

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

**PRESENT:
THE HON'BLE ANANYA BANDYOBADHYAY**

**WPA 12007 of 2015
Prabir Chakraborty
-Vs-
State of West Bengal & Ors.**

For the Petitioner : Mr. Mrityunjoy Chatterjee
Mr. Manas Das

For the Respondents : Mr. Ayan Banerjee
Ms. Debasree Dhamali
Ms. Riya Ghosh

Heard On : 19.08.2024, 29.11.2024, 12.02.2025, 17.06.2025

Judgment on : 24.10.2025

Ananya Bandyopadhyay, J.:-

1. The petitioner, a Conductor under the employment of the South Bengal State Transport Corporation (SBSTC), was subjected to disciplinary action on allegations which, upon close scrutiny, revealed procedural improprieties and disproportionality in the quantum of punishment imposed.
2. The controversy generated out of an incident dated 27th July, 2010, when the petitioner, while performing his duties as a Conductor in Vehicle No. WB39-0913 plying on the Kolkata-Siliguri (Up) route, was subjected to a routine inspection by the checking squad attached to the respondent authorities. During such inspection at Siliguri, three passengers were allegedly found travelling without valid tickets. The checking squad

forthwith realised the requisite fare along with the prescribed fine from the said passengers. Notwithstanding the immediate rectification of the alleged irregularity and the absence of any resultant pecuniary loss to the Corporation, the petitioner was imputed with charges of dereliction of duty, negligence, and failure to safeguard the financial interests of the respondent Corporation.

3. During such inspection, an excess cash amounting to Rs. 1,285.80/- was located in the petitioner's cash bag which, instead of being viewed as an inadvertent or clerical anomaly capable of explanation, was construed by the Disciplinary Authority as a manifestation of lack of integrity, thereby aggravating the gravity of the charges levelled against the petitioner. Consequently, a charge-sheet bearing No. BDO/700/5/SBSTC/10-11 dated 18th August, 2010 was issued against the petitioner, to which the petitioner duly submitted his written explanation on 4th October, 2010.
4. An enquiry report, which was furnished to the petitioner under Memo No. BDO/1029/SBSTC/11-12 dated 24th October, 2011. The Disciplinary Authority, without properly appreciating the mitigating circumstances or the absence of mala fide intention on the part of the petitioner, proceeded to impose the extreme penalty of removal from service vide Memo No. BDO/1470/SBSTC/11-12 dated 26th December, 2011, coupled with a direction to deduct a sum of Rs. 750/- from the petitioner's salary and to forfeit the amount of Rs. 1,285.80/- which had already been deposited by the petitioner in the office treasury at the conclusion of his duty on the date of incident.

5. Aggrieved thereby, the petitioner invoked his statutory right of appeal before the Appellate Authority (Respondent No. 4) on 5th March, 2012. However, the Appellate Authority, instead of exercising its jurisdiction as a corrective forum and reassessing the proportionality and procedural sanctity of the disciplinary decision, mechanically affirmed the order of the Disciplinary Authority vide its order dated 14th August, 2012, thereby dismissing the appeal.
6. Left with no efficacious remedy, the petitioner preferred a review application before the competent authority. As the respondent authorities remained indolent and failed to consider the review within a reasonable time, the petitioner was constrained to invoke the writ jurisdiction of this Hon'ble Court by filing W.P. No. 33084 (W) of 2014. The said writ petition was disposed of by the Co-Ordinate Bench of this Court vide order dated 18th December, 2014, directing the Chairman, South Bengal State Transport Corporation, to consider and dispose of the petitioner's review application within six weeks from the date of communication of the order.
7. Pursuant to such judicial directive, the Chairman did consider the petitioner's review petition, but unfortunately, by a cryptic and unreasoned order, proceeded to reject the same, thereby sustaining the punitive action of removal.
8. Thus, the cumulative effect of the actions of the respondent authorities reflects not merely an overzealous exercise of disciplinary power but also a manifest failure to adhere to the principles of natural justice, proportionality, and fair play in action – principles which are the cornerstone of service jurisprudence.

9. The Learned Advocate representing the petitioner submitted as follows:-

- i. The petitioner, in his reply to the charge-sheet dated 18th August, 2010, specifically traversed each allegation with clarity and candour. As regards the first charge of allowing three unbooked passengers to travel without tickets, it was explicitly stated that the checking squad themselves realised a sum of Rs. 480/- towards fare and fine from the said passengers, who at no point alleged that the petitioner had demanded or received fare without issuing tickets. The Enquiry Officer failed to record the statements of these passengers – an omission fatal to the finding of guilt—thus rendering the charge based solely on presumption and surmise rather than on any cogent or direct evidence.
- ii. It was not the case of the respondent authorities that the petitioner misappropriated fare collections or failed to remit proceeds to the Corporation's account. The passengers were charged and receipts issued by the checking squad themselves. Hence, no element of *mens rea*, dishonesty, or defalcation can be imputed. At best, the alleged lapse might constitute a case of inadvertent negligence, not of moral turpitude or financial impropriety. In such circumstances, the imposition of the harshest punishment of dismissal shocked the conscience of this Court and offended the settled doctrine of proportionality in administrative law.
- iii. As to the second charge, regarding the alleged excess cash of Rs. 1,285.80/-, the petitioner categorically explained that on the

night of the incident, when the vehicle reached Siliguri depot at around 21:30 hours, he had borrowed Rs.1,300/- from the on-duty driver for his personal use and had inadvertently placed the amount in his official cash bag instead of his pocket. This explanation, plausible on the face of it, was summarily disregarded by the Enquiry Officer without any rational inquiry. The driver, who was an essential witness to this factual assertion, was neither summoned nor examined, despite the petitioner's clear plea to that effect in his written statement. Such omission, whether deliberate or negligent, amounted to a gross violation of the principles of natural justice, particularly the right to a fair hearing.

- iv. The Enquiry Officer's report, far from being a reasoned document based on evidence, reflected a preconceived bias that every conductor accused of financial irregularity must necessarily be guilty. The findings were rooted in generalised suspicion rather than specific proof, and the report lacked independent assessment or application of judicial mind. The Enquiry Officer was more concerned with satisfying his superior authority than with ascertaining the truth. Such an approach was antithetical to the object of disciplinary proceedings, which must be fact-finding, not punitive inquisitions.
- v. The Appellate and Reviewing Authorities, instead of exercising their quasi-judicial duty to reappraise the evidence and weigh the proportionality of punishment, mechanically affirmed the

order of removal without addressing the petitioner's detailed representations. This mechanical affirmation, bereft of any reasoning, rendered the entire chain of orders unsustainable in the eye of law.

- vi. The petitioner had consistently maintained that if any lapse did occur, it was purely unintentional and inadvertent, devoid of dishonest motive or pecuniary gain. The Corporation suffered no loss, as the fare was duly realised and deposited. Thus, to stigmatise such conduct as "dishonest" and to impose the punishment of removal was not only legally unsound but morally unjust.
- vii. The conduct of the disciplinary machinery, viewed in its entirety, reveals an abuse of discretion, non-application of mind, and flagrant disregard for fairness. The Enquiry Officer's failure to summon the driver, the Disciplinary Authority's mechanical endorsement of findings, and the Appellate Authority's perfunctory dismissal of appeal cumulatively amount to a denial of justice.
- viii. In light of the foregoing, it stood amply demonstrated that the disciplinary proceeding was vitiated both by procedural impropriety and substantive unreasonableness. The punishment imposed bore no rational nexus to the alleged misconduct and was shockingly disproportionate thereto. The case of the petitioner thus called for judicial interference not

merely on grounds of compassion but on the higher plane of constitutional fairness.

10. The Learned Advocate representing the respondents submitted as follows:-

- i. The Respondent Corporation strenuously defended the disciplinary action, asserting the entire proceeding was conducted in scrupulous adherence to the Service Regulations and in consonance with the principles of natural justice. The petitioner was afforded multiple opportunities to respond to the charge-sheet and the enquiry report, but instead of availing himself of those opportunities, he chose not to call any defence witness or submit corroborative evidence.
- ii. As regards the petitioner's contention that the driver of the vehicle ought to have been summoned by the Enquiry Officer to substantiate his defence that he had borrowed Rs. 1,300/-, it was contended that the burden of proving a special fact, especially one within the exclusive knowledge of a delinquent employee, was upon the person asserting it. Hence, it was incumbent upon the petitioner—not the Enquiry Officer—to produce the driver as a defence witness. The failure to do so cannot now be used to impeach the validity of the enquiry.
- iii. It was further argued there was no obligation upon the Enquiry Officer to record the statements of the three unbooked passengers, as the existence of excess cash in the petitioner's possession was itself a direct and conclusive proof of

irregularity. The comparison between the waybill entries and the amount found in the cash bag was sufficient to establish financial discrepancy. Thus, the finding of guilt rested on documentary and material evidence, not on mere assumption. Accordingly, the punishment imposed was neither excessive nor disproportionate, contending that possession of excess cash by a conductor—who had been entrusted with public funds—amounted to breach of trust and dishonesty, and could not be equated with mere negligence. The offence, being of a financial nature, strikes at the root of institutional integrity. Hence, the Corporation was justified in removing the petitioner from service to preserve administrative discipline and public confidence in the functioning of a public utility.

- iv. It had been further urged that in similar cases involving financial irregularities, identical punishments of removal or dismissal have been imposed upon other conductors, which have been upheld by this Hon'ble Court in a catena of decisions, including the judgment reported in (2016) 4 Cal LT 530, thereby reinforcing the proposition that financial impropriety by conductors constitutes a grave misconduct warranting the penalty of removal from service.
- v. The Enquiry Officer found the charge proved on the reasoning that the petitioner could not satisfactorily account for the excess money in his cash bag and that the plea of having borrowed money from the driver could not absolve him from liability, as

the Service Regulations prohibit possession of personal money during official duty.

- vi. The Disciplinary Authority, after perusing the enquiry report, concluded that the petitioner's conduct demonstrated a loss of integrity and breach of trust, observing that continuance of such an employee in service would be detrimental to the financial discipline of the Corporation.
- vii. The Appellate Authority and Reviewing Authority, in their concurrent findings, upheld the penalty, holding that the proceedings were fair, the evidence sufficient, and the punishment commensurate with the gravity of the misconduct.
- viii. It was thereafter contended that no procedural irregularity or perversity could be discerned in the disciplinary process. The petitioner was given full opportunity to defend himself; the authorities applied their mind to the evidence; and concurrent findings of fact had been returned by all three levels of adjudication. It is therefore not within the domain of the Writ Court, exercising jurisdiction under Article 226 of the Constitution of India, to re-appreciate such concurrent findings or substitute its own view on the adequacy of punishment, unless it was shown that the impugned action was tainted by *mala fides*, procedural irregularity, or manifest disproportionality, none of which were present in this case.

11. The petitioner's defence solidified on the ground that the unbooked passengers never raised any objection against the petitioner nor alleged

that tickets were not offered or fare was not demanded in reply to the first charge in the charge-sheet dated 18.08.2010. The checking squad on the contrary had realised the fare and fine from the aforesaid passengers.

12. The petitioner's plea, therefore, rigidly substantiated assumption and conjecture on the part of the Enquiry Officer in absence of direct and cogent evidence.

13. With regard to the detection of surplus cash of Rs.1,285.80/- in the petitioner's bag at the end of his duty being the second charge, the petitioner's firm assertion was borrowing a sum of Rs.1,300/- from the on-duty driver for personal expenditure, which was inadvertently kept in the same cash bag without any ulterior motive. The ticket series issued for the journey matched in entirety, thereby eliminating the scope of misappropriation. The act, if at all, was erroneous, devoid of dishonest enrichment.

14. The Enquiry Officer, discarding the petitioner's explanation as false and misleading, mechanically bereft of neutrality and fairness, filed the enquiry report without examining the three unbooked passengers and the on-duty driver, violating the principles of natural justice. The petitioner, if at all, could have been considered to be negligent but not dishonest to be dismissed from the service.

15. The respondent authorities had granted the petitioner the opportunity to defend the charge-sheet dated 18.08.2010 issued against him alleging misconduct under Regulations 25(1) (2) and (6) of the SBSTC Employees Service Regulations. The Disciplinary Authority, after considering the enquiry report and the petitioner's response, imposed the penalty of

removal from service by order dated 26.12.2011 which was upheld both by the Appellate Authority and the Reviewing Authority independently, nothing that the petitioner had been given adequate opportunity of hearing and the presence of unaccounted excess cash in the cash bag amounted to financial irregularity undermining the trust and reliability of a Conductor.

16. In case of a disciplinary proceeding, the employers are required to demonstrate the “preponderance of probabilities” to dismiss an errant employee. The Enquiry Officer judged the petitioner’s misconduct on his failure to account for the surplus some of money meaning thereby more than 50% probable reasons to evince the misconduct on the part of the petitioner to have possessed the excess amount through unfair and illegal means contrary to the service rules to which the petitioner had been subjected to.
17. The petitioner’s plea of negligent behaviour in contrast to dishonesty whereby the passengers were found to be travelling without tickets without the knowledge of the petitioner in the bus could not be sustained. The petitioner was duty-bound to provide tickets to the passengers for booking their tickets. The squad who inspected the bus afforded tickets to the passengers and recovered fines for commuting without ticket which was the responsibility of the petitioner in discharging his solemn duty.
18. It was incumbent upon the petitioner to justify his defence of obtaining a sum of Rs.1,300/- from the on-duty driver to proclaim his affirmation citing the same as a defence witness which the petitioner failed to examine. Such non-examination of on-duty driver cannot be accorded to

be a lapse or flow on the part of the Disciplinary Authority which had, on its own, determined the failure on the part of the petitioner to account for excess amount as aforesaid which he was under any circumstances without plausible reason was allowed to carry by himself in the cash bag.

19. The respondent- Transport Corporation did not claim the petitioner to have been indulging in such a kind of misconduct on earlier occasion or there had been gross financial irregularity or loss sustained by the respondent Transport Corporation.

20. The Learned Advocate representing the respondent Corporation referred to a decision of the Co-Ordinate Bench of this Court passed in *Santi Sudha Layek Vs. South Bengal State Transport Corporation & Ors.*, stressing the fact that the petitioner in the said case was dismissed by the Co-Ordinate Bench on similar account of misconduct.

21. A perusal of the aforesaid decision bears the same to be distinguished with the instant writ petition considering the following observation:-

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42. *The penultimate point raised by the petitioner is that by referring to and taking into consideration the past conduct of the petitioner in imposing punishment, the Disciplinary Authority and the Appellate Authority have both committed an error of law rendering their decisions legally unsustainable. It is true that both the said authorities have considered the past record of the petitioner. The Disciplinary Authority in his order stated that from the petitioner's past conduct it was found that he was severely punished for committing offence several times but he did not rectify himself. The Appellate Authority in his order recorded that the petitioner has a long history of similar mal-practices for which he has been penalized in the past. In my view, taking into account the*

past record of a delinquent employee while imposing punishment when he was found guilty of the offences he is charged with, is not impermissible under all circumstances. It is important to note that the past record of the petitioner was not a factor which the Enquiry Officer took into account while holding that the charges against the petitioner have been established. Similarly, while upholding the Enquiry Officer's report, the track record of the petitioner did not weigh with the Disciplinary Authority. It was only while deciding on the punishment to be imposed, the petitioner's past record was considered. Where the charges are of a grave nature, it is permissible to take into account the past history of the delinquent employee for the purpose of deciding what punishment should be imposed on him. The petitioner had been punished on several occasions before with regard to the charge of insubordination, short-fall against sale proceeds etc. and the same does not appear to have deterred the petitioner from committing the same wrongful acts again and again. Charges of financial irregularity/impropriety and insubordination are charges of grave nature and presence of an employee who repeatedly commits such wrongful acts is detrimental to the functioning of an organization. Such an employee must not be shown any leniency and it is permissible for the Disciplinary Authority to consider his past conduct for the purpose of deciding the nature and degree of punishment to be imposed on such delinquent employee. In this connection, reference may be had to the Hon'ble Supreme Court decisions in the cases of Union of India v. Bishamber Das Dogra (supra) and Mohd. Yunus Khan v. State of Uttar Pradesh (supra). The punishment of termination of service, in my opinion, is not too harsh and is quite apt for an employee who is a habitual offender having no remorse and showing no intention of mending his ways. Continuance of such an employee in an organization would be harmful to the work ethos and discipline in the organization and showing any kind of indulgence or mercy to such an employee would send a wrong

signal to the other employees of the organization. Hence, this point of the petitioner also stands rejected.

43. *The final point argued by Learned Counsel for the petitioner is that the Appellate Authority has not assigned any reason for dismissing the appeal and such an order is not tenable in law. It is true that the Appellate Authority's order is a short order. But it appears from the said order that he has gone through the records of the case and has heard the petitioner in person. He has indicated that there is enough evidence on record to prove the charges against the petitioner. As indicated above, an Appellate Authority's order need not be like a judgment written by a Judicial Officer and one cannot lay down any rule as to how detailed the order should be. In my opinion, it is sufficient if the order reveals that the authority has considered the materials on record and has applied his mind independently. These requirements are satisfied in the present case.*

44. *Hence, I am unable to accept any of the grounds of challenge urged by Learned Counsel for the petitioner. Before concluding I should recount the cardinal principles of judicial review. When an action or an order of the State or other authority within the meaning of Art. 12 of the Constitution is challenged before the Writ Court, what is under scrutiny before the Court is not the action or the decision itself but the process or the procedure followed by the authority which culminated in the impugned action or decision. As is often said, a Court exercising the power of judicial review is not concerned with the merits of a decision but with the decision making process. In so far as disciplinary proceedings are concerned, so long as the proceedings are conducted in consonance with the principles of natural justice and the charge-sheeted employee is given sufficient opportunity of defending himself and a fair hearing, the Writ Courts normally would not interfere with such proceedings or punishment imposed by the Disciplinary Authority subject of course, to the question of proportionality. The Writ Court does not exercise appellate jurisdiction and would not ordinarily touch the findings of*

an enquiry proceeding unless the same is based on no evidence at all or is otherwise perverse so as to shock judicial conscience. In my opinion, no ground for interfering with the disciplinary proceeding or the orders of the Disciplinary Authority and the Appellate Authority exists in the present case.”

22. The status of the petitioner in the instant writ petition deferred from that of the petitioner cited in the aforesaid decision who had been guilty of charges of numerous occasions. The charges levelled against the same were far more grave than the one levelled against the petitioner. Each and every case has to be determined on the facts and circumstances akin distinctively and not generally. The petitioner herein was charged with a misconduct of possessing an excess amount, however, the Enquiry Officer termed the same to be a misconduct since the petitioner failed to provide such excess possession apart from verbal assertions.
23. The Enquiry Officer could not establish the surplus amount to have been possessed by the petitioner after the same being illegally obtained from the passengers. Neither did the respondent Corporation claimed the petitioner to have been a habitual delinquent resorting to dubious means acting to the prejudice, dignity and honour of the respondent Transport Corporation on earlier occasions.
24. In the facts and circumstances of the present writ petition, this Court is not inclined to interfere with the decision of the Disciplinary Authority which based on preponderance of probability had proved the charges against the petitioner and had imposed the punishment. However, the punishment of removal from service is indeed harsh and disproportionate considering the misconduct on the part of the petitioner.

25. The Disciplinary Authority is, therefore, to reassess the punishment inflicted upon the present petitioner and leniently accord any other punishment apart from dismissal from service. The petitioner is to forward a representation before the Disciplinary Authority which is to consider and modify the punishment imposed upon the petitioner within 2 months from the date of filing of the representation by the petitioner.
26. In view of the above discussions, the instant writ petition being WPA 12007 of 2015 is disposed of.
27. There is no order as costs.
28. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)