery from pay of the whole or part of any pecuniary loss caused to the Corporation by negligence or breach of orders,
- (v) Suspension,
- (vi) Removal from the service of the Corporation, which does not disqualify from future employment.
- (vii) Dismissal from the service of the Corporation, which ordinarily disqualifies from future employment.

Explanation:- The discharge of a person-

- (a) Appointed on probation, during the period of probation,
- (b) Appointed, otherwise, then under a contract, to hold a temporary appointment, on the expiration of the period of the appointment.
- (c) Engaged under contract, in accordance with the terms of his contract, does not amount to removal or dismissal within the meaning of this regulation.”

Rule 45 (v) and Rule 45 (y) of the West Bengal Motor Vehicle Rules,

1989 reads as follows: -

“(v) shall take reasonable precautions to prevent luggage being miscarried or lost on the way;

(y) shall not, while he is on duty, permit the vehicle to be used for illegal or immoral purpose;”

The Inquiry Officer while assessing the charges leveled against the petitioner, it was held that, *‘the conductor cannot be liable for detecting those goods on the roof of the bus. Because, it is not the duty of the conductor to check the luggage of the passengers. The said conductor had booked the passenger in the booking counter at Gangarampur and the said Stand-in-Charge was also present so there is no scope on the part of the conductor to allow anybody unauthorizedly to carry anything into the bus because, the Stand-in-Charge was also present there. In case, he had found irregularity against the conductor he should bring the same to the notice of the authority but no such action was taken by the Stand-in-Charge. From it, it appears that he did not detect any irregularity against the conductor and there is no proof that in connivance with some outsiders the said conductor had carried any contraband goods.’*

The Charge IV against the petitioner is that, the petitioner did not submit any written report to the Depot Authority regarding search and seizure of VCPs and remote control from the bus after completion of the duties and thereby suppressed the fact. The Inquiry Officer while concluding the findings with regard to Charge No. IV held that the petitioner suppressed the fact and hence is liable for violation of Regulation No. 26 of the North Bengal State Transport Corporation Employees’ Service Rules.

Rule 26 speaks about for performance of duty/obligations imposed on him under any law, or under the authority of the Corporation or by any order or direction issued by an Officer of Corporation. In the instant case,

the police authority has searched the bus in presence of Station-in-Charge and seizure was affected. The Station-in-Charge of the said Depot was the higher authority than the petitioner and thus the said incident was within the knowledge of the higher authority. As regard Sub-Rule (v) and (y) of Rule 45 of the West Bengal Motor Vehicles Rules, 1989 speaks about for taking reasonable precautions to prevent luggage being miscarried or lost on the way and while he is on duty permit the vehicle to be used for illegal or immoral purpose.

The Appellate Authority while reconsidering the appeal of the petitioner noted the findings of the Inquiry Officer as follows:-

“It appears from the Enquiry Report where the Enquiry Officer has opined that as there is a border at Gangarampur it was a routine checking by the police. According to him, for this reason the duty conductor cannot be held liable. The Enquiry Officer in his Enquiry Report has observed that it was the duty of the Stand in Charge to bring to the notice of the Authority, if something was found/detected adverse against the on duty crews. But the Stand-in-Charge did not do so. Hence, the liability for non reporting of any incident like a findings of routine checking by the Police never rests upon Sri Khasnabish.”

Though the Appellate Authority has taken note of the finding of Inquiry Officer but had passed an order of penalty contrary to the finding of Inquiry Officer.

In view of the above, this Court is of the opinion that the order passed by the Appellate Authority is not sustainable under law and thus the impugned order dt. 30.01.2017 is set aside and quashed.

WPA No. 26193 (W) of 2017 is thus **allowed**.

Parties shall be entitled to act on the basis of a server copy of the Judgment and Order placed on the official website of the Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Krishna Rao, J.)