

**(1999) 04 CAL CK 0005**

**Calcutta High Court**

**Case No:** Constitution Writ Jurisdiction, W.P. N. 130 (W) of 1998

Raj Kapoor Ram

APPELLANT

Vs

South Bengal State Transport  
Corporation and Another

RESPONDENT

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**Date of Decision:** April 1, 1999

**Acts Referred:**

- Constitution of India, 1950 - Article 16, 21, 226

**Citation:** (1999) 2 CALLT 255 : (2000) 84 FLR 664 : (2000) 2 LLJ 246

**Hon'ble Judges:** Amitava Lala, J

**Bench:** Single Bench

**Advocate:** Mr. L.K. Gupta and Mr. M.K. Kundu, for the Appellant; Mr. T.K. Sengupta and Mr. D. Bera, for the Respondent

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### **Judgement**

A. Lala, J.

The writ petitioner, while performing his duty as Conductor of a vehicle No. WB-39/2140 on the route of Durgapur to Digha under the South Bengal State Transport Corporation levelled with following three charges :

- (a) Allowing intentionally 3 (three) passengers to travel in his bus without any ticket;
- (b) Excess amount of Rs. 132.10 was found in the collection bag;
- (c) Careless and negligent while performing his duty.

2. On the basis of such charges an Enquiry Officer was appointed and it appears the enquiry report was submitted by 16th September, 1997.

3. The petitioner made this writ petition claiming, inter alia, writ of mandamus to cancel, rescind, revoke the purported charge-sheet dated 31st March, 1997 and the enquiry proceeding conducted by the Enquiry Officer and not to give any effect or further effect to the final order of punishment, if passed, etc.

4. The petitioner, in fact, averred that petitioner has not been supplied a copy of the enquiry report nor any second show cause notice. The petitioner requested the authority to allow him to resume duty as he was placed under the suspension.
5. A question arose at the Initial stage that whether the writ petition is maintainable even before the punishment has been imposed by the authorities or not. A single bench of this court at the time of Initial entertainment accepted the position on the basis of a reported judgment being 1979 (2) CLJ 127 (Manindra Nath Ghosh v. State of West Bengal) that the writ petition is maintainable and no appeal was preferred therefrom. Therefore, no question can be re-agitated at this stage about maintainability of the writ petition being closed chapter.
6. So far the changed circumstances and merit is concerned, a supplementary affidavit has been filed by the petitioner pursuant to the direction passed by a single Bench of this Hon'ble Court wherefrom it appears the order of punishment was Issued as far back as on 22.12.97 by passing an order of removal of the Incumbent from the service of the corporation which accompanied enquiry report dated 16.9.97.
7. The petitioner contended that (a) the charges as levelled against him have not been proved before the Enquiry Officer; (b) enquiry report has not been furnished to him; (c) punishment is disproportionate with the charges.
8. It appears, as against the first charges, that the Enquiry Officer held "it is a fact that not only the conductor but also the passengers are equally responsible for the lapse but the negligence on the part of the conductor cannot be denied."
9. The Enquiry Officer, as against the second charge levelled against him, held "the excess occurred for either he failed to give tickets against payment of fare by the passengers or he failed to pay the balance of the passengers. Both of the acts does not speak high about his way of functioning."
10. Under the above circumstances, finally concluded the report by saying the charges (I) & (II) stand in this respect.
11. In this respect Mr. L. K. Gupta, learned senior counsel appearing in support of the petitioner cited [A.L. Kalra Vs. Project and Equipment Corporation of India Ltd.](#), and relying upon paragraphs 22 and 26 of the judgment contended that where misconduct when proved entails penal consequences. It is obligatory on the employer to specify and if necessary define it with precision and accuracy so that any ex post facto interpretation of some Incident may not be camouflaged as misconduct.
12. On the basis of the second point for non-furnishing enquiry report he relied upon [Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc.](#), and contended that since it is the right of the employee to have the report to defend himself effectively, and he would not know in advance whether the report is in his favour or

against him, it will not be proper to construe his failure to ask for the report, as the waiver of its right. Whether, therefore, the employee asks for the report or not, the report has to be furnished to him. He further contended even if any statutory rule is silent or against it but report of the Enquiry Officer has to be furnished because non-furnishing of enquiry report goes straight against the principles of natural justice.

13. Save as aforesaid he also reiterated the disproportionate order of punishment while this court was observing the same in the course of the argument.

14. Mr. T. K. Sengupta, learned senior counsel made his argument by saying that in respect of the enquiry report he is relying upon an unreported Division Bench judgment of this court being F.M.A. No. 66 of 1997 ( South Bengal State Transport Corporation and Anr. v. Sailendra Nath Banerjee) in which this court was the party. He emphasized by saying that the writ court cannot sit over the appeal. The operative part of the Judgment and order of the Division Bench speaks as follows :

"In the result, we allow the appeal set aside the impugned Judgment and order of the learned trial Judge and also the order of dismissal of the . respondent it shall be open to the Disciplinary Authority to re-consider the matter after furnishing to the respondent a copy of the enquiry report and after giving an opportunity of being heard to him."

15. Secondly he argued that from the annexure "C" of the petition being a reply to the charges given by the petitioner it will be abundantly clear that the petitioner had admitted the charges. Much emphasize was given in respect of the confession of the petitioner about excess amount of Rs. 132.10. He relied upon a judgment reported in [State of Punjab and Others Vs. Dr Harbhajan Singh Greasy](#), to establish that since the Enquiry Officer's report leading the removal of the writ petitioner was based on the alleged admission and even thereafter when it was alleged that the enquiry was found to be faulty it could not be proper to direct re-instatement with consequential benefits. He also relied upon [J.L. Toppo Vs. Tata Locomotive and Engineering Company Ltd.](#), wherein also the employee confessed negligence in enquiry conducted by the company.

16. Thirdly he contended that in the service Regulation of the concerned State Transport Corporation there is a provision of appeal. Therefore, writ Jurisdiction cannot be invoked for the purpose when there is alternative remedy available.

17. In reply thereto, the petitioner contended that there is no provision of appeal on that score nor alternative remedy of Invocation of writ jurisdiction is bar in the premises. Moreover, as and when writ court entertained the application initially at a later stage the same cannot be dismissed on such ground. Secondly report of the Enquiry Officer is based on surmise and conjecture. Thirdly non-service of enquiry report is clear violation of principles of natural justice. Therefore, in all, the petitioner is entitled for fresh enquiry on the basis of the same charges.

18. I have carefully considered the rival contentions. According to me, so far the technical point of maintainability of the writ petition is concerned the same has already over as i have Indicated above. Therefore, there is no necessity to reiterate the facts that writ petition is maintainable.

19. Secondly it is also to be considered whether is there any alternative remedy available under the regulation or not. 1 have perused the regulation as forwarded to me be the learned senior counsel appearing on behalf of the authority but 1 found that scope of appeal, if any, from the removal of the service of the Corporation With Immediate effect is not very clear wherein the scope of the appeal appears to be only limited to the extent of penalties.

20. In furtherance I do not find any reason of submission of the respondent authorities on the basis of the unreported Judgment of Division Bench of this Hon"ble Court wherefrom it is crystal clear that by setting aside the appeal the authority did not become benefited because the Division Bench was not only pleased to set aside the Impugned judgment and order of the learned trial Judge but also the order of dismissal of the respondent. Therefore, the pleasure of the Division Bench was to approach to the Disciplinary Authority to consider the matter after furnishing the copy of the enquiry report and giving an opportunity of being heard which is the parameteria of the argument of the petitioner.

21. Lastly the point of admission by the writ petitioner as enunciated by the authority at the time of hearing through their respective counsels on the basis of the annexure "C" to the petition. Factually this point is distinguishable because the explanation of the petitioner is that Rs.132.10 was available as excess but how the money was available is not an admission but explanation. However, this court is no willing to behave in a manner as if he sits in appeal over and in respect of a disciplinary proceedings but then also this is to be remembered that this court is called upon by the authority concerned itself to go to such question.

22. I also failed to understand the analysis of the authority relying upon the Judgment reported in [State of Punjab and Others Vs. Dr Harbhajan Singh Greasy](#), and [J.L. Toppo Vs. Tata Locomotive and Engineering Company Ltd.](#), It is clearly held by the Supreme Court that since the enquiry officer's report leading to removal of the employee was based on the alleged admission made by him but was not supported by any written statement and when alleged admission was being contradicted by the employee, the High Court was justified in setting aside the order of dismissal. The only question. If at all I am understood that it should not be proper to direct reinstatement with consequential benefits. Matter requires to be remitted to the Disciplinary Authority to follow the procedure from the stage at which the fault was pointed out and to take action according to law. Pending enquiry, the delinquent must be deemed to be under suspension. The consequential benefit would depend upon the result of the enquiry and order passed thereon.

23. In the instant case the petitioner has given a reply to the second charge that it is a fact that Rs. 132.10 was available but question before the Enquiry Officer to enquire the explanation why and how it was available, therefore, neither such explanation can be treated as admission nor there is any whisper to that extent in the report of the Enquiry Officer submitted to the authority being annexure "F" to the supplementary affidavit filed by the writ petitioner. In the elaborate final order dated 22-12-97 several remarks were made with regard to charges levelled against the petitioner which are unfounded even in the Enquiry report. Therefore, can it be said that the order of dismissal based on the report furnished by the Enquiry Officer or it is Independent from the report of the Enquiry Officer to vindicate the mind of the authority concerned to come to a disproportionate order of removal of Incumbent from the service of the corporation with immediate effect. Therefore, court is not free from suspicion about the conduct of the authority concerned and the proceeding initiated by the authority as against the writ petitioner.

24. In these circumstances, considering all aspects I am of the view that justice means Justice between both the parties. The Interest of justice equally deemed that the guilty should be punished and that technicalities and irregularities which do not occasion failure of justice are not allowed to defeat the ends of Justice. Principles of natural justice are but the means to achieve the ends of justice. They cannot be prevented to achieve the very opposite end that would be a counter productive exercise this principle cannot be put in a straight-jacket. Their applicability depends upon the context of facts and circumstances of each case. Here the case goes in favour of the petitioner.

25. Therefore, I am of the view that 1 should accept, in the circumstances, the proposition laid down in [Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc.](#), to the extent of furnishing the enquiry report to the employee Irrespective of any provision in the regulation made by the Corporation to complete the course of principles of audi alterem partem and relying upon an unreported Division Bench judgment, as Ironically cited by the respondent authority itself.

26. Hence I cancel the concerned enquiry report and set aside the order of dismissal being order issued by the Divisional Manager of the Corporation dated 22-12-97 being annexure "F" to the supplementary affidavit filed by the writ petitioner on 18-3-98.

27. As a consequential effect of such order of dismissal the petitioner will be entitled for fresh enquiry within a period of three months from the date of communication of the order on the basis of the same charges but the writ petitioner should be given reasonable opportunity of hearing and for Enquiry Officer to come to an appropriate finding should not be influenced by surmise and conjuncture which can camouflage the court to draw an inference of misconduct in future. It may also to be remembered by the Enquiry Officer that any disproportionate or in-appropriate finding may take away means of livelihood of an employee, who is not in equal

bargaining position with the employer.

28. Punishing authority is also directed not to proceed beyond the scope of enquiry report to be given by the enquiry officer by substituting it's own view which also can camouflage the court to draw an inference of misconduct in future for the self-same reason or reasons.

29. Pending enquiry the delinquent must be deemed to be under suspension with facilities. The consequential benefits would depend upon the result of the enquiry and order to be passed thereon.

The writ petition is, thus, disposed of but no order is passed as to costs.

Urgent xerox certified copy, if applied, to be supplied within seven days from the date of putting requisition.

30. Petition disposed of