

(2011) 05 CAL CK 0027

Calcutta High Court

Case No: Writ Petition No. 22079 (W) of 2010

Swapan Kumar Mallick

APPELLANT

Vs

South Bengal State Transport
Corporation and Others

RESPONDENT

Date of Decision: May 12, 2011

Citation: (2011) 131 FLR 147

Hon'ble Judges: Tapen Sen, J

Bench: Single Bench

Advocate: Manas Kr. Kundu and Animesh Bhattacharyya, for the Appellant; Ayan Banerjee and Anirban Das, for the Respondent

Final Decision: Dismissed

Judgement

Tapen Sen, J.

In this Writ Petition, the Petitioner prays for an Order setting aside the Charge-sheet dated 23.3.2001 issued by the Managing Director, South Bengal State Transport Corporation (Respondent No. 3) as well as the Enquiry Report and the Final Order of punishment dated 8.2.2002 as well as the Appellate Order dated 9.7.2004 as contained in Annexures- P/3, P/5 and P/7 respectively.

The Petitioner also prays for reification of his pay after conferring the benefit of Career Advancement Scheme in terms of the Memo dated 21.6.1990 of the Deputy Secretary, Department of Finance, Government of West Bengal.

2. The case of the Petitioner is that he was appointed as a Badli Conductor on 3.4.2001 and attached to the Belgharia Depot. He was subsequently confirmed after completion of the probation period of 9 months by an Order dated 17.2.1993 and then, confirmed of a post of a Conductor by Order dated 22.8.1995 with effect from 1.12.1993.

3. According to the Petitioner, the post of a Conductor and Cashier with the South Bengal State Transport Corporation carries the same scale of pay and grade. While

performing the duties of Conductor at the Belgharia Depot, the Petitioner applied for the post of a Cashier and was asked to appear in a written test for the said post. He duly appeared and on being selected, an Order was passed on 7.2.1996 appointing him on the post of a Cashier with a direction that he should report by 10.2.1996 before the Deputy Manager, Belgharia Depot. He duly reported for duty on 8.2.1996. According to the further case of the Petitioner, the period of probation to the post of a Cashier was for a period of one year at the first instance subject to extension in case of unsatisfactory performance. However, due to satisfactory service of the Petitioner, the period of probation was never extended and therefore after completion of the period of one year, the appointment on the post of Cashier was deemed to have been confirmed by implication.

4. On 18.1.2001 at about 6.50 P.M., a Conductor named Abhay Banerjee deposited a sum of Rs. 9516/- with the Petitioner being the sale proceeds of the day in respect of the Kolkata - Ratua route. The Petitioner, after verifying, recorded the same in the concerned Bill and after finding the amount to be alright, duly received the same and got it signed by the Conductor. The Petitioner countersigned thereon. The amount was then deposited in the Office. The Petitioner had duly noticed that the cash bag had been duly checked on the way Bill by the checking staff at Raghunathganj. This fact was brought to the Notice of the Section-in-charge, Ram Prasad Pal on the next day since at 6.50 P.M. when the Conductor was depositing the cash, he was not available. The Petitioner also learnt that Ram Prasad Pal had made a photocopy of the said Bill and brought it to the Notice of the Depot-in-charge, Sri Ranjit Roy Choudhury.

5. On 23.3.2001, the Respondent No. 3 issued the impugned Charge sheet proposing to hold an enquiry under the Service Regulations. Along with the list of documents, a photocopy of the cash bag checking report of Abhay Banerjee dated 17.1.2001 along with a photocopy of way Bill No. 907 dated 16.1.2001 was supplied to the Petitioner. From the report of the said bag checking report, the Petitioner is said to have, for the first time, come to learn that the concerned checking staff, after checking the cash bag of Abhay Banerjee, which was done at Raghunathganj, had detected a shortfall of Rs. 91/-. In the said Charge-sheet, one Smt. Susmita Biswas was appointed as Enquiry Officer to enquire into the allegations.

6. The allegations leveled against the Petitioner is that while performing his duties in B Shift on 18.1.2001, he received the sale proceeds of Rs. 9516/- including bag money but the record showed that the checking team at Raghunathganj had found a shortfall of Rs. 91. However on 18.1.2001, the Petitioner received the exact sale proceeds of Rs. 9516/- in terms of actual sale of tickets and therefore, he neglected in verifying the records of the way Bill and calculation of the sale proceeds at two different stages of the Journey namely the report of the checking staff on 17.1.2001 at Raghunathganj and at the terminal point when the sale proceeds were being deposited and it came to be revealed that Sri Abhoy Bandopadhyay was carrying a

short sale of Rs. 91 at Raghunathganj and the excess accumulation on the rest of the journey. The Petitioner was therefore charged for performing his duties negligently and carelessly and therefore, it was alleged, that he had violated Regulation 25(2) and (3) of the SBSTCES Regulations which has been quoted in Paragraph 10 of the Writ Petition.

7. The Petitioner, by his letter dated 12.4.2001 replied to the said Charge-sheet pointing out inter alia that he had brought the fact of checking of cash bag to the Section-in-charge, Ram Prasad Pal on the very next day when he was available. Thereafter enquiry was held and the Petitioner requested the Enquiry Officer to call Ram Prasad Pal but he was not summoned and the enquiry was concluded. In Para-13, the Petitioner has stated that a copy of the Enquiry Report was not served upon the Petitioner nor any opportunity of hearing was given to make his Representation against the Enquiry Report. He has further stated that in the absence of the Enquiry Report, the Petitioner was totally in the dark as to whether the Petitioner was found guilty or not.

8. Subsequently, by an Order dated 8.2.2002, the Respondent No. 3 passed an Order holding him guilty and punished him with "Censure".

9. The Petitioner preferred an appeal against the said Order before the Respondent No. 2 (Chairman), which was rejected by the said Chairman on 30.6.2004 and communicated by the Divisional Manager by Memo dated 9.7.2004. In para-16, the Petitioner has stated that the Divisional Manager is below the rank of Respondent No. 3 who is the Disciplinary Authority of the Petitioner. The Respondent No. 2 is the Appellate Authority and therefore, the Order dated 9.7.2004 passed by the Divisional Manager is without jurisdiction.

10. Before proceeding, this Court rejects this argument at this stage itself because the Order dated 9.7.2004 is nothing but a communication made by the Divisional Manager and the Order of the Chairman which was passed on 30.6.2004 on the appeal of the Petitioner would be evident from the heading of the Order itself as contained in Annexure- P/7.

11. An Affidavit-in-opposition has been filed wherein the Respondents have taken the plea that the Writ Petition is not maintainable because he has approached this Court without preferring a revision before the Board of Directors of the South Bengal State Transport Corporation. They have also taken the plea that the Petitioner has approached this Court after an inordinate delay of about 8 years and therefore the Writ Petition is liable to be dismissed. In para-7 of the Affidavit-in-opposition, the Respondents have stated that it is incorrect to say that the Petitioner had brought the matter to the knowledge of Ram Prasad Pal, the Depot-in-charge. They have also stated that from the records, it is clearly revealed that although the checking staff at Raghunathganj had detected a shortfall of Rs. 91, the Writ Petitioner received the exact sale proceeds by totally ignoring the shortfall.

Some statements have made in para-8 and in para-9, the Respondents have clearly stated that the Petitioner never submitted a Report about the matter.

12. In Para-11, the Respondents have stated that after conclusion of the enquiry, the Petitioner has been imposed with the punishment of Censure which does not cause any prejudice to him and that after disposal of the departmental proceeding and till filing of the Writ Petition and even before the Appellate Authority, he never demanded for a copy of the Enquiry Report. If such request has been made, the Respondents would have supplied a copy thereof to him. They have also stated that all the points taken by the Petitioner in reply to the Charge-sheet have already been dealt with by the Disciplinary Authority as also by the Appellate Authority on facts and therefore such factual findings of the Disciplinary Authority and of the Appellate Authority cannot be substituted by the High Court in its Writ Jurisdiction. On the question of violation of the principles of natural justice, they have stated that the Petitioner never made any requisition before the authorities for calling Sri Ram Prasad Pal. They have also stated and denied the allegations made by the Petitioner to the effect that he has been prejudiced with regard to the Career Advancement Scheme. They have stated that the benefit of career advancement was granted to all employees of the Corporation.

13. The Petitioner has also filed a reply reiterating as stand taken in the Writ Petition and has stated that he had requested the Enquiry Officer to call Ram Prasad Pal and therefore in order to do proper justice the Enquiry Officer should have called the said Ram Prasad Pal. He has also stated that non-furnishing of Enquiry Report renders the punishment illegal. He has further stated that it is incorrect on the part of the deponent to state that the benefit of career advancement was given to him because the same was denied and his basic pay released on March, 2003 at Rs. 4100/- whereas he has entitled to Rs. 4200/-. He has stated that his final suffering started since March, 2003 and it has been continuing even after implementation of ROPA 2009. He has stated that in August, 2009, his basic pay had been released at Rs. 4950/- instead of Rs. 4075/- by denying career advancement benefit and the pay of all employees of Belgharia Division had been revised from September, 2009 and if it had been given to the Petitioner in September, his basic pay would have been Rs. 12,870/- whereas it was released on September, 2009 at Rs. 12,600/-

14. Having considered the submissions of the parties, this Court is not inclined to consider the points raised by the Petitioner because it is clear that the Order of punishment was passed as early as on 8.2.2002. The punishment was a mere Censure. Thereafter the Order of the Appellate Authority was passed on 30.6.2004 and it was communicated on 9.7.2004. The Writ Petition has been filed on 11.11.2010. In other words, the Petitioner has come to this Court after a delay of 6 years. That apart, this Court is satisfied that failure to supply the report of the Enquiry Officer would not ipso facto result in the proceedings being declared null and void unless the delinquent employee proves that such non-supply had caused

prejudice and resulted in miscarriage of justice. In the instant case, the allegations that some final benefits were not given to the Petitioner, as has been stated in the reply, are statements which do not indicate that they are a direct consequence of the impugned Order, which was a mere Censure without indicating any financial implications. There is no merit in this Writ Petition. It is accordingly dismissed. No Order as to costs.

Upon appropriate Application(s) being made, urgent Certified copy of this judgment, be given/issued expeditiously subject to usual terms and conditions.