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**Date:** 22/12/2025

**(2007) 06 CAL CK 0045**

**Calcutta High Court**

**Case No:** A.P.O. No. 154 of 2005

Jyotish Chandra Das — APPELLANT

Vs

Calcutta Port Trust and Others — RESPONDENT

**Date of Decision:** June 26, 2007

**Acts Referred:**

- Calcutta Port Trust Employees (Classification, Control and Appeal) Regulations, 1987 - Regulation 15, 20(2), 25(1), 7

**Citation:** (2008) 1 LLJ 466

**Hon'ble Judges:** Pinaki Chandra Ghose, J; Ashim Kumar Roy, J

**Bench:** Division Bench

**Advocate:** Pranob Dutt, Biswaroop Bhattacharjee, A.R. Mukherjee and Kunal Chatterjee, for the Appellant;Kishore Dutt and Sunita Shew, for the Respondent

**Final Decision:** Dismissed

**Judgement**

1. This appeal is arising out of an order passed by the Hon''ble First Court dated February 25, 1997 whereby the Hon''ble First Court was pleased to dismiss the writ application filed by the writ petitioner.

2. The facts of the case briefly are as follows:

In and around 1969, the appellant was appointed as unskilled labourer in Dock Basin Machinery and was promoted to the post of Fitter sometime in 1981. At the relevant point of time the petitioner was acting as senior Fitter in the Department of Chief Mechanical Engineer, Calcutta Port Trust. On May 14, 1992, the appellant availed of a journey to Simla by availing the Leave Travel Concession (hereinafter referred to as "the LTC") facilities, which the appellant was entitled to enjoy as an employee of the Calcutta Port Trust.

3. On September 29, 1992 a charge-sheet was issued to the appellant amongst others on the allegation that neither such journey was undertaken by the appellant

nor the 90% LTC advance taken by him was refunded to the respondent No. 1. In the second charge it was alleged amongst others that the appellant had not given any statement to the Vigilance Department in contravention of the Chairman''s Circulars bearing Nos. 3486/75 dated October 7, 1984 and 3488/ 75 dated August 23, 1984 respectively.

4. Both the charges were refuted by the appellant and it was specifically stated that he undertook the journey on the scheduled date which was mentioned in the railway ticket. The second charge was also denied by the appellant and when he was called by the Central Vigilance Officer, he duly gave his statement and the copy of same was supplied to the'' appellant. Accordingly, it was contended on behalf of the appellant that he did not violate the Chairman''s order.

5. An enquiry was held in the matter by the'' Enquiry Officer relying on a purported letter dated June 30,1992 (Exhibit 3) addressed to the Chief Vigilance Officer, Calcutta Port Trust by the Chief Commercial Superintendent, Eastern, Railway that before commencing of the journey ⬩ the said tickets were cancelled and monies were refunded against cancellation.

6. The Enquiry Officer did not find any reason to disbelieve the said letter in spite of fact'', that the said refund of money could only be obtained in terms of the Circular No. DMD/4111/1/6629 dated November 27, 1990. Therefore, it was submitted that in view of the said Circular, no refund on tickets could have'' been obtained without a letter or without a permission from the issuing Officer, of LTC of the Calcutta Port Trust.

7. It is further submitted that such letter, and/or permission was never obtained or issued by the Authorities. The Enquiry Officer held that both the charges were found established against the appellant. Without supplying a copy of the Enquiry Report to the appellant, the; Disciplinary Authority, i.e., the Chief Mechanical Engineer passed an order of removal from service dated April 22, 1994.

8. On April 22, 1994 the appellant obtained a copy of the said Enquiry Report and filed an appeal before the Appellant Authority on May 3, 1994 under Regulation 15 of the Calcutta Port Trust Employees (Classification, Control and Appeal) Regulations (hereinafter referred to as "the said Regulations") and the Appellate Authority on July 13, 1994 disposed of the said appeal with an order that the appellant is reinstated in the Trustees'' service and is appointed to the post of Fitter as a fresh appointee.

9. Further, he was directed to be appointed to the post of Fitter at the minimum of the scale and further directed that the said sum of Rs. 8881/- should be recovered from his monthly salaries at the rate of Rs. 300/- per month.

10. Being aggrieved by the said order dated July 13, 1994, the appellant, thereafter, filed a review application before the Chairman, Calcutta Port Trust.

11. On March 20, 1995, the present writ petition was filed by the petitioner challenging the charge-sheet, enquiry proceedings and the order of removal from service and the order of the Appellate Authority dated July 13,1994 and thereafter, on the basis of the order so passed by the Hon''ble Court, liberty was granted to the appellant to join his duties immediately without prejudice to the rights and contentions of the parties in the said application.

12. On August 23, 1995, the appellant resumed his duty as Fitter in terms of the said interim order dated March 20, 1995.

13. On February 25, 1997, the said writ petition was dismissed by the Hon''ble First Court. On August 22, 1997 the appellant preferred an appeal from the said order which was dismissed for default on December 4,1997 and subsequently, the said order was recalled on December 19, 1997.

14. In the meantime, the Chairman being the Reviewing Authority rejected the review application which was pending before him. Subsequently, the matter came up before this Court and it is contended by the appellant before us that the review matter is a non-speaking order and the same has been passed without any application of mind.

15. It is also contended that the said order passed by the Appellate Authority is in contravention of or de hors Regulation 20(2)(c) of the said Regulations read with Regulation 7 thereof, inasmuch as the Appellate Authority. had no jurisdiction and/or power to grant fresh appointment to the appellant to the post of Fitter at the minimum of the scale after reinstating the appellant in the Trustee''s service.

16. The reason for inflicting the harsh punishment on the appellant by the Appellate authority after reinstating him in service of Fitter at the minimum of the scale, was mainly on the second charge for having violated the Chairman''s said order Nos. 3488/75 dated October 7, 1983 and 3488/75 dated August 23, 1984. On this count also the punishment is not sustainable inasmuch as in terms of Regulation 25(1) of the said Regulations all regulations, rules, resolutions, circulars, notification, directions and orders corresponding to these rules in force immediately before the commencement of these regulations and all directives or orders issued pursuant thereto are hereby repealed. Under such circumstances, the ﬁ punishment meted out to the appellant on the basis of some repealed order/circular of the Chairman is without the authority of law, biased and perverse.

17. Pranob Dutt, Learned advocate appearing on behalf of the appellant contended before us that the reason for inflicting the harsh punishment on the appellant by the Appellate Authority after reinstating him in service of Fitter at the minimum scale of pay was mainly on the second charge for having violated the Chairman''s said order Nos. 3488/75 dated October 7, 1983 and 3488/75 dated August 23, 1984. On this count also the punishment is not sustainable inasmuch as in terms of Regulation 25(1) of the said Regulations, all regulations, rules, resolutions, circulars,

notifications, directions and orders corresponding to these rules in force immediately before the commencement of these regulations and all directives or orders issued pursuant thereto, are hereby repealed. Under such circumstances, the punishment meted out to the appellant on the basis of some repealed order/circular of the Chairman, is without the authority of law, biased and perverse.

18. He relied upon a decision reported in 1943 Kings Bench Division 462 Hodge v. Ultra Electric Ltd. and submitted that the natural and prima facie meaning of the word "reinstate" as applied to a person who has been dismissed is to replace him in a position from which he was dismissed in such a way as fully to restore the status quo ante the dismissal. The word in the order connotes the right to work as well as the right to receive money.

19. However, he drew our attention to page 466 of the said decision and submitted that duty to reinstate must be a duty to put the employee back in the same job and under the same terms and conditions. According to him, the appellant is reinstated with the Trustees'' Service with immediate effect for appointing the appellant in the post Fitter at the minimum of the scale. In such circumstances, nothing but fresh appointment in the post of Fitter at the minimum of the scale is void in the eye of law and as such is a nullity. Accordingly, he placed reliance on the decision reported in MACFOY v. United Africa Co. Ltd. (1961) 3 All ER 1169.

20. He further submitted that it would not be out of context to state herein that the appellant has undergone various punishments for the same offence, viz.

a) The appellant remained out of service from April 22, 1994 to August 22, 1995.

b) The appellant was given fresh appointment in the post of Fitter at the minimum of the scale with effect from August 23, 1995 till the date of his retirement on June 30,2002. Due to the same the appellant''s entire past services with effect from 1969 has stood forfeited and he has been deprived of his pensionary benefits as he has not fulfilled the minimum qualifying service in terms of the CPT Employees (Pension) Regulations, 1988.

21. Mr. Dutt further contended that in view of the above punishments, it is humbly prayed before this Hon''ble First Court that the review order and the order of the Appellate Authority to the extent of appointing the appellant afresh to the post of Fitter at the minimum of the scale, may kindly be set aside and the respondent authorities be directed to compute the retirement benefits of the appellant on the basis of his scale of pay enjoyed by him just before the date of removal from service by deducting therefrom the amount already paid to the appellant and such payment be made to him within such time as the Court may deem fit and proper.

22. On the Contrary, Mr. Kishore Dutt, Learned advocate on behalf of the respondent submitted that the Appellate Authority took a lenient view and reinstated the appellant in the, Trustees'' services as in the same post at the''

bottom of the scale as a fresh appointee. Such order does not warrant interference by this Hon''ble Court.

23. According to him, in case of.'' reinstatement, consequential directions are to be given. Reinstatement can be ordered with or without back wages. Reinstatement can also be ordered with or without continuity in service. In this case, the Appellate Authority ordered-reinstatement with forfeiture of past service. Whether an employer would forfeit past services, whether an employee would be in continuity or break of service is not provided in the Service Regulations. Therefore, according-to him, it is not open to challenge it in a Court of law.

24. The forfeiture of past service is not unknown in Service Jurisprudence. He placed, reliance on a decision reported in Apparel Export Promotion Council Vs. A.K. Chopra, and submitted that the scope of judicial interference with award of punishment is very, limited. If the punishment is disproportionate, then only the Court can interfere with the punishment but when misconduct has been proved and punishment is not disproportionate then the Court shall not interfere with the punishment. He placed reliance on a decision reported in Indian Oil Corporation Ltd. and another Vs. Ashok Kumar Arora, in support of his contention.

25. According to him, the Courts have no jurisdiction to substitute punishment imposed by the respondents and in this context he placed reliance on a decision reported in State of Punjab and others Vs. Surjit Singh Conductor, .

26. Further he contended that it is settled principle of law that the Court has no power to reduce the punishment and he relied upon a decision reported in Punjab State Civil Supplies Corporation Ltd. Chandigarh and others Vs. Narinder Singh Nirdosh, in support of his contention.

27. He further contended that the decision cited on behalf of the appellant have no manner of application in the facts and circumstances of the case. According to him, the employer has exercised its jurisdiction within the four corners of law.

28. After hearing Learned Counsel for the parties and after perusing the facts of the case and the materials on record and the order so passed by the Hon''ble First Court, it appeals to us that what punishment is to be imposed is solely within the jurisdiction of the competent Authority and the same is outside the purview of the High Court''s interference has already been held in the decision of Apparel Export Promotion Counsel v. A.K. Chopra 1999 Lab IC 918 (supra) where it is the fact that usually and normally the High Court should not interfere unless such findings are based on no evidence and wholly perverse and/or legally/ untenable.

29. It is also not to be the action of the High Court to act as the Appellate Authority and to substitute its own conclusion as to the guilt of the delinquent.

30. The Penalty/punishment imposed unless it is impermissible or shocks its conscience, the High Court should not normally interfere with the same.

31. In the decision of Indian Oil Corporation Ltd. v. A.K. Arora (supra) the Hon''ble Court held that the jurisdiction of the High Court in cases of departmental enquiries and the findings recorded therein is very limited. The High Court should not interfere with the punishment imposed on the delinquent unless it finds that such punishment is totally disproportionate to the proof of misconduct of an employee.

32. In the decision of State of Punjab and Ors. v. Surjit Singh Conductor 1997 Lab IC 154 (supra) the Hon''ble Supreme Court held that once the charges have been proved, it is settled law that the disciplinary authority is empowered to impose appropriate punishment.

33. In the decision of Punjab State Civil Supplies Corporation Ltd., Chandigarh and Ors. v. Narinder Singh Nirdosh (supra) the Hon''ble Supreme Court held that it is the settled legal position that the disciplinary authority on the basis of the magnitude of the misconduct is empowered to impose the punishment appropriate to the situation, the High Court is unjustified in interfering with the punishment of reversion, as imposed, lenient view taken by the Government. The nature of punishment depends upon the magnitude of the misconduct.

34. After considering all these decision including the decision cited by Mr. Dutt reported in MACFOY v. United Africa Co. Ltd. 1961 (3) All ER 1169 in our opinion, the said decision cannot extend much help to the appellant herein.

35. In the facts and circumstances of this case, we have expressed the opinion as expressed by the Hon''ble First Court and we affirm the said decision and we do not find that any grounds have been made out by the petitioner to interfere with the order so passed ) by the Hon''ble First Court and we do not find any irregularity and illegality in the said order. Hence, we affirm the said order of the Hon''ble First Court and dismiss this appeal.