Sekhar Goswami Vs S. B. S. T. C. and Others

Court: Calcutta High Court

Date of Decision: Jan. 20, 2006

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Section 80

Citation: 110 CWN 477

Hon'ble Judges: Arun Kumar Mitra, J

Bench: Single Bench

Advocate: Manas Kr. Kundu and Debashree Mukherjee, for the Appellant; Debayan Bera and Sakti Prasad Chakraborti, for the Respondent

Final Decision: Allowed

Judgement

Arun Kumar Mitra, J.
The writ petitioner in this writ petition being a Conductor working under South Bengal State Transport Corporation

has filed this writ petition challenging the order of suspension, charge-sheet, the entire inquiry proceeding including the inquiry report as also the

final order of punishment dated 13th October, 1999 passed by the respondent No. 2 and the order dated 17-10-2001 passed by the respondent

No. 1. The petitioner prayed for grant of reinstatement with all consequential benefits.

Facts in brief

The writ petitioner was appointed as a Conductor on 20-09-1990 and was subsequently, confirmed in the said post. According to the petitioner

he was subsequently selected for clerical job which was computer related and since then the petitioner has been working as Lower Division

Assistant. The petitioner was allotted duty as Conductor on 14-09-1999. He was placed on duty at Midnapore depot. When he was posted in the

route Midnapore-Mohar, during return journey an excess of Rs. 162/- against actual stile of Rs. 924/- was found in the cash bag of the petitioner

by the bag checking personnel.

2. The petitioner was placed under suspension on 18-09-1999 and a charge-sheet was issued containing five counts of charges leveled against the

petitioner on the basis of report dated 14-09-1999. A copy of the charge-sheet has been made annexure "P-1" to the writ petition. The list of

documents was enclosed in the form of a report dated 18-09-1999. Tile petitioner replied to the charge-sheet on 02-10-1999 and through the

said reply the petitioner denied the allegations levelled against him. Annexure "P-2" is the said reply.

3. The petitioner alleged that he explained the circumstances under which the excess was found in his bag. However, an inquiry was held by one

Smt. Bedati Ghosh on 12-10-1999. It was further alleged by the petitioner that on the next date that is on 13-10-1999 the disciplinary authority

without furnishing the inquiry report and without asking for any representation as per regulation 38(2) of SBSTCESR passed the final order

reducing the pay at the cumulative effect. The said final order has been made annexure ''P-4".

4. The petitioner preferred appeal and the appellate authority confirmed the punishment which has been made annexure ''P-5'' to the writ petition.

5. Affidavit-in-opposition has been filed on behalf of the respondents and affidavit-in-reply thereto has also been filed on behalf of the writ

petitioner. In the said affidavit-in-opposition filed on behalf of respondent nos. 1 and 2 the allegations made by tire petitioner in the writ petition

were denied in specific.

6. It has been stated that the allegations made by the petitioner that the charges are based on surmise and conjunctures are not correct In the

opposition it was also denied that the charge-sheet was issued against the petitioner with closed mind.

7. In the opposition the answering respondents denied the allegation that instead of holding any inquiry by himself the respondent No. 2 deputed

one Smt. Bedati Ghosh, Assistant Manager to hold the inquiry. It has been stated on behalf of the respondents that the allegations are wholly

misconceived and it has been designed for the purpose of the writ application. Smt. Bedati Ghosh didn''t hold any inquiry in the disciplinary

proceeding at all and as such the question of giving the petitioner any intimation of her appointment as Inquiry, Officer didn''t arise. Since Smt.

Bedati Ghosh didn''t hold any inquiry, the question of the petitioner being highly prejudiced doesn''t arise.

8. It has further been stated that Smt. Bedati Ghosh was present and she acted as ministerial staff of the disciplinary authority, the respondent No.

2 and she recorded the proceeding as per direction of the disciplinary authority. Along with the opposition a copy of the evidence of witnesses

recorded during the inquiry by the disciplinary authority has been annexed as annexure ''R-I''.

9. It has further been stated in the opposition that from the records of the proceeding it would be clear that Smt. Bedati Ghosh recorded the

proceeding as per direction of respondent No. 2 and the petitioner also before the signature in the same sheet of paper didn''t make any objection

whatsoever.

10. In paragraph 13 of the opposition it has been stated that the petitioner was assisted by his co-worker Arun Maity during the inquiry

proceeding. He also put his signature in the proceeding in course of inquiry. He also didn''t make any adjudication in the records of the proceeding

that inquiry was not conducted by the respondent No. 2. However, in the opposition it has been categorically stated that the final order has been

passed rightly and the appellate order was also passed in a valid manner.

11. In the opposition it has been categorically denied that the respondent authority in an arbitrary, vindictive and mala fide manner or in gross

violation of natural justice completed the inquiry.

12. In the reply reiteration has been made in respect of the allegations levelled against the respondents in the writ petition.

13. The petitioner prayed for quashing of the entire proceeding, charge-sheet and also the suspension order.

SUBMISSIONS

14. On behalf of both the parties that is the petitioner and the respondent nos. 1 and 2 submissions were made, both orally and through short

written notes.

15. The learned counsel for the petitioner submitted that copy of the report dated 14/09/1999 which is the basis of the charge-sheet was not

supplied to the petitioner, though reliance was placed on the said alleged report by the disciplinary authority at the back of the petitioner and

thereby the principles of natural justice have been violated and the provisions of Regulation 39 of the Durgapur State Transport Corporation

Employees'' Service Regulations (in short Service Regulations) has also been violated. The learned counsel for the petitioner submitted that entire

inquiry proceeding including punishment order is thus, liable to be quashed. In this context the learned counsel relied on two decisions reported in

State Bank of India and others Vs. D.C. Aggarwal and another, and Benny T.D. and Others Vs. Registrar of Cooperative Societies and Another,

. Stress has been laid on the observations made in paragraph 21 of the decision reported in Benny T.D. and Others Vs. Registrar of Cooperative

Societies and Another, which is quoted hereinbelow :

21. Mr. Sukumaran the carried senior counsel relied upon the decision of this Court in Pritpal Singh and others Vs. State of Haryana and others,

and urged that in view of the findings of the Public Inquiry Commission that there has been tampering of marks in respect of several candidates and

as such there has been no fair and objective selection, the public interest demands annulment of the entire selection and a Court should not shirk its

responsibility by directing annulment of selection on the mere technicality that the Report of the said Public Inquiry Commission had not been given

to the Bank or any of the persons to be affected. In the aforesaid case, selection made by the Haryana Subordinate Services Selection Board for

appointment to the post of Assistant sub-Inspectors of Police was annulled by this Court on coming to a Conclusion that the selection made by the

Board was not objective and fair. This Court held that the matter which involved the public interest could not be treated as purely adversarial. But

in the course of hearing the Court being of the opinion that the problem to be resolved was much too serious to be dealt with on adversarial

contentions and in view of glaring infirmities in the process of selection which the Court noticed. All the persons including those who had been

selected and appointed were directed to be duly notified, so that the Court could decide as to whether the entire selection process was infirm and

quash the selection. To achieve the aforesaid objective, the Court had called upon the Chief Secretary to the State Government to furnish upon

affidavit particulars regarding constitution or the Board, the names and qualification of its members and to produce the record and minutes of the

Board''s meeting. In other words, the court complied with the principles of natural justice by giving notice to the affected parties of all the relevant

materials and then on receiving explanations from those persons by way of affidavit in this Court and taking into account the contentions raised by

those persons, ultimately, decided the matter. The ratio of the aforesaid case will have no application to the present case inasmuch as neither the

Bank nor any of the affected parlies have been given a copy of the Report of Public Inquiry Commission on which Report the Registrar had relied

upon as well as the Division Bench of the High Court had relied upon and came to a conclusion by relying upon such Report without giving any

opportunity to the parties concerned to have their submissions. It would tantamount to gross violation of the principle of natural justice which

cannot be brushed aside on the ground that public interest demands annulment of the selection. In our opinion, the ratio of the aforesaid decision

cannot be applied to the case in hand.

16. The learned counsel then criticised the charge-sheet and submitted that the first charge was levelled purely on suspicion and conjecture. No

iota of evidence about intention to misappropriate of Corporation''s money could be adduced and suspicion cannot take the place of proof. In this

regard the learned counsel for the petitioner relied on a decision reported in Nand Kishore Prasad Vs. State of Bihar and Others, of which

paragraph 18 has been relied on which is quoted hereinbelow:

18. Before Sealing with the contentions canvassed, We may remind ourselves of the principles in point, crystallized by judicial decisions. The first

of these principles is that disciplinary proceedings before a domestic tribunal are of a quasi-judicial character; therefore, the minimum requirement

of the rules of natural justice is that the tribunal should arrive at its conclusion on the basis of some evidence, i.e. evidential material which with

some degree of definiteness points to the guilt of the delinquent in respect of the charge against him. Suspicion cannot be allowed to take the place

of proof even in domestic inquiries. As pointed out by this Court in Union of India (UOI) Vs. H.C. Goel, ""the principle that in punishing the guilty

scrupulous care must be taken to see that the innocent are not punished, applies as much to regular criminal trials as to disciplinary enquiries held

under statutory rules.

17. The learned counsel also relied on another decision reported in 1999 Vol. (7) SCC 409 (Zunjarrao Bhikaji Nagarkar vs. Union of India &

Ors.) and paragraph 42 of the said judgment has been relied upon by the learned counsel for the petitioner.

18. Then again a judgment of the Hon''ble Apex Court reported in 2001 Vol. (4) SCC 9 has been referred to by the learned counsel for the

petitioner and the observations made in paragraph 27 of this judgment has been relied upon.

19. The learned counsel for the petitioner submitted that on behalf of the respondents argument has been advanced that as admittedly an excess

amount has been found, inference can be drawn for misappropriation which is not appropriate and a valid argument.

20. The learned counsel submitted that the second charge is vague in absence of particulars and cannot be sustained. The learned counsel also

submitted that the other charges are also not attracted against the petitioner. The learned counsel is this regard relied on the decision of the Hon''ble

Apex Court reported in 1982 Vol. (2) SCC 376 (State of Uttar Pradesh vs. Mohd. Sharif [Dead] through L.Rs.). The learned counsel referred to

the observations of the Hon''ble Apex Court made in paragraph 3 of this judgment which is quoted hereinbelow:

3. After hearing counsel appearing for the State, we are satisfied that both the appeal court and the High Court were right in holding that the

plaintiff had no reasonable opportunity of defending himself against the charges levelled against him and he was prejudiced in. the matter of his

defence. Only two aspects need be mentioned in this connection. Admittedly, in the charge-sheet that was framed and served upon the plaintiff no

particulars with regard to the date and time of his alleged misconduct of having entered Government Forest situated in P.C. Thatia district,

Farrukhabad and hunting a bull in that forest and thereby having injured the feeling of one community by taking advantage of his service and rank,

were not mentioned; Not only were these particulars with regard to date and time of the incident not given but even the location of the incident in

the vast forest was not indicated with sufficient particularity. In the absence of these plaintiff was obviously prejudiced in the matter of his defence

at the enquiry. Secondly, it was not disputed before us that a preliminary enquiry had preceded the disciplinary enquiry and during the preliminary

enquiry statements of witnesses were recorded but copies of these statements were not furnished to him at the time of the disciplinary enquiry.

Even the request of the plaintiff to inspect the file pertaining to preliminary enquiry was also rejected. In the face of these facts which are not

disputed it seems to us very clear that both the first appeal and the High ""Court were right in coming to the conclusion that the plaintiff was denied

reasonable opportunity to defend himself at the disciplinary enquiry; it cannot be gainsaid that in the absence of necessary particulars and

statements of witnesses he was prejudiced in the matter of his defence. Having regard to the aforesaid admitted position it is difficult to accept the

contention urged by the counsel for the appellant that the view taken by the trial court should be accepted by us. We are satisfied that the dismissal

order has been rightly held to be illegal, void and inoperative. Since the plaintiff has died during the pendency of the proceedings the only relief that

would be available to the legal heirs of the deceased is the payment of arrears of salary and other emoluments payable to the deceased.

21 Reliance has also been placed on another decision reported in 1986 Vol. (3) SCC 454 (Awai Singh vs. State of Rajasthan) and on its

paragraph 14 and 15 which are also quoted hereinbelow:

14. Quite apart from that fact, it appears to us that the charges were vague and it was difficult to meet the charges fairly by any accused. Evidence

adduced was perfunctory and did not at all bring home the guilt of the accused.

15. Shri B. D. Sharma, learned advocate for the respondent, contended that no allegations had been made before the enquiry officer or before the

High Court, that the charges were vague. In fact the appellant had participated in the enquiry. That does not by itself exonerate the department to

bring home the charges.

22. The learned counsel for the petitioner submitted that the disciplinary authority considered past record without giving any opportunity which is

not permissible in the eye of law and in this regard the learned counsel relied on the decision reported in State of Mysore Vs. K. Manche Gowda,

23. The learned counsel then submitted that the court can interfere when the punishment in shockingly disproportionate and the court can substitute

punishment in appropriate cases. In support of his such contention the learned counsel relied on few decisions of the Hon"ble Apex Court laying

stress on particular paragraph which paragraphs are also quoted hereinbelow:

1999 Vol. (9) SCC, 86 (Syed Zaheer Hussain vs. Union of India & Ors.).

4. In our view, in the facts and circumstances of the case, the punishment of dismissal from service is too harsh and on the contrary, it is required to

be substituted by an appropriate lesser punishment. Learned counsel for the respondents after instructions has stated that an appropriate lesser

punishment may be awarded by this Court. It will be acceptable to the respondents. In our view, the ends of justice will be served if we set aside

the order of dismissal of the appellant and instead direct reinstatement of the appellant in service with continuity and with all other benefits save and

except withdrawing 50 per cent of back wages from the date of dismissal, i.e., 11-10-1988 till today. In our view, this punishment which will

involve a substantial monetary loss to the appellant will meet the ends of justice and will be a sufficient corrective measure for the appellant. The

request of learned counsel for the respondents that two future increments may also be withheld without cumulative effect does not appear to us to

be justified on the peculiar facts and circumstances of the case, In our view, the aforesaid monetary loss to the appellant will meet the ends of

justice so that he may be careful in future. It is ordered accordingly. At the request of learned counsel for the respondents, eight weeks'' time is

granted to the respondents to comply with the present order and to reinstate the appellant with continuity in service and with all other benefits. We

make it clear that from today onwards, the appellant will be entitled to full salary. Both the appeals are allowed accordingly. The orders of the

Tribunal dated 4-11-1996 and 13-2-1997 are set aside. OA No. 714 of 1993 filed by the appellant in the Tribunal shall stand allowed in the

aforesaid terms. In the facts and circumstances of the case, there will be no order as to costs. The Director General of Police and Others Vs. G.

Dasayan,

11. Accordingly, we set aside the order of the tribunal and in the place of order of dismissal passed by the Disciplinary Authority, the order of

compulsory retirement is substituted. The appeal will stand disposed of accordingly with no order as to costs.

24. The learned counsel for the petitioner submitted that inquiry was held by Smt. Bedati Ghosh and not by Disciplinary Authority. In support of

his such contention the learned counsel submitted that had Smt. Ghosh been engaged as Ministerial staff to record dictation site would have put her

signature in each page. The learned counsel also argued that engagement of Ministerial staff in a departmental proceeding is unheard of. The

learned counsel concludingly submitted that the entire inquiry proceeding is biased, mala fide and has been vitiated for violation of the principles of

natural justice and also for violation of the service regulations and as such the Court should allow the writ petition and should grant the relief as

prayed for by the petitioner.

25. The learned counsel appearing for the respondents submitted that the charge leveled against the petitioner was that Rs. 162/- was found in the

cash bag with the intention to misappropriate the amount by realizing money without issuance of tickets. Another charge against the petitioner was

that he was habitual offender in making financial irregularities. In reply to the charge-sheet specific case of the petitioner is that he did not know

how the excess was found and no denial was there regarding the allegations that the petitioner was in the habit of making financial irregularities that

is he was a habitual offender in respect of such type of offence.

26. The learned counsel referred to charge-sheet and the reply given by tile writ petitioner and submitted that main contention of the petitioner was

that excess amount of Rs. 162/- was found in the cash bag but there was no evidence that there was any intention to misappropriate the said

amount. Therefore, the charge is bad and final order is perverse but the charge was specific that Rs. 162/- was found in excess and if some excess

amount is found in a cash bag of a Conductor the only, inference which can be drawn is that excess amount found was to misappropriate and no

other inference call be drawn.

27. Contention raised by the petitioner that charges were based on surmise and conjectures since ""intention to misappropriate is based on

suspicion"" cannot be sustainable inasmuch as excess amount can be only found in cash bag if some tickets were not issued to the passengers and

intention to misappropriate is a natural consequence.

28. The learned counsel for the respondents submitted that charge-sheet will show that the charges are definite and based on bag checking report.

29. The learned counsel for the respondents submitted that in respect of the second charge it has been contended by the petitioner that particulars

have not been given and as such the charge is vague. The learned counsel submitted that this point has not been taken by the petitioner in the

pleadings and on the contrary from the reply it would be evident that the charges had not been denied which clearly proves that the petitioner

committed some offence previously.

30. The learned counsel then submitted that the petitioner has alleged that the charge-sheet has not been framed as per regulation but the said

contention of the petitioner is baseless.

31. The learned counsel relied on the amended provision of the said Service Regulation Nos. 36, 37, 38 and 39 (as amended w.e.f. 11-01-1999).

From amended Regulation 38(1) it would be clear that charge-sheet has been framed in accordance with the said regulation.

32. It is further submitted by the learned counsel for the respondents that framing of charge is a procedural matter and technically cannot stand in

the way. The learned counsel submitted that what is mandatory is the opportunity of hearing which has been given to the petitioner. In this regard

the learned counsel for the respondents relied on a decision reported in 1996 Vol. (3), SCC 364. The learned counsel laid stress on the

observations made in paragraph 33(4)(a) of this judgment

33. The learned counsel for the respondents then submitted that in the instant case the disciplinary authority itself inquired into the charges so

question of supply of inquiry report does not arise.

34. The learned counsel also denied the allegation that the inquiry has been conducted by one Smt. Bedati Ghosh. The learned counsel submitted

that in paragraphs 11, 12 and 13 of the affidavit-in-opposition the respondents have categorically denied the said allegation. Bedati Ghosh,

according to the learned counsel for life respondents has acted as Ministerial staff and she recorded the statements as per dictation of the Deputy

Managing Director,

35. It has been further submitted by the learned counsel for the respondents that from annexure-"R1" to the affidavit-in-opposition it would be

evident that Bedati Ghosh acted as Ministerial staff. It would also appear from annexure -- "R1" that the petitioner was assisted by co-worker

Arun Maity. Neither the petitioner nor his representative Aran Maity stated at the time of inquiry that Bedati Ghosh acted as Inquiry Officer and on

the contrary the signature in the deposition sheet being annexure-"R1" to the affidavit-in-opposition will clearly prove that the contention of the

petitioner in this regard is wholly incorrect.

36. The learned counsel further submitted that there was specific charge of financial irregularities against tile petitioner which was not denied by

him. Accordingly, the disciplinary authority did not commit any mistake in relying upon the past record of the petitioner.

37. The learned counsel then submitted that the punishment is not at all disproportionate considering the charges levelled against the petitioner.

38. The learned counsel for the respondents further submitted that finding based on uncontroverted material cannot be considered as perverse. In

this regard the learned counsel relied on a decision reported in 1999 Vol. (3) SCC 372 (U.P. State Road TPT. Corpn. & Ors. vs. Musai Ram &

Ors.). The learned counsel laid stress on the observations made in paragraphs 1, 2, 3, 4, 5, 6, 7, 8 and 9 of this judgment which are quoted

hereinbelow :

1. The respondent was a bus conductor in the Uttar Pradesh State Roadways Organization. On 17-04-1971, he was placed under suspension. A

charge-sheet dated 13-10-1971 was served upon the respondent. In the charge-sheet, two charges were framed. These charges were to the

effect that on 13-08-1969 while the respondent was acting as the conductor of a bus, he had charged the passengers amounts in excess of the

prescribed fare. When Shri Paras Nath Pandey, the Assistant Traffic Inspector inspected the bus on that date, the respondent declined to return

the excess fair and misbehaved with the Assistant Traffic Inspector. The charge was that he had misbehaved with the checking staff and refused to

return the excess amount. He was guilty of failure to discharge his duty properly, misbehaviour and misappropriation of passengers'' money. Copy

of the report of Shri Paras Nath Pandey, Assistant Traffic Inspector, Jalalpur dated 18-08-1969 was annexed with the charge-sheet.

2, The second charge was that on 1-9-1969 while the respondent was acting as the Conductor of a bus, it was checked by Shri Paras Nath

Pandey, Assistant Traffic Inspector, Jalalpur. It was found that though the fare had been collected from 5 passengers, no tickets were issued by the

respondent to the passengers. When the ATI demanded from the respondent blank ticket-book for issuing tickets to those passengers, the

respondent caused hindrance. He was, therefore, guilty of failure to discharge his duty property, had intended to misappropriate government

revenue and had been guilty of, misconduct. The charge-sheet also stated the evidence which was proposed to be considered in support of the

second charge. The documents relied upon were (1) report of Shri Pandey dated 02-09-1969, a copy of which was enclosed and (2) Way Bills

Nos. 345-46/ 56 dated 1-9-1969 with checking remarks, which the respondent was asked to see in the office. He was required to put in a written

submission in reply to each of the charges. He was also informed that if he desired to be heard in person or wished to examine or cross-examine

any witness, the name and address of the witness with a brief indication of the evidence that each witness would be expected to give, should be

submitted in writing

3. The respondent gave his reply dated 28-10-1971. He also stated that he proposed to examine two witnesses, Shri Tiwary and Shri Ahluwalia.

Thereafter, an enquiry was held. The enquiry report is dated 24-12-1971. Following the report, a show-cause notice was issued to the respondent

by the Assistant General Manager on 31-12-1971. The respondent gave his reply to the show-cause notice which is dated 7-1-1972. On 16-04-

1972, the Assistant General Manager passed an order removing the respondent from service. The respondent filed an appeal from this order

which was dismissed on 13-11-1973 by the General Manager of the Uttar Pradesh State Roadways Organization.

4. The respondent thereafter gave a notice u/s 80 of the CPC and filed a suit which was transferred to the Uttar Pradesh Public Services Tribunal

on the constitution of that Tribunal. The Tribunal dismissed the claim of the respondent by its order dated 02-02-1978. The respondent filed a writ

petition before the High Court which has been allowed. Hence, the appellants have filed the present appeal. The appellants are a statutory

organization which have taken over the Uttar Pradesh State Roadways Organization which had employed the respondent.

6. It is also contended that Shri Pandey had made his report after recording the statement of the passengers. The respondent was not given copies

of file statements of those passengers and those passengers were not examined. Hence, there is a violation of the principles of natural justice.

Whether there is such a violation or not, obviously depends upon the facts of each case. In the present case, in the charge-sheet it is clearly stated

that what is proposed to be relied upon is a report submitted by he Assistant Traffic Inspector on ''both the occasions. Although the Assistant

Traffic Inspector was examined and he proved his reports, the respondent did not cross-examine even the Assistant Traffic Inspector regarding the

statements of passengers on the basis of which the report was made. He did not choose to do so. It is, therefore, not possible for him to contend

that the enquiry ought to have been based on the statements of the passengers recorded by the Assistant Traffic Inspector or that the enquiry

officer ought to have examined the passengers or that he ought to have been given a chance to cross-examine the passengers. When he has not

challenged the reports filed by the Assistant Traffic Inspector, there is no question of violation of the principles of natural justice.

7. Learned counsel for the respondent had relied upon several authorities dealing with the question whether in cases where the statements of

witnesses are recorded during the preliminary enquiry and are relied upon in support of the charges, if copies of such statements are not given to

the person charge-sheeted, there would be a violation of the principles of natural justice. We will only refer to one of these authorities which

summarizes the decisions on this issue, which is Chandrama Tewari vs. Union of India. The court has held that where the documents are mentioned

in the memo of charge but are neither relevant to the charge nor referred to or relied upon by the authorities nor are necessary for cross-

examination, non-supply of such documents would not vitiate the proceedings and there would be no violation of the principles of natural justice.

8. In the present case, the respondent did not cross-examine even the Assistant Traffic Inspector, much less challenged the reports filed by the

Assistant Traffic Inspector. Even in the charge-memo, the predecessors of the present appellants had not relied upon the statements of the

passengers.

9. The question whether the authority can act upon the reports filed by the Assistant Traffic Inspector or not and whether these reports should be

accepted or not is a matter which has to be examined by the enquiry officer. The court does not sit in appeal over the findings of the enquiry

officer. If the findings are based on uncontroverted material placed before the enquiry officer, it cannot be said that these findings are perverse.

39. The learned counsel then relied on another decision reported in 2003 Vol. (1) CHN 505 (Calcutta State Transport Corporation v. Pradip

Kumar Banerjee &. Ors.). The learned counsel on the point of consideration of past record relied on paragraph 8 and 30 of this judgment, on the

score of judicial review relied on paragraph 17 and on the point of consideration of evidence relied on paragraph 24 and 33 and on the point of

proportionality of punishment relied on paragraph 36 of this judgement.

40. The learned counsel submitted that in such type of cases, order of dismissal will should be commensurate with the nature of offence committed

but the disciplinary authority took a lenient view and in this regard the learned counsel relied on a judgment reported in 2003 Vol. (3) SCC 605

and mainly laid stress on the observations made in paragraph 10 of this judgment.

41. On the point of consideration of the past record the learned counsel for the respondents also relied on the judgment reported in 2001 Vol. (2)

SCC 576, 2000 Vol. (10) SCC 330, 1997 Vol. (5) SCC 62.

42. The learned counsel then distinguished the cases cited by the learned counsel for the petitioner.

43. The learned counsel for the respondents lastly submitted that the writ petition is liable to be dismissed with costs.

44. POINTS FOR DECISION

1. Whether the inquiry proceeding in its entirety including the order of suspension is illegal or not.

2. Whether in conducting the disciplinary proceedings principles of natural justice were followed:

3. Whether the punishment awarded to the petitioner is disproportionate or not.

4. Whether the reliefs, as prayed for should be granted to the petitioner.

DECISION

45. On hearing the learned counsel for the parties and on perusal of the records of the instant departmental proceeding as well as the proceedings

initiated against him and on perusal of the averments made in the writ petition, the affidavit-in-opposition as well as the affidavit-in-reply the

following facts come out:

Charge-sheet was issued to the petitioner on two counts of charges. The petitioner gave a reply dated 12.10.1999 to the said charge-sheet

denying the allegations levelled against him. The petitioner in the reply, which is annexure-"P2" to the writ petition stated that the excess amount of

Rs. 162/- was found in his cash bag but the reason for such excess is not known to him and he feels sorry for the incident and he assured that in

future such incident will not occur. The petitioner, however, did not give any reply to the second count of charge that he is a habitual offender.

46. From the charge-sheet and reply it therefore, appears that the petitioner more or less admitted the first charge and did not give any denial to

the second charge. Neither the petitioner said in his reply that no excess was found nor he could explain the reason for such excess. He only said

that it is not known to him how such excess it found. However, though evasion but denial was there.

47. It further appears from the documents on record produced by the learned counsel for the respondents that Earlier different departmental

proceedings were initiated and completed against the petitioner. Therefore, it may be say that the petitioner has admitted the second count of

charge. Insofar as the first charge is concerned inquiry was conducted. It is admitted however, that no inquiry report was served on the petitioner.

48. Suspension order, as it comes out from the records cannot be said to be illegal inasmuch as an employee can be suspended during the

pendency of the departmental proceedings.

49. Now, the question arises regarding charge-sheet. The charge-sheet containing two charges also cannot be termed to be illegal or mala fide or

biased inasmuch as the petitioner in his reply more or less admitted both the charges. That apart, unless the charge-sheet is proved to be a result of

bias or mala fide or in ex facie violation of the Service Regulations or the rules, the same cannot be termed to be illegal.

50. Now, comes the question of inquiry proceedings. Here, admittedly in the final order the disciplinary authority said that the himself has

conducted the inquiry and in the affidavit-in-opposition it has been stated in more than one place that inquiry report was not served on the

petitioner and it is not necessary since the disciplinary authority itself made the inquiry. The petitioner alleged violation of Regulation 39 of the

Service Regulations. The said regulations 36 to 39 are quoted hereinbelow:

36. PENALITIES : The following penalties may, for good or sufficient reasons and as hereinafter provided, be imposed on an employee namely :

(i) Censure;

(ii) with-holding of increments or promotions;

(iii) recovery from pay of the pay of the whole or part of any pecuniary loss caused to the Corporation by negligence or breach of orders.

(iv) reduction to a lower stage in time scale of pay for a specified period with further direction as to whether or not the employee will earn

increments of pay during the period of such reduction will or will not have the effect of postponing the future increments of his pay;

(v) reduction to a lower time scale of pay, grade, post or service which shall ordinarily be a bar to the promotion of the employee to the time scale

of pay, grade, post or service from which he was reduced, with or without further directions regarding conditions of the restoration to the grade or

post or service from which the employee was reduced and his seniority and pay on such restoration to that grade, post of service;

(vi) compulsory retirement;

(vii) removal from service which shall not be a disqualification for future employment;

(viii) dismissal from service which shall ordinarily be a disqualification for future employment.

Explanation : The following shall not amount to a penalty within the meaning of this rule, namely :

1. stoppage of an employee at the efficiency bar in the time scale of pay on the ground of his unfitness to cross the bar.

2. reversion to a lower service, grade or post of an employee officiating in a higher service, grade or post on the ground that it is considered, after

trial, to be unsuitable for such higher service, grade or post or on administrative grounds unconnected with his conduct;

3. reversion to his permanent service, grade or post of an employee appointed on probation to another service, grade or post during or at the end

of the period of probation in accordance with the terms of his appointment or the rules and orders governing the probation;

4. compulsory retirement of an employee in accordance with the provisions relating to his superannuation or retirement;

5. Termination of services:

(a) of an employee appointed in probation during or at the end of the period of probation in accordance with the terms of his appointment or the

rules and orders governing such probation, or

(b) of a seasonal employee (e.g. reserve pool employee) at the end of the season for which he is employed, expressly or impliedly, or

(c) of an employee employed under an agreement and contractor in accordance with the terms of such agreement and contract.

6. A written warning given without any disciplinary proceedings admonition or reprimand for offences of occasional and minor nature does not

amount to the imposition of the penalty of ""Censure"" and may not go into the Confidential Character Roll, if maintained.

7. Failure on the part of an employee to intimate to his official superiors the fact of his arrest and the circumstances connected therewith, shall be

regarded as suppression of material information and will render him liable to disciplinary action on that ground alone, apart from the action that may

be called for on the out come of the police case against him.

37. Authority to impose penalties: The appointing authority of any particular post or an authority which is not subordinate to such appointing

authority may, if so authorized by the Corporation, impose any penalty specified in regulation 36 upon the employees of the Corporation.

38. PROCEDURE FOR IMPOSING PENALTIES : (1) No order imposing any of the penalties specified in rule shall be made except after an

enquiry held in the manner provided in this rule.

(2) The disciplinary authority shall draw up or cause to be drawn up

(i) the substance of the imputations of misconduct or misbehaviour into definite and distinct articles of charge;

(ii) a statement of imputations of misconduct or misbehaviour in support of each article of charge which shall contain (a) statement of relevant facts

including any admission or confession made by the employee. (b) a list of documents by which, and a list of witnesses by whom, the articles of

charge are proposed to be sustained.

(3) The disciplinary authority shall deliver or cause to be delivered to the employee a copy of the articles of charge and the statement of

imputations of misconduct or misbehaviour prepared under clause (ii) of sub-regulation (2) and shall require the employee to submit to the inquiring

authority within such time as may be specified a written statement of his defence and to state whether he desires to be heard in person.

(4) The disciplinary authority shall in all cases for the purpose of enquiry form an inquiring authority and forward to it -

(a) a copy of the articles of charge and the statement of the imputations of misconduct or misbehaviour;

(b) a copy of the statement of witness, if any;

(c) evidence proving the delivery of the documents referred to sub-regulation (2) of the employee;

(5) The employee shall appear in person before the inquiring authority on such day and at such time within ten working days from the date of

receipt by him of the articles of charge and the statements of imputations of misconduct or misbehaviour as the inquiring authority may, by a notice

in writing specify in this behalf or within such further time not exceeding ten days, as the inquiring authority may allow.

(6) If the employee who has not admitted any of the articles of charge in his written statement of defence appears before the inquiring authority,

such authority shall ask him whether he is guilty or has any defence to make and if he pleads guilty to any of the articles of charge, the inquiring

authority shall record the plea, sign the record and obtain the signature of the employee thereon. The inquiring authority shall return a finding of guilt

in respect of those articles of charge to which the employee pleads guilty. The inquiring authority shall, if the employee fails to appear within the

specified time or refuses or omits to plead or claims to be tried require the disciplinary authority or his representative to produce the evidence by

which he proposes to prove the articles of charge and shall adjourn the case to a later date not exceeding 30 days, after recording an order that the

employee may for the purpose of preparing his defence-

(a) inspect within five days of the order or within such further time not exceeding five days as the inquiring authority may allow, the documents

specified in the list referred to in sub-regulation (2).

(b) submit a list of witnesses to be examined on his behalf.

(c) give a notice within ten days of the order or within such further time not exceeding ten days as the inquiring authority may allow asking for the

discovery or production of any documents which are in the possession of Corporation but not mentioned in the list mentioned in sub-regulation (2).

(7) The inquiring authority, shall, on receipt of the notice for the discovery or production of documents forward the same or copies thereof to the

authority in whose custody or possession the documents are kept, with a requisition for the production of the document by such date as may be

specified in such requisition Provided that the inquiring authority may, for reasons to be recorded by it in writing, refuse to requisition such of the

documents as are, in its opinion, not relevant to the case.

(8) On receipt of the requisition referred to in sub-regulation (7) every authority having the custody or possession of the requisitioned documents

shall produce the same before the inquiring authority;

Provided that if the authority having the custody or possession of the requisitioned documents is satisfied for reasons to be recorded by it in writing

that the production of all or any of such documents would be against the Corporation''s interest or security of the state, it shall inform the inquiring

authority accordingly and the inquiring authority shall, on being so informed, communicate the information to the employee and withdraw the

requisition made by it for the production or discovery of such documents.

(9) After the completion of the enquiry, a report shall be prepared and it shall contain :

(a) the articles of charge and the statement of imputations of misconduct or misbehaviour;

(b) the defence of the Corporation employee in respect of each article of charge;

(c) an assessment of the evidence in respect of each article of charge;

(d) the finding on each article of charge and the reasons therefore.

(10) The disciplinary authority shall consider the record of the enquiry and record its findings on each charge.

(11) If the disciplinary authority having regard to its findings on the charges, is of opinion that any of the penalties specified in regulation 36 should

be imposed, it shall pass appropriate orders on the case.

39. APPEALS : (1) An appeal shall lie from an order passed by the General Manager/Managing Director or an authority, imposing any of the

penalties mentioned in regulation 37 to the Chairman of the Corporation.

(2) No appeal shall he from any order imposing any of such penalties passed by the Chairman.

(3) The appellate authority shall consider-

(a) whether the facts on which the order is based have been established.

(b) whether the facts established afford sufficient ground for taking action, and.

(c) whether the penalty is excessive, adequate or inadequate and shall thereafter pass such order as it thinks proper.

(4) Every appeal preferred under this regulation shall contain all material statements and arguments relied on by the appellant but shall not contain

any disrespectful or improper language, and shall be complete in itself. Every such appeal shall be addressed to the authority to whom the appeal is

preferred and shall be submitted through the appropriate official channel.

(5) An appeal may be disallowed if -

(a) it does not comply with the provisions of this regulations or

(b) it is not preferred within, ninety days from the date on which the appellant was informed of the order appealed against and no reasonable cause

is shown for the delay; or

(c) it is a repetition of a previous appeal and its made to the same appellate authority by which such appeal has been decided and no new facts or

circumstances are adduced which afford grounds for a reconsideration of the case.

Provided that an appeal disallowed on the ground mentioned in clause (a) may be re-submitted within one month from the date on which the

appeal has been disallowed after removal of the defects.

(6) Except under very special circumstances to be satisfactory and to be accepted by the Corporation no lawyer will be allowed to appear either

before the authority who conducts any enquiry or any authority to whom an appeal may be made.

(7) The employee may, however, avail himself of the assistance by any other employee of the Corporation, as co-employee in the enquiry for

which no prior permission is required to be taken from the Corporation or any other authority subordinate to the Corporation.

51. It is a fact or admitted that no inquiry report was served on the petitioner. In the decision reported in 1991 Vol. (1) SCC 588 (Union of India

& Ors. vs. Mohd. Ramzan Khan) it has been observed that if the inquiry report is not served on the delinquent employee, it amounts to violation of

the principles of natural justice. The said decision was, however, diluted in the decision of the Hon''ble Apex Court reported in 1993 Vol. (4) SCC

727 (Managing Director, ECIL, Hyderabad & Ors. vs. B. Karunkar & Ors.) but neither of the two decisions lay out the proposition that inquiry

report need not at all be served if the disciplinary authority itself conducts an inquiry and in spite of the fact that the petitioner is being prejudiced

for non-supply of the inquiry report.

52. Regulation 3B of the said Service Regulations in its sub-regulation (6) provides ""the inquiring authority shall return a finding of guilt in respect of

those articles of charges to which the employee pleads guilty."" Though, it has not been specifically stated in the regulation 38 that copy of the

inquiry report is to be served on the delinquent employee but it is a fact that if the employee is not given chance to submit his reply befitting the

findings of the inquiry for which the findings of the inquiry is obviously required, then it can be said that there is violation of the principles of natural

justice.

53. In my view, therefore, it cannot be said that the entire proceedings is bad but it can safely be said that from the stage of submission of inquiry

report the proceedings is not legal and valid.

54. The proposition laid down in different citations given by the learned counsel for both the parties are no doubt settled and this can be said to be

the settled proposition of law. It is also a fact that the proposition of law is to be discussed or is to be invoked in different cases considering the

facts of the case. In the instant case admittedly, the inquiry report was not served which caused prejudice to the petitioner and in that view of the

matter the proceedings from the stage of submission of inquiry report can be termed as bad.

55. In view of the discussions made above, it can be safely said that principles of natural justice were not fallowed inasmuch as the copy of the

inquiry report was not served on the delinquent employee/petitioner.

56. Insofar as the third question is concerned that is the quantum of punishment is concerned, it is to be decided by the disciplinary authority and

not by the court unless it become shockingly disproportionate. Here, since I''ve found that the inquiry proceeding bad in law, the punishment

automatically goes.

57. Insofar as reliefs are concerned, the petitioner has prayed for setting aside the final order passed by the disciplinary authority as well as the

appellate order. Insofar as the appellate order is concerned, on careful consideration it can be said that the provisions of Service Regulation 39 has

not been strictly followed in disposing of the appeal inasmuch as specially sub-regulation (4) of Regulation 39 has not been followed or all material

statements and arguments relied on by the appellant were not substantiated in the appellate order. In that view of the matter the final order being

annexure- "P4" is set aside and the appellate order being annexure- "P5" is also set aside.

58. The respondents are directed to supply copy of the inquiry report to the petitioner and to proceed afresh on the basis of the same charge-

sheet. The stage up to the filing of the inquiry report remains valid and the respondents are to proceed from the stage of supply of inquiry report, as

observed. After supplying the copy of the inquiry report and on receipt of the reply the respondent authorities may also impose penalty

proportionate to the charges, if they so find but if the respondent authorities are satisfied with the reply, they are at liberty to relieve the employee

from the charges levelled against him.

59. The inquiry is to be completed within three months and in the interim period status quo as regards the service of the petitioner will be

maintained.

60. The writ petition is allowed on the above terms. There will be no order as to costs.

Urgent xerox certified copy, if applied for, will be given to the parties as expeditiously as possible.