

S/L 5
10.4.2024
Court No.11
SD

WPA 3523 of 2007

Uttam Kumar Thakur
Vs.

Calcutta State Transport Corporation & Ors.

Mr. Ashis Kumar Chowdhury
Mr. Rajib Ghosh
Mr. Babhru Bahan Bera
Mr. Avisek Chatterjee

...for the Petitioner.

Mr. N.C. Bihani
Mr. Niladri Bhattacharya
Mr. Soumya Mukherjee

...for the CSTC.

Questioning the defensibility of the order passed by the appellate authority on 13.11.2006 in a statutory appeal preferred by the petitioner and the order of punishment passed by the disciplinary authority communicated to the petitioner on 18.10.2005 and seeking other allied reliefs, the present writ petition was instituted.

Before going to delve deep into the controversy, it would be apt to advert to the facts, as projected in the writ petition. The petitioner joined the Calcutta State Transport Corporation (in short, the 'Corporation') as a bus conductor (Badge no.6492) on 06.04.1990. The conditions of service of the petitioner are regulated by one Regulation, namely, C.S.T.C. Employees' Service Regulation, 1961.

In 2005, when the petitioner was attached to a Bus of Kolkata-Dhamakhali route, bearing registration no. WB-04B-8021, then an order styled as a 'charge sheet –cum-suspension' *vide.* memo. no. 3005/CSTC(S) dated 19.03.2005 was served upon him on 22.03.2005 asking the petitioner to respond thereto within seven days from the

date of receipt thereof. From the memo. dated 19.03.2005, it revealed that the petitioner was placed under suspension in connection with a disciplinary proceedings initiated against him on the following charges:

- i) *“failure to maintain correct and proper account in cash bag for a sum of Rs.225/- as found excess in the cash bag;*
- ii) *failure to perform duty with due devotion and care, diligence and sincerity to prevent loss of this Corporation; and*
- iii) *misconduct”.*

The petitioner submitted his reply to the charge-sheet on 30.03.2005 but without dealing with the averments made in the reply, the authority decided to proceed with the disciplinary proceeding and engaged one officer of the Corporation as enquiry officer who in pre-determined mind returned his findings. A copy of enquiry report was provided to the petitioner under a covering letter dated 04.06.2005.

On 18.10.2005, upon receipt of a communication from the competent authority, the petitioner came to learn that by passing an order, the disciplinary authority held that all the charges brought against the incumbent had been proved and passed the following order of punishment.

“.. the increment be reduced to the initial stage with cumulative effect”.

Though on 7.11.2005, the petitioner preferred a statutory appeal against the final order of punishment, the petitioner assailed the order of punishment in a writ petition being W.P. no. 17474(W) of 2006, which was disposed of by

an order dated 28.08.2006 directing the appellate authority to dispose of the appeal within a specific time frame. In deference to the order dated 28.08.2006, the appeal was disposed of affirming the order of punishment.

Situated thus, the petitioner has preferred the present writ petition to impugn the order of appellate authority as well the final order of punishment.

Mr. Chowdhury, learned advocate for the petitioner argues that in the given case, the charge sheet is bad and the articles of charges incorporated therein were vague. He contends that disciplinary proceeding basing upon such charge sheet cannot be sustained. He next contends that the disciplinary authority as well as the enquiry officer have proceeded in derogation of the statutory rules and in defiance of the principle of natural justice and as such, the entire disciplinary authority stood vitiated. He elaborates his such assertion contending that no opportunity was afforded to the petitioner to cross-examine the management witnesses. He asserts that the punishment is disproportionate to the misconduct allegedly proved against the petitioner.

Inviting my attention to the Rule 52 of the West Bengal Service Rules Part-I, he contends that in terms of the Rule, it is mandatory that in case of an order of punishment of reduction of scale of pay to its lower stage, there must be a specific time period for which this order shall remain effective but no such time frame was fixed and as such, the punishment which was imposed upon the petitioner was in not consonance with the provisions of Rule 52.

Placing reliance upon a judgment delivered in case of *State of Uttar Pradesh and Others vs. Saroj Kumar Sinha* reported in (2010) 2 SCC 772, he submits that in a departmental enquiry, an enquiry officer acts as a quasi-judicial authority and hence, his findings must be informed with reason. Similarly, the order of disciplinary authority would be reasoned order but in the case at hand, by a cryptic order, the punishment was imposed upon the petitioner in a pre-conceived mind.

In response, Mr. Bihani, learned advocate representing the respondents reposted the claims of Mr. Chowdhury. Drawing my attention to some sentences made in the order of punishment, he claims that the enquiry report and the copy of the deposition were handed over to the delinquent employee. He argues that the delinquent employee did not contradict the allegations levelled against him rather he stressed upon the contents of his reply to the charge-sheet heavily.

Tweaking a sentence from the reply to the charge-sheet where the petitioner made an attempt to defend the charges contending that *‘in course of making transaction with the passengers vide such big notes the mistake on the part of the conductor is quite natural’*, it is sought to be argued by Mr. Bihani that the petitioner has virtually admitted the guilt. He reiterates the well-ingrained principle that the admitted facts need not be proved.

He contends that the scope of interference in disciplinary matter is restricted. He argues that while exercising the power of judicial review the Court should not

act an appellate authority nor should it re-appreciate the evidence or go into adequacy and/or reliability of the evidence.

Citing a decision rendered in cases of *State of Karnataka and Another vs. Umesh* reported in (2022) 6 SCC 563 and *Union of India and Others vs. Subrata Nath* reported in 2022 SCC Online SC 1617, he argues that the Court shall refrain itself from interfering with the finding of facts recorded by the disciplinary authority unless it is found to be patently perverse or grossly incompatible with the evidence on record or based on no evidence.

He contends that the Court cannot substitute the findings of the disciplinary authority and the appellate authority with its own finding in case of existence of possibility that another view could be taken on the given facts.

He claims that the present petitioner was habitual in committing indiscipline and disorderliness and he claims that on earlier four occasions, the petitioner was either cautioned or fastened with minor penalties but he did not mend his ways. Referring a decision rendered in the case of *Central Industrial Security Force and Ors. –vs- Abrar Ali*, reported in (2017)4 SCC 507, he submits that past conduct of an employee can be taken into account at the time of imposition of penalty.

He submits that though the allegations leveled against the petitioner were grave in nature yet the disciplinary authority has taken a lenient view and has imposed comparatively a lesser punishment.

He argues that since the scale of pay of the petitioner was reduced to its initial stage, there was no question of compliance of the requirements of Rule 52 of the West Bengal Services Rules Part-I.

Heard the learned advocates for the respective parties. Perused the materials on record.

Admittedly, there is no quarrel in accepting the proposition that in case of a disciplinary proceeding, the scope of judicial review is restricted and normally, the same shall be confined to decision making process and unless the punishment is perverse or shockingly disproportionate to the proven misconduct, the Court should not interfere with the quantum of punishment. If the decision-making process is found to be flawed, the court may interfere to correct the error by setting aside such decision and require the decision maker to take a fresh decision.

In a domestic enquiry, fairness in the procedure is a part of the principles of natural justice. It is apposite to refer the judgment of *Sawai Singh v. State of Rajasthan* reported in (1986) 3 SCC 454 wherein it was observed that it is not possible to lay down any rigid rules of the principles of natural justice which depends on the facts and circumstances of each case but the concept of fair play in action is the basis.

Procedural fairness in a departmental enquiry demands proper disclosure of materials to be used against the delinquent. There are repetitive pronouncements on the proposition that non-disclosure and non-supply of the documents to the delinquent employee would amount to violation of natural justice and if it is found that the

documents are voluminous and it is impracticable to supply the copies to the delinquent, the disciplinary authority must afford an opportunity to the charged employee to inspect the documents and the omission to supply the documents or to afford an opportunity to inspect the document, as the case may be, would vitiate the entire decision making process and/or the disciplinary proceeding.

Indisputably, from the charge-sheet issued against the petitioner it would be explicit that no list of documents and list of witnesses were disclosed. No statements of imputation of charges containing the details, references etc. relating to the charges were appended to the charge-sheet. It is noteworthy such imputation of charges is meant to give a clear idea regarding the nature of allegations the delinquent is to meet. On cursory glance of the charge-sheet, it would be explicit that in absence of any support from the imputation of charge, the article of charge nos. 2 and 3 were vague.

No materials have been placed to show that the petitioner was afforded opportunity to cross-examine the management witnesses though such evidence were based in taking final decision. Despite incorporation of any statement in prelude of the charge-sheet, unless a specific charge is framed, authority cannot claim impunity to look into the past conduct of the delinquent.

It is condign to note that purpose of enquiry is not somehow to establish the charge levelled against the delinquent by the management but its actual motto is to unravel the truth. In a disciplinary proceeding, it is the department which tests the veracity of allegations levelled

against the delinquent by the department itself. Therefore, the enquiry officer acquires a status of independent quasi-judicial authority. Similarly, the disciplinary authority also acquires the status of an independent arbiter. They are not supposed to be representatives of the department. It is expected that both of them shall independently examine whether basing upon the evidence brought on records by the management and delinquent, the allegations of misconduct can be declared to be proved or not. It is settled law that the suspicion, however strong it may be, cannot place of proof.

In the final order of punishment, there is no indication to suggest that the decision-maker reached to the conclusion after appreciation of evidence. In the case at hand, sufficient opportunity was given to the Corporation to produce the records to justify their actions taken in the disciplinary proceeding but on all occasions, the Corporation took the plea that the records are misplaced.

This Court did not get any occasion and/or opportunity to ascertain whether the findings returned by the enquiry officer were well-reasoned and whether the findings were based on evidence.

The principles of natural justice require that the decision of the disciplinary authority also must be informed with reason. In the entire order of punishment, there is no discussion regarding evidence. The record shall have a clear reflection that the prescribed procedures were followed and the order of punishment was passed after appreciation of the facts and evidence. The decision-maker in its decision must disclose the grounds basing upon which he came to

conclusion that the allegations stood proved. In the case at hand, tenor of the final order of punishment and order of the appellate authority suggests that both the authorities have abruptly jumped to the conclusion without appreciating the evidence brought on record.

For these two reasons, the entire proceeding stood vitiated. I cannot express my agreement to the submission made from the bar that the use of word 'mistake' in the reply can be construed to an admission of the guilt. The purport of the word is to be traced in the context it was used. Since the charge-sheet has been condemned to be violative of principles of natural justice in absence of list of evidence and documents and imputation of charges, the proceeding continued and concluded basing upon such charge-sheet cannot stand. Needless to state that if the foundation of a disciplinary proceeding is fragile, an edifice cannot stand thereon.

There is no scintilla of doubt as regards the binding effect of the judgments relied upon by Mr. Bihani but those are distinguishable on facts.

Therefore, in view of foregoing analysis, the final order of punishment and the order of appellate authority are set aside.

Now, at this stage after lapse of almost 19 years, it would not be apposite to send back the matter to the disciplinary authority to enable the authority to issue a fresh charge-sheet containing all the requisite materials and proceed afresh. At a long distance of time, it would also not be apt to force the petitioner to go through a long-drawn

disciplinary proceeding on the allegations of detection of a paltry sum of Rs. 250/- in cash bag and other two charges, which have been declared to be vague.

Therefore, in this factual context, this Court feels inclination to exercise its equitable discretion and accordingly, the respondent no. 2 is directed to restore the scale of pay of the petitioner to its pre-reduction stage and extend all the benefits consequential to such restoration to the petitioner within a period of three months from the date of receipt of a copy of this order.

With these above observations and directions, this writ petition is disposed of.

There shall be no order as to costs.

All parties are to act on the website copy of this order

(Partha Sarathi Chatterjee, J.)