

A SOUTH BENGAL STATE TRANSPORT CORPORATION

v.

ASHOK KUMAR GHOSH AND ORS.

(Civil Appeal No. 4338 of 2010)

MAY 6, 2010

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[R.V. RAVEENDRAN, R.M. LODHA AND
C.K. PRASAD, JJ.]

Service Law:

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Misconduct – Penalty – South Bengal State Transport Corporation Service Regulations – Regulations 36 and 38 – State Transport Corporation – Charges of misconduct against respondent Conductor – Findings against him by Disciplinary authority – Respondent relegated to status of Daily Rated Conductor – He challenged the action – Plea of bias – Further plea that the punishment imposed was not provided for in the Regulations – Held: Mere appointment of Enquiry Officer, while framing the charge sheet, before considering the reply of respondent, did not reflect any bias – However, punishment imposed, not being one of the punishments enumerated in Regulation 36, not permissible in law – Reinstatement directed on technical ground, hence, without back wages – Punishment modified to penalty of reduction to lowest stage in time scale of pay applicable to Conductors.

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Reversion – Held: An employee cannot be reverted to a post lower than the post in which he entered service.

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Reversion – Held: Reversion to a post outside the cadre i.e. from regular post to a daily wage post, is not permitted.

Respondent no.1 was a conductor in the appellant transport corporation. Disciplinary proceedings were initiated against him for allowing a ticketless passenger

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SOUTH BENGAL STATE TRANSPORT CORPN. v. 177
ASHOK KUMAR GHOSH

to travel in the bus and for possessing excess amount in his cash bag. The disciplinary authority found the charges proved and inflicted the punishment of relegating respondent no.1 to the status of a Daily Rated Conductor. A

Respondent no.1 filed writ petition before the High Court contending that appointment of the Enquiry Officer in the charge sheet itself reflected bias on the part of the authority and this itself vitiated the punishment. The High Court allowed the writ petition and quashed the order of punishment holding that initiation of disciplinary proceedings was not free from bias inasmuch as the Enquiry Officer was appointed without considering the reply submitted by respondent no.1 and the punishment inflicted was in violation of Regulation 38(2) of the South Bengal State Transport Corporation Service Regulations. Hence the present appeal. B C D

Partly allowing the appeal, the Court

HELD: 1.1. Regulation 38 of the South Bengal State Transport Corporation Service Regulations, *inter alia*, provides the procedure for imposing penalties. From a plain reading of Regulation 38(2), it is evident that the disciplinary authority is required to draw or cause to be drawn up, the substance of imputation of misconduct into definite and distinct articles of charges and the statement of imputation of misconduct, to contain the statement of relevant facts including any admission or confession made by the employee. It also requires drawing up a list of documents by which and a list of witnesses by whom the articles of charges are proposed to be sustained. Regulation 38(3) of the Regulations obliges the disciplinary authority to deliver or cause to be delivered to the employee the articles of charges and the statement of imputation of misconduct requiring the employee to submit to the Enquiry Officer written statement of defence E F G H

A within a period specified. Neither Regulation 38(2) nor Regulation 38(3) provides that before the appointment of the Enquiry Officer the reply of the delinquent employee is to be considered. [Para 11] [185-G-H; 186-A-C]

B 1.2. It may be open for a disciplinary authority to
initiate the departmental proceedings on consideration of
the reply of an employee but as an absolute proposition
of law it cannot be said that before initiating departmental
enquiry or appointing Enquiry Officer, reply of the
C delinquent employee is required to be obtained and
considered unless it is the requirement of the rules. There
may be cases where the charges are of such a nature
that the disciplinary authority may not require any reply
from the delinquent employee but straightway initiates the
departmental enquiry and appoint an Enquiry Officer. In
D the present case, the Bus was checked by the flying
squad of the appellant-Corporation itself and in view of
what has been found by it, the disciplinary authority while
framing the charge had appointed the Enquiry Officer.
The mere appointment of Enquiry Officer while framing
E the charge sheet, even before considering the reply of the
delinquent employee, does not reflect any bias. [Para 11]
[186-C-F]

F *State of Punjab vs. V.K. Khanna and others*, (2001) 2
SCC 33, distinguished.

G 2.1. In the present case, imposition of penalty was
found to be bad by the High Court due to non-compliance
of Regulation 38(2) of Regulations on the ground that the
delinquent employee was not given any chance to have
his say before imposition of penalty. However, Regulation
38(2) nowhere contemplates giving an opportunity to the
delinquent employee. Matter would have been different
had the delinquent employee not given the copy of the
enquiry report and opportunity to file reply thereto. [Para
13] [187-B-D]

SOUTH BENGAL STATE TRANSPORT CORPN. v. 179
ASHOK KUMAR GHOSH

2.2. The punishment inflicted on the delinquent employee is of relegating him to the status of Daily Rated Conductor from the post of Conductor. The post of Conductor carries a time scale and Regulation 36(4) provides for penalty of reduction to a lower stage in time scale of pay for a specified period. The reduction to a lower stage in the time scale would obviously mean that the employee retains the same post but the scale of pay, which every post carries, can be reduced to a lower stage. Relegation of the delinquent employee to the status of Daily Rated Conductor cannot be said to be a reduction to a lower stage in the time scale of pay or reduction to a lower grade as delinquent employee has been deprived of the post of Conductor. This reduction to a lower stage, has to be in the scale of pay of the Conductor itself. Reduction to a lower grade should be with reference to the same post. The punishment inflicted also does not come within the ambit of reduction to a lower post or grade as contemplated under Regulation 36(5) of the Regulations. [Para 15] [188-F-H; 189-A]

3. It is well settled that while an employee can be reverted to a lower post or service, he cannot be reverted to a post lower than the post in which he entered service. Further it is also well settled that reversion to a lower post or service does not permit reversion to a post outside the cadre that is from regular post to a daily wage post. Therefore in the case at hand, the punishment inflicted on the delinquent employee (respondent no.1), not being one of the punishments enumerated in Regulation 36, is not permissible in law. [Para 16] [189-B-D]

Nyadar Singh v. Union of India AIR 1988 SC 1979, relied on.

4. The High Court was not right in holding that the enquiry was to be set aside on the ground of bias. The punishment imposed by the disciplinary authority,

A however, requires to be modified. Though, normally, in such a situation the matter should be referred back to the disciplinary authority for imposition of fresh penalty, having regard to the facts and circumstances and to do complete justice, it is directed as follows:- (a) The finding of guilt recorded by the Disciplinary Authority is upheld; (b) The punishment imposed by the appellant is set aside and the direction for reinstatement is upheld; (c) However as the punishment is being set aside and reinstatement is directed on a technical ground, the respondent-employee will not be entitled to any back wages; (d) Instead of reversion to the post of daily wage conductor, the punishment is substituted as reduction to the lowest stage of the time scale applicable to the post of conductor with effect from the date of imposition of punishment. [Paras 17, 18] [189-E-H; 190-A-B]

Case Law Reference:

(2001) 2 SCC 33 distinguished Para 5

AIR 1988 SC 1979 relied on Para 16

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4338 of 2010.

From the Judgment & Order dated 24.09.2008 of the High Court at Calcutta in MAT No. 567 of 2008 & CAN No. 7375 of 2008.

Janartanjan Das, Swetaketu Mishra, P.P. Nayak for the Appellant.

V.K. Monga for the Respondents.

The Judgment of the Court was delivered by

C.K. PRASAD, J. 1. This petition for special leave to appeal is against the judgment and order dated 24.09.2008, passed by the Calcutta High Court in MAT No.567 of 2008,

SOUTH BENGAL STATE TRANSPORT CORPN. v. 181
ASHOK KUMAR GHOSH [C.K. PRASAD, J.]

whereby it had dismissed the appeal preferred by the petitioner and affirmed the order of the learned Single Judge dated 17.04.2008 passed in W.P.No.4100(W) of 2008 quashing the order of punishment inflicted on respondent No.1. A

2. Leave granted. B

3. Short facts giving rise to this appeal are that the writ petitioner-respondent No.1, hereinafter referred to as the delinquent employee was at the relevant time working as Conductor with the appellant –South Bengal State Transport Corporation. On 17.02.2007 he was assigned duty in a Bus bearing Registration No.WB-39/2110, plying between Durgapur to Baharampur. The said bus was checked by the checking squad at Baharampur and they detected one ticketless passenger, who was going towards Baharampur from Kandi. The checking squad collected fine from the said passenger. Further a sum of Rs.345/- was found in excess in the Conductor's cash-bag. The Divisional Manager, Durgapur Division of the South Bengal State Transport Corporation is the disciplinary authority of the delinquent employee. A memo of charge dated 7.3.2007 was drawn by the Divisional Manager, Durgapur alleging the aforesaid misconduct against the delinquent employee; i.e. allowing the ticketless passenger to travel in the bus and possession of excess amount of Rs.345/- in the cash-bag. The memo of charge was served on the delinquent employee on 8.3.2007 and without giving any opportunity to him the Divisional Manager, Durgapur was appointed as the Enquiry Officer. The delinquent employee submitted his reply dated 17.3.2007 denying both the charges and according to him detection of the passenger travelling without ticket is not misconduct, because on the spot itself the ticketless passenger was tried and a fine was realized from him by applying Section 178A of the Motor Vehicles Act. As regards the second charge, the plea of the delinquent employee is that an amount of Rs.345/- was left by a passenger and when one of the passengers claimed the amount, he verified the C
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A same and till then kept the amount with the intention of returning
 it to him. The enquiry was conducted by the disciplinary
 authority i.e. the Divisional Manager, Durgapur himself who did
 not accept his plea and held both the charges brought against
 him to have been proved. Accordingly the disciplinary authority
 B inflicted the punishment and relegated the delinquent employee,
 a Conductor to the status of Daily Rated Conductor.

4. The delinquent employee challenged the punishment by
 filing the writ petition before the High Court, inter alia,
 C contending that “the appointment of an Enquiry Officer in the
 chargesheet itself reflects bias on the part of the authority” and
 this itself vitiates the punishment. The aforesaid submission
 found favour with the High Court and it allowed the writ petition,
 quashed the order of punishment and while doing so observed
 as follows :

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 “In the present case, there is absolutely not an iota of
 material to indicate that the show-cause/reply submitted by
 the petitioner in response to the charge-sheet was at all
 taken into consideration. Going a step further, it can be
 E said in the present case that appointment of an Enquiring
 Officer while issuing a charge-sheet is undoubtedly an
 unconscious reflection of the sub-conscious mind and this,
 undoubtedly, reflects bias on the part of the authority. Thus,
 there is bias at the very initiation of the enquiry.”

F Ultimately, the High Court concluded as follows :

“So far as the present case is concerned, in view of the
 fact as indicated earlier that initiation of the proceeding
 was not free from bias and in the backdrop of the fact that
 G there had been non-compliance of Regulation 38(2), this
 court does not find any reason as to why the matter shall
 not be interfered with.”

5. It is relevant here to state that while recording the finding
 H of bias, the learned Single Judge had referred to a decision of

this Court in the case of *State of Punjab vs. V.K. Khanna and others*, (2001) 2 SCC 33, in which it has been held as follows: A

“34. The High Court while delving into the issue went into the factum of announcement of the Chief Minister in regard to appointment of an enquiry officer to substantiate the frame of mind of the authorities and thus depicting bias — what bias means has already been dealt with by us earlier in this judgment, as such it does not require any further dilation but the factum of announcement has been taken note of as an illustration to a mindset viz. the inquiry shall proceed irrespective of the reply — is it an indication of a free and fair attitude towards the officer concerned? The answer cannot possibly be in the affirmative. It is well settled in service jurisprudence that the authority concerned has to apply its mind upon receipt of reply to the charge-sheet or show-cause as the case may be, as to whether a further inquiry is called for. In the event upon deliberations and due considerations it is in the affirmative — the inquiry follows but not otherwise and it is this part of service jurisprudence on which reliance was placed by Mr Subramaniam and on that score, strongly criticised the conduct of the respondents (sic appellants) herein and accused them of being biased. We do find some justification in such a criticism upon consideration of the materials on record.” B C D E

6. Another plea of the delinquent employee was that the punishment relegating him to the status of Daily Rated Conductor is not provided in the South Bengal State Transport Corporation Service Regulations (hereinafter referred to as the ‘Regulations’) but the said plea had been negated by the High Court in the following words: F G

“It cannot be denied that punishment inflicted on the petitioner comes within the scope and ambit of Regulation 36. Punishment imposed is in the nature of reduction to a lower post or to a lower stage in time scale.” H

A 7. The appellant, aggrieved by the aforesaid order preferred an appeal along with an application for stay. The stay application and the appeal were dismissed by a common order dated 24.9.2008 with the following directions:

B (a) The appellant disciplinary authority shall be at liberty to proceed afresh against the employee strictly in accordance with the provisions of Regulation 38(1) and 38(2);

C (b) During the pendency of the proceeding before the disciplinary authority the respondents shall continue to enjoy the status enjoyed by him prior to the passing of the order of punishment.”

D 8. Mr. Janaranjan Das, learned counsel appearing on behalf of the appellant-Corporation submits that mere appointment of Enquiry Officer while issuing the chargesheet does not reflect bias and hence, the finding recorded by the High Court that initiation of the departmental proceedings was not free from bias is erroneous. He submits that the departmental proceeding was conducted in accordance with the Regulations and it cannot be said that there had been non-compliance of Regulation 38(2) of the Regulations. He further submits that reliance on the judgment of this Court in the case of *V.K. Khanna* (supra) is highly misplaced.

F 9. Despite service of notice on respondent No.1, the delinquent employee has not chosen to enter appearance.

G 10. Regulation 38 of the Regulations, inter alia, provides the procedure for imposing penalties. As the High Court had held that the appointment of Enquiry Officer without considering the reply submitted by the delinquent employee speaks of bias and the punishment inflicted is in violation of Regulation 38(2) of the Regulations, we deem it expedient to reproduce not only Regulation 38(2) but 38(3) which are relevant for the purpose :

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38. PROCEDURE FOR IMPOSING PENALTIES : A

(1) xxx xxxx xxx

(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, B

(ii) A statement of imputations of misconduct or misbehaviour in support of each article of charge which shall contain C

(a) statement of relevant facts including any admission or confession made by the employee, D

(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. E F

(4) xxx xxxx xxxx

11. From a plain reading of Regulation 38(2) it is evident that the disciplinary authority is required to draw or cause to be drawn up, the substance of imputation of misconduct into definite and distinct articles of charges and the statement of imputation of misconduct, to contain the statement of relevant G H

A facts including any admission or confession made by the
employee. It also requires drawing up a list of documents by
which and a list of witnesses by whom the articles of charges
are proposed to be sustained. Regulation 38(3) of the
B Regulations obliges the disciplinary authority to deliver or cause
to be delivered to the employee the articles of charges and the
statement of imputation of misconduct requiring the employee
to submit to the Enquiry Officer written statement of defence
within a period specified. Neither Regulation 38(2) nor
C Regulation 38(3) provides that before the appointment of the
Enquiry Officer the reply of the delinquent employee is to be
considered. In our opinion, it may be open for a disciplinary
authority to initiate the departmental proceedings on
consideration of the reply of an employee but as an absolute
D proposition of law it cannot be said that before initiating
departmental enquiry or appointing Enquiry Officer, reply of the
delinquent employee is required to be obtained and
considered unless it is the requirement of the rules. There may
be cases where the charges are of such a nature that the
disciplinary authority may not require any reply from the
delinquent employee but straightway initiates the departmental
E enquiry and appoint an Enquiry Officer. In the present case the
Bus was checked by the flying squad of the appellant-
Corporation itself and in view of what has been found by it, the
disciplinary authority while framing the charge had appointed
the Enquiry Officer. We are of the opinion that the
F appointment of Enquiry Officer while framing the charge sheet,
even before considering the reply of the delinquent employee,
does not reflect any bias.

12. Now, referring to the authority of this Court in the case
G of *V.K. Khanna* (supra), relied on by the High Court, same is
clearly distinguishable. In the said case the chargesheet dated
24.4.1997 was issued to the delinquent employee who
happened to be the Chief Secretary of the State and he was
asked to submit his reply within 21 days but even before his
H reply, the Chief Minister made a statement on 27.4.1997 that

a judge of the High Court would look into the charge against him. The aforesaid act of the Chief Minister coupled with other factors led this Court to conclude that the action was actuated by bias. In the present case the facts are completely different. A

13. It is relevant here to state that imposition of penalty was found to be bad by the High Court due to non-compliance of Regulation 38(2) of Regulations on the ground that the delinquent employee was not given any chance to have his say before imposition of penalty. Regulation 38(2) of the Regulations has been quoted in the preceding paragraph of the judgment and nowhere it contemplates giving an opportunity to the delinquent employee. Matter would have been different had the delinquent employee not given the copy of the enquiry report and opportunity to file reply thereto. Thus, both the reasons given by the learned Single Judge, as affirmed in the appeal by the High Court, are erroneous. B
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14. It may be mentioned that the High Court had held that punishment inflicted on the delinquent employee to be one provided under Regulation 36 of the Regulations. According to the High Court punishment imposed is in the nature of reduction of lower post or to a lower stage in time scale. Regulation 36 provides for the penalties which can be imposed on delinquent employee. Regulation 36 reads as follows : E

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

- (i) Censure;
- (ii) with-holding of increments or promotions; G
- (iii) recovery from 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 H

- A 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;
- B (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 of service from which the employee was reduced and his seniority and pay on such restoration to that grade, post or service;
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- D (vi) compulsory retirement;
- (vii) removal from service which shall not be a disqualification for future employment;
- E (viii) dismissal from service which shall ordinarily be a disqualification for future employment."

F 15. The punishment inflicted on the delinquent employee is of relegating him to the status of Daily Rated Conductor from the post of Conductor. The post of Conductor carries a time scale and Regulation 36(4) provides for penalty of reduction to a lower stage in time scale of pay for a specified period. The reduction to a lower stage in the time scale would obviously mean that the employee retains the same post but the scale of pay, which every post carries, can be reduced to a lower stage.

G Relegation of the delinquent employee to the status of Daily Rated Conductor cannot be said to be a reduction to a lower stage in the time scale of pay or reduction to a lower grade as delinquent employee has been deprived of the post of Conductor. This reduction to a lower stage, in our opinion, has to be in the scale of pay of the Conductor itself. Reduction to a

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lower grade should be with reference to the same post. In our opinion, the punishment inflicted also does not come within the ambit of reduction to a lower post or grade as contemplated under Regulation 36(5) of the Regulations. A

16. We may next consider whether the punishment is permissible in service jurisprudence. It is well settled that while an employee can be reverted to a lower post or service, he cannot be reverted to a post lower than the post in which he entered service (See: *Nyadar Singh vs. Union of India* – AIR 1988 SC 1979). Further it is also well settled that reversion to a lower post or service does not permit reversion to a post outside the cadre that is from regular post to a daily wage post. We are therefore of the view that the punishment inflicted on the delinquent employee not being one of the punishments enumerated in Regulation 36, is not permissible in law. B
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17. However we are of the view that the reasoning of the High Court for quashing the order of punishment is not sustainable. While we do not agree with the High Court that the enquiry is to be set aside on the ground of bias, we agree that the punishment imposed by the disciplinary authority requires to be modified. Though, normally, in such a situation the matter should be referred back to the disciplinary authority for imposition of fresh penalty, having regard to the facts and circumstances and to do complete justice, we propose to impose the penalty. E
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18. We accordingly allow this appeal in part with the following directions:

(a) The judgment of the High Court is set aside and the finding of guilt recorded by the Disciplinary Authority is upheld. G

(b) The punishment imposed by the appellant is set aside and the direction for reinstatement is upheld.

(c) However as the punishment is being set aside and H

A reinstatement is directed on a technical ground, the respondent-employee will not be entitled to any back wages.

B (d) Instead of reversion to the post of daily wage conductor we substitute the punishment as reduction to the lowest stage of the time scale applicable to the post of conductor with effect from the date of imposition of punishment.

B.B.B. Appeal partly allowed.