

Form No.J(2)

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

Present:

The Hon'ble Justice Raja Basu Chowdhury

WPA 4085 of 2013

With
CAN 5 of 2023

Pijush Paul
Versus

The Calcutta State Transport Corporation & Ors.

For the petitioner : Mr. Manas Kumar Biswas
Mr. Md. Jalaluddin
Ms. Susmita Dey (Basu)

For the respondents : Mr. Amal Kumar Sen

Heard on : 7th February, 2024

Judgment on : **7th February, 2024.**

Raja Basu Chowdhury, J:

In re: CAN 5 of 2023

1. This is an application, inter alia, praying for recalling of the order dated 8th August, 2023 passed in WPA 4085 of 2013.
2. Heard the learned advocates appearing for the respective parties and considered the materials on record. I find that the petitioner has been able to make out sufficient cause for its non-appearance

on 8th August, 2023, when the writ petition was dismissed for default.

3. In view thereof, the order dated 8th August, 2023 is recalled. The writ petition, being WPA 4085 of 2013 is restored to its original file and number.
4. The application, being CAN 5 of 2023 is thus disposed of.

In re: WPA 4085 of 2023

1. The present writ petition has been filed, *inter alia*, challenging the final order dated 30th April, 2012 passed by the respondent no.3, as also the appellate order dated 16th May, 2012.
2. The petitioner was recruited as a trainee conductor by the respondent no.1 in the year 1998 and since then, had been discharging his duties as conductor with the respondent no.1.
3. It is the petitioner's case that while performing his duty as a conductor in a public transport vehicle of the respondent no.1 en route from Kolkata – Karimpur, the checking personnel had boarded the public transport vehicle at Karimpur and checked the cash bag of the petitioner. Upon checking a deficit amount of Rs.1003/- against the sale of Rs.2206/- was detected. Based on the aforesaid, a charge-sheet with an order of suspension was issued on 31st October, 2014. By a communication in writing dated 19th November, 2011, the petitioner had duly responded to the said charge-sheet. The same followed a disciplinary enquiry against the

petitioner in terms of the Service Regulations (in short the “said Regulations”) as applicable to the employees of the respondent no.1.

4. On the basis of the enquiry so conducted a final order dated 30th April, 2012 was passed thereby, holding the petitioner guilty of the offences as charged against him and consequentially was inflicted with an order of punishment thereby, bringing down his pay to the basic grade with cumulative effect. His salary was thus, refixed on that basis. It was further provided in the final order that the same should be recorded in the service book and that the period of suspension spent by the petitioner was to be treated as substantive punishment thereby, denying other financial benefit save and except the subsistence allowance payable to him.
5. Challenging the aforesaid final order, the petitioner had preferred a departmental appeal. However, since the departmental appeal was kept pending, the petitioner was compelled to move a writ petition which was registered as WP No. 16336 (W) of 2012. On contest by an order dated 19th October, 2012 a Coordinate Bench of this Court was, *inter alia*, pleased to dispose of the said writ petition by directing the appellate authority to dispose of the petitioner’s statutory appeal filed on 16th May, 2012 within 31st December, 2012.
6. Pursuant to and in terms of the direction passed by a Coordinate Bench of this Court, the appellate authority appears to have considered and rejected the appeal filed by the petitioner by its

order dated 27th December, 2012, which was communicated to the petitioner vide communication dated 31st December, 2012.

7. Challenging the final order as also the appellate order, the present writ petition has been filed.
8. Mr. Ghosh, learned advocate representing the petitioner by referring to the charge-sheet submits that the said charge-sheet and the order of suspension are not in conformity with the said Regulations as applicable to the petitioner. By referring to Regulation no.47 it is submitted that the appropriate authority could have suspended the petitioner provided the order of suspension was issued prior to issuance of the charge-sheet. There is no provision in the said Regulation which authorizes the respondents to simultaneously suspend a delinquent employee while issuing the charge-sheet. By further referring to the charge-sheet it is submitted that the charges were never proved in course of enquiry. Insofar as charge no.2 is concerned, it is submitted that the respondents could not produce any witness nor lead any evidence to demonstrate that the petitioner had received the fares from 7 several passengers without issuing any tickets to them. On the contrary, the evidence on record would categorically indicate that the petitioner had not received or retained the fares from the aforesaid 7 passengers without issuing tickets. Admittedly, the 7 passengers had not been examined and in view thereof, the charge that the petitioner despite receiving fares from 7 passengers had not issued tickets to them cannot be

sustained and is bad in law. He submits that proper procedure was not followed while preparing the bag checking report. The disciplinary authority being a quasi-judicial authority is obliged to enquire into the charges not only having regard to the principles of natural justice but is also required to ensure that the proof of charges are based on relevant piece of evidence or at least some evidence. By referring to the statement of Sri Prafulla Kumar Purkait, the checking personnel, it is submitted that the said checking personnel had not made any positive statement that the petitioner despite collecting the fare from the 7 passengers had not issued tickets to them and had retained the fare illegally. It is submitted that only a vague statement had been made that although, the petitioner had collected the fare he had returned the same to the passengers without issuing the tickets. It is submitted since, the final order passed by the disciplinary authority is based on no evidence and the primary charge, being charge no.2 could not be proved, the final order cannot be sustained. It is still further submitted insofar as charge no.1 is concerned, the petitioner had already made good the loss allegedly suffered by the respondent no.1 by depositing the deficit amount with the respondents in terms of the direction issued by the respondents on 14th October, 2011 prior to issuance of the said charge-sheet, and as such the same could not have formed the basis for framing the charges against the petitioner. Factum of such payment would

corroborate from the receipt issued by the respondent no.1 on 15th October, 2011 which is annexed to the affidavit-in-reply. Accordingly, the final order cannot be sustained, the same should be set aside. The Appellate authority also did not consider the aforesaid aspect at all and had mechanically rejected the appeal by observing that there has been compliance of the provisions of natural justice.

9. *Per contra*, Mr. Sen, learned advocate representing the respondents submits that admittedly, in this case, shortage of cash was detected in the cash bag of the petitioner by the inspectors on 14th October, 2011. The petitioner also acknowledged the same. The aforesaid fact would corroborate from the bag check report. Simply because the petitioner had made payment of the deficit amount, the same does not absolve the petitioner from being subjected to a disciplinary proceeding. He submits that the petitioner had never cross-examined the deponents who were the checking personnel. By placing reliance on the enquiry proceeding, *inter alia*, including the deposition of Prafulla Kumar Purkait, he submits that the said deponent had categorically submitted that at the time of ticket checking he had been able to ascertain from the passengers that the petitioner despite accepting the fare from such passengers did not issue tickets to them. Mr. Sen, however, acknowledges that in the said deposition the deponent had deposed that the passengers had taken back the money from the petitioner. He submits that the

computation as regards the deficit amount had been established in course of the enquiry and as such charge no.1 which pertains to the deficit amount of cash being detected in the petitioner's bag stood established. Similarly, the charge no. 3 which relates to failure to perform duty with due devotion and care, diligence and sincerity also stood established. Insofar as charge no.2 is concerned it is submitted that this is not a case of no evidence. Admittedly, the checking personnel had deposed. There is no challenge in the form of cross examination to the testimony. In a departmental enquiry the standard of proof required, is not the same as in a criminal trial. The test for proof of charges in a departmental enquiry is based on preponderance of probabilities. He submits that in a case of this nature, interference is not called for. In any event, the charges no. 1 and 3 have both been proved and as such the enquiry does not stand vitiated even if there is some doubt as regards proof of charge no.2 is concerned. In support of his aforesaid contention he has placed reliance on the following judgments:-

- i. ***State Bank of India & Ors. v. Narendra Kumar Pandey***, reported in **(2013) 2 SCC 740** &
- ii. ***State of Bihar & Ors. v. Phulpari Kumari***, reported in **(2020) 2 SCC 130**.

10. Heard the learned advocates appearing for the respective parties and considered the materials on record. As would appear from the case made out by the parties, on 14th October, 2011 when the

petitioner was performing the duty of a conductor on a public transport vehicle plying from Kolkata to Karimpur, the checking personnel had boarded the bus at Karimpur stoppage and allegedly detected that the petitioner had received fare from seven passengers without issuing any tickets to them. It was also detected that the petitioner was holding onto a block of tickets consisting of 100 tickets of Rs.5/- denominations amounting to Rs.500/- which according to the petitioner had been sold, however, the cash from the sale was not detected in his bag. On checking it was found that a deficit of Rs.1003/- in his bag. Immediately after the incident the petitioner was called upon to deposit the deficit amount. The same was deposited by the petitioner on 15th October, 2011. Such fact would corroborate from the receipt issued by the respondent no.1 which is annexed in the affidavit-in-reply. Subsequently, however, on and from 19th October, 2011 the petitioner was prevented from discharging his duties and later, on 31st October, 2014 a charge-sheet was issued. Particulars of the charges levelled against the petitioner is extracted hereinbelow: -

- (1) failure to maintain correct and proper account in your cash bag for a sum of Rs.1003 (Rs. One thousand three) found as deficit in your cash bag.*
- (2) Received fare from seven (7) passengers without issuing any tickets to them.*
- (3) Failure to perform duty with due devotion & care, diligence & sincerity and all these constitute gross misconduct.*

11. The petitioner had duly responded to the said charge-sheet by a communication dated 9th November, 2011 denying all material allegations. Following the aforesaid, an enquiry was conducted against the petitioner. From the conduct of the petitioner, it would be apparent that the petitioner had accepted the short-deposit of Rs.1003/- and further having not cross-examined the checking personnel, in my view, the charge no.1 stands proved. In this context I may record that although, ordinarily a writ Court while exercising its power under judicial review is not required to examine and analyze the evidence, however, it is well-settled that since the departmental proceeding is a quasi judicial one and although, the provisions of Evidence Act, are not strictly applicable yet, the Court while exercising the powers of judicial review is entitled to consider as to whether while inferring commission of misconduct on the part of the delinquent employee, relevant piece of evidence has been taken into consideration and whether irrelevant facts have been excluded therefrom. Inference of facts must be based on evidence which met the requirements of legal principles.
12. Having regard to the aforesaid, I have proceeded to examine as to whether the enquiry authority while inferring proof of charges against the petitioner had placed reliance on relevant considerations and whether inference of facts were based on evidence which met the requirement of judicial principles. In the light of the above, and while analyzing charge no.2, I notice that

although, the checking personnel, namely, Prafulla Kumar Purkait in his statement had made a general statement that the that he had acquired information from the passengers that the petitioner had collected fares from the passengers and had not issued tickets, yet in the self-same deposition it has also been recorded, in the very next sentence that the passengers had taken back the money from the petitioner. There is also no mention of the names of the passengers or the particular number of passengers from whom he had acquired such information.

13. Taking note of the aforesaid, I find that the finding reached by the enquiry officer insofar as charge no. 2 is concerned is not supported by evidence. Such finding appears to be perverse.
14. Although, Mr. Ghosh, learned advocate has strenuously argued that the petitioner cannot be subjected to double jeopardy and the respondents having recovered the sum of Rs.1003/- from the petitioner ought not to have further enquired against the petitioner on such score, I am afraid and I am unable to accept the same. There appears to be no challenge as regards the deficit amount in the bag. The petitioner had also deposited the said amount in terms of the direction issued by the respondents. Deposit of the deficit amount in my view, cannot absolve the petitioner from being enquired into by the respondents, especially when the question of failure to perform duty with due devotion and care, diligence and sincerity remained to be enquired into. I may also note that the

petitioner was stopped from discharging his duties from 19th October, 2011 and as such the contention raised by the petitioner that he was suspended simultaneously with the issuance of charge-sheet does not appear to be correct.

15. In my view since, the charges no.1 and 3 have been proved, the enquiry in its entirety cannot stand vitiated. However, having regard to the fact that the petitioner had already deposited a sum of Rs.1003/- which constituted the deficit amount and by reasons of charge no.2 not being proved, the final order of punishment passed by the respondents requires to be revisited. Having regard to the above the order of punishment inflicted on the petitioner ordering that his pay to be brought down to the basic grade with cumulative effect and treating the period of suspension as a substantive punishment appears to be harsh. However, since, it is for the disciplinary authority to take a call on the quantum of punishment to be inflicted on the petitioner, I direct the respondents to revisit the order of punishment in the light of the observations made hereinabove. It shall be open to the disciplinary authority to impose any lesser penalty.

16. I may however, note that the judgments relied on by Mr. Sen in the case of the **State Bank of India** (supra) does not assist the respondents at all since the same is factually distinguishable. The observation made therein was based on an ex parte enquiry unlike the present one. Insofar the judgment relied on in the case of **State**

of Bihar & Ors., (supra), is concerned, the same does not come in aid of the respondents. It is well settled that a judgment is an authority for what it decides and not what can be logically deduced therefrom, a slight variation in facts may alter the final outcome.

17. In view thereof, the punishment inflicted on the petitioner by the final order dated 30th April, 2012 and the rejection of the appeal passed by the appellate authority, to the aforesaid extent stands set aside.
18. The respondents are directed to take a final call on the quantum of punishment to be inflicted on the petitioner within a period of 8 weeks from the date of communication of a photostat certified copy of this order, on the basis of the observations made herein and to communicate the same to the petitioner .
19. With the above observations and or directions, the writ petition is disposed of.
20. There shall be no order as to costs.
21. Urgent photostat certified copy of this order, if applied for, be made available to the parties upon compliance of necessary formalities.

(Raja Basu Chowdhury, J.)