

(1999) 07 CAL CK 0034

Calcutta High Court

Case No: C.R. No. 5901 (W) of 1998

Gostha Behari Jana

APPELLANT

Vs

Calcutta State Transport
Corporation and Others

RESPONDENT

Date of Decision: July 14, 1999

Acts Referred:

- Road Transport Corporations Act, 1950 - Section 36, 37, 38, 45(2)(C)(1)

Citation: 2 CWN 226 : (2000) 86 FLR 508 : (2000) 1 LLJ 992

Hon'ble Judges: S.B. Sinha, Acting C.J.; M.H.S. Ansari, J

Bench: Division Bench

Advocate: Anupam Chatterjee and Nibaran Kumar Das, for the Appellant; Thakurdas Roychowdhury, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

S.B. Sinha, A.C.J.

1. The sole question which arises for consideration in this appeal is whether the Special Officer (Administration) of the first respondent herein was competent to pass an order of punishment unto the appellant herein. The facts of the matter are as follows:

2. The appellant was a conductor appointed by the Depot Manager, Belghoria Depot on or about May 10, 1967. Admittedly a disciplinary proceeding was initiated and by reason of an order dated April 18, 1978, the Special Officer (Administration) had issued a charge sheet against him. The Enquiry Officer appointed to enquire into the charges, submitted a report on or about June 5, 1978 whereby and whereunder, the charges levelled against the petitioner have been held to have been proved. The Special Officer (Administration) thereafter issued a second show cause notice which was questioned by the appellant by filing a writ application praying, inter, alia;

"(a) Declaration that the second show cause notice dated June 14/15, 1978, being Annexure "F" is ultra vires the provisions as contained in Regulation 38 of the Calcutta State Transport Corporation Employees Service Regulation.

(b) A writ of and/or in the nature of Mandamus do issue commanding the respondents to act and proceed in accordance with law and further commanding the respondents to cancel, and/or withdraw and rescind the purported charge sheet dated April 18, 1978, being Annexure "B", purported Enquiry Report dated June 5, 1978, being Annexure "D", and the purported second show cause notice dated June 14/15, 1978, being Annexure "F" and from giving any effect or further effect to the purported orders."

3. It appears that the petitioner was dismissed from his service.

4. The sole question that arises for consideration in this application is that as a Depot Manager, Belghoria Depot, was the appointing authority of the appellant whether the Special Officer (Administration) had no jurisdiction to pass the impugned order for dismissal.

5. The petitioner in paragraph 24 of the writ application stated that the respondent No. 2 was inferior in rank and/or authority to the Depot Manager, Belghoria Depot and thus the orders passed by the said authority were illegal.

6. The learned Trial Judge dismissed the writ application holding that the respondent No. 2 have been delegated with the power of the Disciplinary Authority and was therefore competent to issue the impugned orders.

7. Mr. Anupam Chatterjee the learned Advocate appearing on behalf of the appellant raised a short question in support of this appeal. The learned Counsel submitted that by an order dated March 5, 1971 as contained in Annexure "M" to the Affidavit-in-Opposition, it appears that the respondent No. 1 Corporation had taken a decision that the post of Special Officer (Discipline) would be re-designated as Special Officer (Administration) with immediate effect.

8. Our attention has been drawn to an order dated February 8, 1982, wherefrom it appears that duties and functions which have been assigned to the Special Officer (Administration) and also to the Senior Law Officer as approved by the General Manager in terms of order dated February 4, 1982 does not contain any function for performing the duties of Disciplinary Authority.

9. From another order dated February 7, 1980 as contained in Annexure "Q" in Affidavit-in-Reply, it appears that a decision had been taken by the Board of Directors that the powers for passing final orders be vested with the Head of the Departments.

10. By another order dated March 13, 1980 as contained in Annexure "R" in affidavit-in-Reply, it appears that the Special Officer (Administration) will continue to

initiate departmental proceeding against the delinquents, suspend them and enquire into the charges framed against them, but he will report to the respective departmental heads on the findings of his enquiries and recommended penalties, on which reports the respective departmental heads will pass final orders as considered suitable by them.

11. The learned Counsel appearing on behalf of the respondents submitted that the respondent No. 2 is not subordinate to the Depot Manager and could be delegated with the power of the Departmental Head.

12. Admittedly the respondent No. 1 had framed a regulation in exercise of the statutory power conferred upon them u/s 45(2)(C)(1) of the Road Transport Corporation Act, 1950 known as Calcutta State Transport Corporation Employees Service Regulations.

13. For the purpose of removal or dismissal within the meaning of this regulation, we may refer to Regulations 37 and 38 which are:

"37. The appointing authority or any particular post or an authority which is not subordinate to such appointing authority may, if so authorised by the Corporation, impose any penalty specified in regulation 36 upon employees of the Corporation.

38. Subject to the condition that no employee may be removed or dismissed by an authority subordinate to that by which he was appointed, the Corporation may authorise its officers to impose such penalties as may be specified by the Corporation, upon employees subordinates to such punishing authority."

14. Thus, Regulation 38 postulates such punishment which is not contemplated by Regulation 36.

15. From perusal of the abovementioned office order there cannot be any doubt whatsoever that the respondent was subordinate to Senior Law Officer and, thus, could not be appointing authority of the petitioner and, thus, was not entitled in law to impose any punishment on him.

16. In the case of [Mysore State Road Transport Corporation Vs. Mirja Khasim Ali Beg and Another](#), where Apex Court in a similar situation upon consideration of Section 115(7) of the States Reorganisation Act, 1956 held:

"In the view of the Court, the broad purpose underlying the proviso to Section 115(7) of the Act was, to ensure that the conditions of service of the aforesaid persons shall not be changed except with the prior approval of the Central Government, i.e. before embarking on varying the conditions of service, the State Governments should obtain the concurrence of the Central Government. Now as pointed out by the Judicial Committee of the Privy Council in *North West Frontier Province v. Suraj Narain Anand* and by this Court in *Pradyat Kumar Bose v. The Hon'ble Chief Justice of Calcutta High Court and State of Madhya Pradesh v. Shardul*

Singh, the expression "conditions of service" is an expression of wide import and the dismissal from service is a matter which falls within the conditions of service of public servants. It is also well settled that it is not possible by means of any legislative provision or Rule to take away the guarantee provided by Article 311(1) of the Constitution which lays down that no public servant shall be dismissed by an authority subordinate to that by which he was appointed and if any such legislative provision or Rule lays down otherwise, it will clearly be ultra vires (see R.T. Rangachari v. Secretary of State), North West Frontier Province v. Suraj Narain Anand (supra) and State of U. P. v. Babu Ram Upadhyaya. It follows, therefore, that the protections including the constitutional protection enshrined in Article 311(1) of the Constitution enjoyed by persons holding civil posts under the State like the first respondents prior to the coming into force of the States Reorganisation Act, 1956 could not, after the appointed day i.e. November 1, 1956, be taken away, whittled down or impaired by any legislative enactment or rule."

17. Reliance placed by the learned counsel for the respondent in [P.V. Srinivasa Sastry and others Vs. Comptroller and Auditor General and others](#), and [Inspector General of Police and another Vs. Thavasiappan](#),

18. In both the abovementioned cases the Supreme Court was considering the case where the charge sheet has been issued by the authority subordinate to the Disciplinary Authority. The Apex Court upon taking into consideration, its earlier decisions [P.V. Srinivasa Sastry and others Vs. Comptroller and Auditor General and others](#), and [Transport Commissioner, Madras-5 Vs. A. Radha Krishna Moorthy](#), held that disciplinary action as an enquiry can be initiated by an officer who is subordinate to the appointing authority. The said decision of the Supreme Court is not an authority for the proposition that despite existence of a statutory regulation the appellant could have been dismissed from service by an authority subordinate to the Appointing Authority. For the reason aforementioned, we are of the view that the order of dismissal passed by the respondent/Corporation impugned in the writ application was illegal.

19. We, therefore, set aside the Judgment under appeal and also set aside the order of punishment and remand the matter back to the appropriate disciplinary authority for consideration of the matter afresh for passing an appropriate order in accordance with law. The Disciplinary Authority would be entitled to consider the materials on record collected by the Enquiry Officer as also the representation, filed by the writ petitioner/appellant in reply to the second show-cause notice issued by the respondent No. 2. This order is being passed keeping in view the decision of Apex Court in [Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc.](#),

20. Appeal and all applications are accordingly disposed of. No order as to costs.

M.H.S. Ansari, J.

21. I agree.