

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

W.P.A. 19660 of 2014

Diptendu Bagchi

-Vs-

The State of West Bengal & Ors.

For the Petitioner	: Mr. Susanta Pal Mr. Saugata Mitra Mr. Nikhil Kumar Gupta Mr. Subhadeep Maitra
For the Respondent Nos. 2 to 5	: Mr. Ayan Banerjee Ms. Debasree Dhamali Ms. Riya Ghosh
Heard on	: 16.07.2024, 30.09.2024
Judgment on	: 16.05.2025

Ananya Bandyopadhyay, J.:-

1. In the instant writ petition, the petitioner had prayed for a writ in the nature of mandamus commanding the respondent authorities to show cause as to why the impugned order dated 7.3.2014 passed by the Chairman, South Bengal State Transportation rejecting the appeal arising out of order of termination dated 06.03.2013 vide memo No. 3237/10/SBSTC/13, shall not be set aside and the petitioner shall not be allowed to resume his duty on regular basis and a writ in the nature of mandamus commanding the respondents to explain why the back wages for service of the petitioner should not be given immediately.

2. The petitioner, an employee of the South Bengal State Transport Corporation (SBSTC) since 1991, was serving as a Depot-in-Charge at Purulia when he was transferred to Barasat Depot on 09.12.2011 vide an order issued by the Managing Director NBSTC along with thirteen other candidates.
3. The petitioner was directed to report at his new place of posting by 15.12.2011. The petitioner informed the respondents of his illness requested for a few days of medical leave.
4. Vide a letter dated 19.12.2011, the Managing Director directed the petitioner to inform the office of his latest medical condition supported by a medical report. On 20.03.2012, the Managing Director noted it was evident from the medical reports submitted by the petitioner that though the physicians had advised rest for 10 days, yet he had not joined his place of posting for two and a half months. He was directed to explain his absence within seven days of receipt of the memo as to why disciplinary proceedings would not be initiated against him. Through a letter , the petitioner informed the Managing Director that he suffered high blood sugar, triglyceride and uric acid and his wife suffered from spondylosis, gastritis and thyroid with no one to look after her at home. His only son of eight years was a student of St Xaviers School, Purulia. It had been three months since he had been undergoing medical treatment, and he requested relief either being posted at the Divisional office or anywhere other than the Depot in-charge. Through a letter dated 29.03.2012, he submitted that as per his doctor's fit certificate he requested permission to join Barasat Deport on 29.03.2012. On 03.04.12, he submitted a letter with the same content of the letter dated 29.03.2012 along with another letter on the self-same date explaining owing to his

medical conditions he would not be able to join his duty from 03.04.2012. Vide a letter dated 23.04.12 concerning the memo sent to him on 24.03.12, he stated to be suffering from high blood sugar, triglyceride and uric acid. After joining Barasat, he faced the problem of excessive blood sugar causing absenteeism again and requested the allegations of absenteeism be withdrawn. Through a letter dated 25.04.2012, he informed the Managing Director that as per a memo dated 09.04.2012, he had attended a hearing and deposited the related papers on 24.04.2012.

5. Citing medical issues and family difficulties, he failed to report at his new posting, instead submitting intermittent medical certificates and sought for a change in his place of posting. Despite several communications from the Corporation requesting valid explanations and documentation, the petitioner remained absent without formal authorization for over three months. A charge sheet dated 11.05.2012 was issued against him for disobedience of transfer order, insubordination, and prolonged unauthorized absence, violating the SBSTC Employee Service Regulations.

6. The charges issued against the petitioner are replicated as follows:-

“On receipt of a Transfer Order bearing No. 2557/SBSTC/ dtd. 15. 12. 2011 he handed over charge to Sri Ashok Chowdhury, TS on 15.12.11 as Depot-in- charge of Purulia Depot and kept himself isolated and also did not receive the charge of Barasat Depot and thereby disobeyed the order of the Superior.

The Corpn. received an intimation on 17.12.11 that he is sick but no Medical Certificate was attached thereto. On 19.12.11 a letter was sent to him for which no reply has been received. On 27.12.11 the Corpn. received another intimation along with few Medical Certificates. The prescription dtd. 22.12.11 recommended him rest for 10 days. Thereafter the Corpn.

received no intimation from his end neither he reported for duty. On 29.3.12 after lapse of about 105 days he submitted a prayer for allowing him to join in duty alongwith some medical certificates. A show cause notice was issued and he submitted his reply thereto and was called for personal hearing but his reply to show cause neither deposition at the personal hearing is found satisfactory.

As a good gesture he was provisionally allowed to join duty subject to verification of the medical papers but he reported duty at Barasat depot but did not took over charge of the Depot-in-charge. On 30.3.12 he remained at the depot for few hours and thereafter left the depot without any intimation to the superiors and remained absent from duty till now. His unauthorized remaining absent from duty caused detrimental, dislocation and is an act of insubordination, indiscipline and causing willful damage of work to the Corpn.

He is charged for violation of provisions 25(1), (2), (3) 4 (6) of SBSTC ESR Considering the graveness and seriousness offence committed by him as stated hearing before he is placed under suspension. During the period of suspension he will get subsistence allowance as per rule of the Corpn.”

7. In reply to the charge-sheet vide a letter dated 15.05.12, the petitioner stated he was suffering from excessive blood pressure and severe weakness. He tried to call his supervisors, however, was unable to contact them and informed his Divisional Manager and MD SBSTC on 03/04/12. He prayed to be exonerated from the charge-sheet.
8. The enquiry officer took the petitioners defense statement. From the enquiry report that enquiry officer observed that the petitioner had absented himself from 27.12.2011 to 20.03.2012 without any authorization and did not submit any medical documents for being absent from January 2012 to March 2012. Thereafter he absented himself on and from 02.04.2012 after reporting at Barasat Depot on 30.03.12. As a DTM he did not take care

about the depot when his deputy in charge was on leave. He did not inform the many authorities about his sickness. Thus, it was held that as he senior officer, he did not accustom himself with the transfer order from Purulia to Barasat and failed to discharge his responsibilities and was liable for unauthorized absenteeism violating regulations no. 25(1), (2), (3) and (6) of the SBSTC Employees Service Regulations.

9. The petitioner in his reply dated 25.02.2013, to the enquiry report explained he could not report to his place of work as he was sick.
10. Through a final order issued by the Managing Director dated 06.03.2013, he upheld the enquiry report and terminated the petitioner from the service of the Corporation on established charges on absenteeism.
11. The petitioner appealed against the final order through letters dated 18.03.13, 03.06.13, 26.09.2013. In the appeal petition heard by the Chairman of the South Bengal State Transport Corporation and in an order dated 07.03.2014 it was held that there were no irregularities in the framing of the charge against the appellant and in holding the enquiry and there was no violation of natural justice. He believed that the punishment of termination from service awarded by the disciplinary authority was just and fair and rejected the appeal petition.
12. The Learned Advocate for the petitioner contended that the petitioner had duly informed the authorities of his illness and had submitted relevant medical documents to justify his absence, yet the Corporation unfairly treated it as unauthorized. It was argued that the termination order was unjust, and although the petitioner made an appeal to the Chairman of SBSTC requesting reinstatement, the matter was heard ex parte,

disregarding the representations and medical evidence submitted. Despite forwarding multiple representations requesting to resume duty, the petitioner did not receive any substantive response from the authorities. The Learned Advocate further maintained that the appeal was dismissed without a fair hearing and without proper verification of the medical reports. Consequently, it was urged that the impugned order rejecting the appeal be reconsidered, as the petitioner had been denied a fair opportunity to present his case, resulting in undue hardship.

13. The Learned Advocate for the respondent forcefully contended that the petitioner had not submitted any proper medical certification at the relevant time, only self-declared reports from a charitable dispensary without the authentication of a recognized medical practitioner. Despite being repeatedly asked to furnish valid documentation and inform the Corporation of his health condition, he failed to comply promptly. The prescriptions he eventually submitted were post facto and insufficient to justify a prolonged absence of nearly five months. The respondents asserted that the petitioner's condition was not of such severity to prevent him from joining duty, and that his failure to report to the transferred post at Barasat—far from his home district—was a deliberate act of disobedience. The respondents emphasized that there was no violation of natural justice or irregularity in the disciplinary proceedings, as the petitioner had been afforded ample opportunity to defend himself, including cross-examination and submission of evidence. They highlighted the grave nature of the charges; willful absenteeism and insubordination, particularly since the petitioner was holding the crucial post of Depot-in-Charge. His unauthorized absence had

severely impacted the functioning and revenue of the Corporation. The respondent's counsel further argued that the petitioner had not challenged the transfer order in any forum, yet chose to defy it, rendering his absence deliberate and unjustified. All findings by the Disciplinary and Appellate Authorities were based on factual evidence and thus not open to interference. Relying on authoritative Supreme Court judgments, the respondents asserted that in cases of willful absenteeism, termination from service is both justified and not disproportionate.

14. The Learned advocate representing the respondents relied on the following decisions:-

a) ***State of Punjab v. Sukhwinder Singh***¹:-

“5. The High Court was right in noting that the respondent was a member of a disciplined force and that absence from duty was unbecoming of a member of such force. It was in that light that the High Court should have looked at the repeated acts of the respondent's absence from duty. The fact that the respondent is a member of the Scheduled Castes is neither here nor there for the purposes of considering whether or not he is guilty of misconduct and breach of discipline, nor the fact that he had gone to give his pay to his mother and was detained on account of her illness. It is necessary that members of the police forces should attend the duties which they have been allocated and not absent themselves. This is a paramount public interest that must outweigh private considerations. The High Court was, therefore, in patent error in looking benignly at the numerous acts of absence of the respondent.

6. That the order of dismissal did not use the “mantra” of “gravest act of misconduct” is not determinative. The substance

¹ 1999 SCC (L&S) 1234

of that conclusion is to be found in that order. When a policeman is repeatedly absent from duty, it cannot but be reasonably concluded that there is incorrigibility in his continued misconduct.”

b) ***Maan Singh v. Union of India***²:-

“11. *Relying on State of Punjab v. Ram Singh Ex-Constable [(1992) 4 SCC 54 : 1992 SCC (L&S) 793 : (1992) 21 ATC 435] one of the arguments advanced before us is that it is only in cases where the misconduct is of the gravest kind an order of dismissal shall be made. This case was decided in the context of Rule 16.2(1) of the Punjab Police Manual, 1934, Vol. II. The said Rule reads as follows:*

“Dismissal shall be awarded only for the gravest acts of misconduct or as the cumulative effect of continued misconduct proving incorrigibility and complete unfitness for police service. In making such an award regard shall be had to the length of service of the offender and his claim to pension.”

After analysing the said provision, this Court in Ram Singh case [(1992) 4 SCC 54 : 1992 SCC (L&S) 793 : (1992) 21 ATC 435] held that Rule 16.2(1) consists of two parts, firstly, dismissal shall be awarded for the gravest acts of misconduct and secondly, cumulative effect of continued misconduct proving incorrigibility and complete unfitness for police service and the length of service of the offender and his claim for pension should be taken into account in an appropriate case. The second part is referable to a misconduct which, by itself, may not warrant an order of dismissal and may be a ground to take a lenient view of giving an opportunity to reform and even after giving such opportunities, if the delinquent officer is proved to be incorrigible and found completely unfit to remain in service then in order to maintain discipline in the service appropriate punishments can be given. Therefore, when the charge against the appellants in

² (2003) 3 SCC 464

each of these cases is habitual absence for long periods on several occasions unauthorisedly, the view taken by the disciplinary authority is justified.”

c) In **State of M.P. v. Hari Harihar Gopal**³, the following was held:-

“4. The respondent in failing to report, for duty as ordered and in remaining absent without obtaining leave in advance was guilty of grave dereliction of duty. Whether on account of illness of his wife or himself as he claims the respondent was unable to report for duty, notwithstanding the promises made by him, is a matter with which we are not concerned. It was for the Enquiry Officer to determine whether the respondent was prevented on account of illness or other circumstances over which he had no control from reporting for duty as ordered.”

15. In the present writ petition, the petitioner, an employee of the South Bengal State Transport Corporation since 1991 and posted as Depot-in-Charge at Purulia, had been transferred to the Barasat Depot in December 2011 but failed to join his new place of posting, citing medical and familial difficulties. The petitioner remained absent from duty for several months without proper authorization or submission of satisfactory documentation, despite repeated communications from the Corporation. A departmental proceeding was initiated against him on charges of disobedience, insubordination, and prolonged unauthorized absence. Upon conclusion of the enquiry, in which the petitioner had the opportunity to participate, the disciplinary authority terminated his services. The appellate authority subsequently upheld the order.

³ (1969) 3 SLR 274

16. The petitioner contended that his absence was necessitated by genuine illness and unavoidable circumstances, which had been duly communicated along with supporting medical records. It was alleged that the Corporation failed to appreciate the medical evidence and proceeded ex parte in disposing of the appeal. The petitioner further submitted that his representations seeking reinstatement were not duly considered.
17. The respondent Corporation, however, submitted that the petitioner had not furnished valid or timely medical certificates from any recognized institution and that the post facto documents were self-serving and insufficient to justify the extended unauthorized absence. It was argued that the petitioner, despite being given ample opportunities, failed to resume duty or to challenge the transfer order through any proper forum. The disciplinary proceeding had been conducted in accordance with principles of natural justice, and the petitioner's misconduct, particularly given his rank and responsibility, had materially affected the Corporation's functioning.
18. Provisions 25 of the South Bengal State Transport Corporation Regulations is referred to below:-

"25. CONDUCT AND DISCIPLINE

(1) An employee of the Corporation shall at all times maintain a very high standard of integrity and impartiality and shall not behave in a manner which is improper or derogatory to the prestige of the Corporation. Riotous or disorder by behaviour during working hours at the establishment or any act subversive of discipline shall be treated as misconduct.

(2) An employee of the Corporation shall faithfully/regularly perform the duty or the obligation imposed on him under any law 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.

(3) An employee of the Corporation shall not involve himself in theft, fraud or Dishonesty in connection with the corporation's business or property.

(4) An employee of the Corporation shall be regular in attendance and shall devote himself to his/her duties with due diligence and care. He/she shall not remain absent or due diligence and care. He/she shall not remain absent or abstain from duty except under proper authority. Habitual absence without leave or absence without leave for more than 10 days and habitual late attendance shall be treated as misconduct

(5) An employee of the corporation shall behave in an orderly and peaceful manner and shall not use any abusive and filthy language or create any disturbance inside the corporation premises or while travelling in any vehicle belonging to the Corporation. No employee of the corporation shall disturb the work of another Employee of the corporation.

(6) consumption of intoxication drink and drugs - An employee shall-

(i) Strictly abide by any law relating to intoxicating drinks or drugs In force in any area in which he may happen to be for the time being.

(ii) Not be under the influence of any intoxicating drink or drug during the course of his duty and shall also take due care that the performance of his duties at any time is not affected in any way by the influence of such drink or drug.

(iii) Refrain himself from consuming any intoxicating drink or drug in a public place.

(iv) Not appear in a public place in state of intoxication.

(7) No employee of the corporation shall do anything which may cause financial or material loss to the corporation or damages to its properties. Every employee of the corporation shall take all reasonable steps to prevent any such loss or damage and shall take proper care of any property of the corporation placed in his charge.

No employee shall engage himself in gambling, money lending or borrowing within the office premises during working hours for purpose not sanctioned by the management.

(8) prohibition of sexual harassment of working women.

(i) No employee shall indulge in any act of sexual harassment of any women at her work place.

(ii) Every employee who is in-charge of a work place shall take appropriate steps to prevent sexual harassment to any women at such work place. For this purpose, sexual harassment includes such unwelcome sexually determined behaviour (whether directly or implication) as:-

a) Physical contact and advances;

b) A demand or request for sexual favours.

c) Sexual coloured remarks.

d) Showing pornography

e) Any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

(9) Every corporation employee shall enjoy full democratic right except being a member of any political party.”

19. The Hon'ble Supreme Court held the following in ***Bhagwan Lal Arya v.***

Commr. of Police⁴:-

“10. *In the instant case, the appellant had absented himself for 2 months, 7 days and 17 hours on medical grounds. The above two rules provide that penalty of removal can be imposed only in cases if grave misconduct and continued misconduct indicate incorrigibility and complete unfitness for police service. The absence of the appellant on medical grounds with application for leave as well as sanction of leave can under no circumstances, in our opinion, be termed as grave misconduct or continued misconduct rendering him unfit for police service.*

⁴ (2004) 4 SCC 560

11. *The order dated 16-1-1995 passed by the respondents was produced by the respondents themselves in their reply to CWP before the High Court of Delhi that they had sanctioned leave without pay for the period from 7-10-1994 to 15-12-1994, the period of alleged unauthorised absence. The High Court has failed to appreciate and evaluate this aspect of the matter. The High Court also did not appreciate that after issuing sanction for leave for the period in question, the employee's legitimate expectation would be that no stern action would be taken against him with respect to the alleged act of misconduct which by no stretch of imagination can be considered an act of gross misconduct or continued misconduct indicating incorrigibility and complete unfitness for police service. It is not the case of the respondents that the appellant is a habitual absentee. He had to proceed on leave under compulsion because of his grave condition of health and, therefore, the punishment of removal from service is excessive and disproportionate. We are of the view that the punishment of dismissal/removal from service can be awarded only for acts of grave nature or as cumulative effect of continued misconduct proving incorrigibility or complete unfitness for police service. Merely one incident of absence and that too because of bad health and valid and justified grounds/reasons cannot become the basis for awarding such a punishment. We are, therefore, of the opinion that the decision of the disciplinary authority inflicting a penalty of removal from service is ultra vires Rules 8(a) and 10 of the Delhi Police (Punishment and Appeal) Rules, 1980 and is liable to be set aside. The appellant also does not have any other source of income and will not get any other job at this age and the stigma attached to him on account of the impugned punishment. As a result of which, not only he but his entire family totally dependent on him will be forced to starve. These are the mitigating circumstances which warrant that the punishment/order of the disciplinary authority is to be set aside."*

20. Both the disciplinary authority as well as the appellate authority through a reasoned order concluded the petitioner to be liable for unauthorised absenteeism initially from 27.12.2011 to 20.03.2012 and thereafter on and from 02.04.2012 after reporting at Barasat Depot on 30.03.12 being permitted to join his duty at the aforesaid Depot on generous consideration of his prayer dated 29.03.2012 after a lapse of 105 days (from 16.12.2011 to 29.03.2012- inclusive of both the days) subject to submission of medical papers for verification. The petitioner irresponsibly reported for duty at Barasat Depot on 30.03.12, refrained from taking charge deliberately and went on leave without informing the concerned authority and seeking permission therefrom and did not attend to discharge his duties till the date of issuance of charge-sheet.
21. The respondent authorities did not grant the petitioner an opportunity to attend to his duties at Barasat dept displaying leniency towards him in inferring an expecting due diligence from him prospectively. However, the petitioner projecting extreme reluctance and audacity abstained from continuing to deliver to his duties as a public servant expected of him in pursuing a government service in a responsible post. Such act on the part of the petitioner in the garb of illness is not only deceptive but abhorrent and condemnable too. The physical ailment claimed to have been suffered by the petitioner in absence of concrete, reliable and authenticated medical documents did not require his service to be continued exclusively through conducive and convenient place of posting in the proximity of his house to be ensconced in an ambience of catering to domesticity disregarding and neglecting his official duties. The petitioner could have been availed to be

medically treated even at Barasat for his ailments if at all. The petitioner had wilfully abdicated his responsibilities and was unauthorisedly absent without seeking lawful permission and was indeed liable for insubordination in not complying with the order of transfer issued by the superior authorities.

22. However, the petitioner had served the respondent corporation for nearly 20 years continuously and satisfactorily without any past record of misconduct. The charge against the petitioner did not reveal any financial irregularities or defalcation therefore the punishment of his dismissal from service appeared to be harsh and disproportionate. The petitioner's act of insubordination and unauthorized absence indubitably resulted in dereliction of duties, however it could not fall within the ambit of severe or gross misconduct of exemplary nature. The petitioner rendered service for nearly 20 years without any complain or objection raised against him in discharging his duties which should not be unrecognized due to his aforesaid insubordination and unauthorized absence which, however, could not be appreciated or expected but the petitioner should not be penalized to the extent of being deprived of financial benefits for his earlier service of 20 years (approx.). Since there has been considerable lapse of time, the disciplinary authority after due consideration of the fact of absence of severe financial irregularities is to modify the order of dismissal of the petitioner from service to compulsory retirement, entitling the petitioner to the financial benefits for the period of service rendered by him in accordance with law.

23. In view of the above discussion, the instant writ petition being WPA 19660 of 2014 is allowed in part.

24. Accordingly, the instant writ petition being WPA 19660 of 2014 is disposed of. Connected application, if any, also stands disposed of.

25. There is no order as to costs.

26. 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.)