

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Before:

The Hon'ble Justice Hiranmay Bhattacharyya

**WPA 16970 of 2022
Md. Nausad
Vs.
State of West Bengal & ors.**

For the Petitioner	: Mr. D.K.Sengupta, Ms. Sweta Saha,	advocates
For the CSTC	: Mr. N.C.Bihani Mr. Soumya Mukherjee	advocates
Reserved on	: 16.05.2023	
Judgment on	: 05.10.2023	

Hiranmay Bhattacharyya, J.:-

1. Petitioner has prayed for setting aside the order of punishment dated 30.12.2021 passed by the Disciplinary Authority and the order of the appellate authority dated 12.04.2022
2. Petitioner was appointed as a Driver by the Calcutta State Transport Corporation (for short "CSTC"). While the petitioner was posted at Manicktala depot he was allotted duty with vehicle no. WB 05-1990 on 22.05.2021. The said vehicle heavily dashed two other vehicles when the petitioner was on the steering thereby damaging all the three vehicles. A charge sheet dated 13.08.2021 was issued. Petitioner replied to the charges leveled against him by a letter dated 16.08.2021. The Inquiry Officer in his report dated 09.11.2021 held the petitioner guilty of the charges leveled against him.
3. Petitioner submitted his representation against the Inquiry Report and the Disciplinary authority by an order dated 30.12.2021 directed that the estimated loss of Rs. 3,29,745/- be realised from the salary of the petitioner in equal installments. The appellate authority was, however, of the view that only an amount of Rs. 2,00,000/- shall be realised from the petitioner.

4. Mr. Sengupta, learned advocate for the petitioner submitted that proper enquiry was not conducted by the respondent authority. He further submitted that the petitioner was not at fault and the vehicle allotted to him had mechanical fault. Mr. Sengupta contended that the authorities failed to insure the vehicles and, therefore, the petitioner should not be penalized for the fault of the authority.
5. Mr. Bihani, learned advocate for CSTC seriously disputed the submissions of Mr. Sengupta. He contended that the petitioner participated in the enquiry and such proceeding was conducted by following the principles of natural justice. Mr. Bihani submitted that under Article 226 of the Constitution of India, the High Court cannot act as an appellate authority over the findings of the disciplinary authority. In support of such contention, he placed reliance upon the decision of the Hon'ble Supreme Court of India in the case of **State Bank of India vs. Ram Lal Bhaskar and anr.** reported at **(2011) 10 SCC 249**.
6. Heard the learned advocates for the parties and perused the materials placed.
7. There is no quarrel to the proposition of law laid down in **State Bank of India** (supra) that in a proceeding under Article 226 of the Constitution, the High Court does not act as an appellate authority over the findings of the disciplinary authority and so long as the findings of the disciplinary authority are supported by some evidence, the High Court does not reappreciate the evidence and come to a different and independent finding on the evidence.
8. The Hon'ble Supreme Court in the case of **Union of India & Ors. v. P. Gunasekaran** reported at **(2015) 2 SCC 610** held that the High Court, in exercise of its powers under article 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence. The Hon'ble Supreme Court in paragraph 12 of the said reports have curved out the following exceptions.

“12. The High Court can only see whether:

(a) the enquiry is held by a competent authority;

(b) the enquiry is held according to the procedure prescribed in that behalf;

(c) there is violation of the principles of natural justice in conducting the proceedings;

(d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;

(e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;

(f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;

(g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;

(h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

(i) the finding of fact is based on no evidence.”

9. Bearing in mind the aforesaid propositions of law, this Court shall now consider as to whether the orders of the disciplinary authority and the appellate authority calls for any interference.
10. The charge against the petitioner was that while he was on steering of his allotted vehicle, the said vehicle heavily dashed two other vehicles causing damages to all the three vehicles.
11. The defence of the petitioner was that the vehicle which was allotted to the petitioner had major mechanical fault and the same was not covered under any insurance.
12. The Inquiry Authority observed that there was no mechanical fault in the allotted vehicle. The Inquiry Authority held the petitioner guilty of the charges leveled against him.
13. The Inquiring Authority in his report dated 09.11.2021, however, did not consider the specific defence of the petitioner that the vehicle did not have any insurance coverage. It appears from the evidence of the charged driver that he submitted copies of Insurance of the vehicles but the Inquiry Authority did not return any finding on such document.

14. The Disciplinary Authority and the Appellate authority also did not take into consideration the specific defence case of the petitioner that the vehicle did not have insurance coverage. It appears from the evidence that the copies of the insurance of the vehicle was submitted by the petitioner at the time of inquiry. Whether the vehicles had valid insurance coverage at the relevant point of time is a relevant fact which was overlooked by all the authorities. That apart it appears from the order dated 30.12.2021 that the estimated loss was calculated at Rs. 3,29,745. From the orders passed by the disciplinary authority it appears that the said authority directed realisation of the pecuniary loss caused by the petitioner to CSTC. No document has been produced by CSTC to show the actual expenses incurred by CSTC for repairing the vehicles. The fact whether the vehicles were insured is a relevant fact for ascertaining the loss suffered by CSTC. In case the vehicles were not insured, the question would arise whether the authorities can penalise the petitioner for their own fault.
15. In the case on hand the disciplinary authority erroneously failed to consider the documents submitted by the petitioner regarding the insurance of the vehicles. The finding of the disciplinary authority as to the loss suffered by CSTC is also based on no evidence. Therefore, the instant case squarely falls within the exceptions carved out by the Hon'ble Supreme Court in the case of **P. Gunasekaran** (supra).
16. This Court is, therefore, of the considered view that the orders passed by the Disciplinary Authority and the Appellate Authority calls for interference.
17. Since the appellate authority modified the order of the disciplinary authority, this Court is of the considered view that the appellate authority should be directed to revisit its order dated 12.04.2022 and decide the appeal afresh in the light of the aforesaid observations.
18. For the reasons as aforesaid, the Chairman, CSTC being the 3rd respondent is directed to revisit its order dated 12.04.2022 and to decide the appeal afresh in the light of the observations made hereinbefore by passing a reasoned order upon giving an opportunity of hearing to the petitioner and communicate the same to the petitioner. The entire exercise shall be completed as expeditiously as possible but positively within a period of eight weeks from the date of receipt of the server copy of this order. Recovery, if any, pursuant to

the impugned orders shall be subject to the order to be passed by the appellate authority in terms of this order.

19. Accordingly the writ petition stands disposed of with the aforesaid observations and directions. There shall be, however, no order as to costs.
20. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(Hiranmay Bhattacharyya, J.)