

suspended with immediate effect and he was directed to deposit his identity card in the office.

A charge sheet was issued to the petitioner on 4th December, 2018 and he was directed to submit his written statement either admitting or denying the charges levelled against him. Copy of the bag check report was forwarded to the petitioner along with the charge sheet.

The petitioner replied to the said charge sheet. Though the petitioner mentioned that the allegation levelled against him was false he however, admitted that an amount of Rs. 400/- was with him when the checking squad checked his bag. According to the petitioner the said money was with him for purchasing medicines.

The Senior Discipline Officer of the Company vide a communication dated 2nd January, 2019 intimated the petitioner that the disciplinary authority appointed one Shri Animesh Kumar Saha, Discipline Officer of the Company as an Inquiry Officer and one Smt. Kakali Sinha, head clerk, Central Discipline Section as Presenting Officer in the disciplinary proceedings. A hearing notice was issued in favour of the petitioner intimating that the proceeding was fixed for hearing on 9th January, 2019.

Being aggrieved by the initiation of the disciplinary proceeding the petitioner filed the instant writ petition on the ground that the charge sheet served upon the petitioner was defective and vague. The said charge sheet did not disclose the service Rule by which the petitioner will be guided. The petitioner prayed for setting aside the suspension order as well as the charge sheet.

The petitioner however, participated in the disciplinary proceeding without prejudice to his rights and contentions in the pending writ petition. During the pendency of the writ petition a final order of punishment was passed against him.

The petitioner has filed an interlocutory application incorporating subsequent facts and documents on record.

By an order dated 27th May, 2019 passed by the Deputy Managing Director (1W/Bus), CSTC the punishment of reduction of pay of the petitioner to the initial stage in the timescale of pay of conductor with cumulative effect was imposed upon him. The petitioner was warned that in case of recurrence of such offence in future he may make himself liable for severe disciplinary action including termination of service.

The petitioner is aggrieved by the imposition of penalty against him.

According to the petitioner the disciplinary proceeding was initiated on the basis of a defective charge sheet. The charges were neither definite nor specific. The charge sheet did not contain the Article of Charges. The name of the management witnesses were also not forwarded along with the charge sheet.

The petitioner relies upon the notification dated 8th September, 1961 containing the Calcutta State Transport Employees' Service Regulations published in the Calcutta Gazette on 11th September, 1961. Rule 39 of the said Regulations have been relied upon by the petitioner wherein it has been mentioned that no order of dismissal, removal or reduction shall be passed on an employee of the Corporation unless he has been informed in writing of the grounds on which it is proposed to take action and has been offered an adequate opportunity of defending himself. The grounds on which it is proposed to take action shall be reduced to the form of definite charges which shall be communicated to the person charged together with the statement of allegations on which each charge is based.

The petitioner relies upon an affidavit affirmed by the Officer on Special Duty of the West Bengal Transport Corporation formerly known as the Calcutta Tramways Company (1978) Ltd. however in connection with a different case

wherein an averment has been made that three transport undertakings namely the Calcutta State Transport Corporation, the West Bengal Service Transport Corporation and the Calcutta Tramways Company (1978) Limited have been merged under one name and working together as the West Bengal Transport Corporation. Relying upon the aforesaid averment the petitioner contends that as the identity of the Calcutta State Transport Corporation where the petitioner is serving has changed because of the merger he is not aware of the service Rules according to which he is presently guided. Until and unless the specific service Rule is mentioned in the charge sheet the petitioner is not in a position to defend himself properly.

The petitioner further points out that there are glaring discrepancies between the suspension order and the charge sheet issued against him. It has been submitted that the checking squad consisted of a member who is not an employee of the Company. According to the petitioner an outsider is not authorised to join the checking squad.

The petitioner alleges violation of the principle of natural justice. It is the specific case of the petitioner that back to back notices of hearing were not served upon him. Due to non-service of the notices it was not possible for him to attend on the said dates of hearing. The inquiry officer proceeded with the disciplinary proceeding in his absence and recorded the evidence of the management witnesses. The petitioner never had the scope and opportunity to cross-examine the management witnesses as the entire evidence was recorded in his absence. The petitioner submits that the notices of hearing fixed on 13th February, 2019 and 11th March, 2019 was not served upon him and accordingly he could not attend the hearing on the aforesaid dates. The petitioner however, appeared for hearing on the subsequent two dates, i.e. 11th April, 2019 and on 22nd April, 2019.

The petitioner alleges that on 22nd April, 2019 the inquiry officer forced him to sign on a couple of pre-written pages. The petitioner objected to the highhanded activity of the inquiry officer by writing a letter to the Managing Direction of the Company on the self-same day i.e., 22nd April, 2019. By a further letter dated 23rd April, 2019 the petitioner prayed for removal of the inquiry officer and for appointment of fresh inquiry officer instead and in place of the previous one.

The petitioner alleges that the inquiry officer acted in a biased manner by compelling the petitioner to sign on pre-written documents. Due to non-service of the hearing notices the petitioner could not attend the hearing and accordingly the same has caused prejudice to him. The petitioner further alleges that the presenting officer who was initially appointed in the matter was changed without giving any prior intimation to him. The disciplinary authority passed the impugned order of punishment which is liable to be set aside on the ground of violation of the principle of natural justice, bias, prejudice suffered by the petitioner and the entire disciplinary proceeding is liable to be set aside as the same was initiated on the basis of a defective and vague charge sheet.

The petitioner relies upon the following decisions in support of his case:

1) **Chief Information Commissioner –vs- The State of Manipur** reported in **2012(1) CHN(SC) 61** paragraph 35 on the issue that when a procedure is laid down statutorily and there is no challenge to the said statutory procedure the court should not, in the name of interpretation lay down a procedure which is contrary to the expressed statutory provision. Where statute provides for something to be done in a particular manner it can be done in that manner alone and all other modes of performance are necessarily forbidden.

In the instant case the respondents were bound to follow the Service Regulations of the Company by issuing a formal charge sheet mentioning the

Article of Charges and forwarding the list of documents relied upon by the Company. Instead, the Company has issued a charge sheet which did not contain the article of charges. Accordingly, the entire disciplinary proceeding is bad in law and liable to be set aside.

2) ***Nazir Ahmed -vs- Emperor reported in AIR 1936 Privy Council 253(1)***

3) ***Tailor -vs- Tailor reported in 1876(1) Ch. D. 426*** also on the self-same principle.

4) ***Zahira Habibulla Sheikh & Anr. -vs- State of Gujarat & Ors.*** reported in ***AIR 2006 SC 1367*** paragraph 36 on the issue of providing reasonable opportunity of hearing to the delinquent.

The petitioners submits that opportunity of hearing was not given to him as he did not receive the copy of the hearing notices, due to which he could not be present at the time when the evidence and the depositions of the management witnesses were recorded, consequently the petitioner was also not able to cross examine the said witnesses who deposed against him.

5) ***Brij Behari Singh -vs- Bihar State Financial Corporation & Ors.*** reported in ***(2015)17 SCC 541*** paragraphs 8 and 9 on the issue that a charge sheeted employee is entitled not only to know the accusation but also the testimony by which the accusation is supported. The delinquent must be given a fair chance to hear the evidence in respect of the charge and cross-examine the witnesses who prove the charge. The delinquent must also be given a chance to rebut the evidence laid against him. Any departure from the same violates the principles of natural justice.

The petitioner submits that as he was not present at the time of recording the evidence of the management witnesses accordingly there has been infraction in the principle of natural justice.

6) ***State of Uttar Pradesh & Ors. -vs- Saroj Kumar Sinha*** reported in ***AIR 2010 SC 3131*** paragraphs 26 and 28 on the issue that the inquiry officer who is acting in a quasi judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the disciplinary authority. His function is to examine the evidence presented by the department, even in the absence of the delinquent officer and to see whether the evidence is sufficient to hold that the charges are proved. The inquiry officer has to be wholly unbiased and he has to ensure that the rules of natural justice are strictly observed to ensure that the government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service.

The petitioner alleges that the inquiry officer acted in a biased manner compelling him to sign on certain pre-written papers. The same is highly illegal and unfair on the part of the inquiry officer.

7) ***Narender Mohan Arya -vs- United India Insurance Co. Ltd. & Ors.*** reported in ***AIR 2006 SC 1748*** paragraph 26 on the issue of bias wherein the court held that where the report of the inquiry officer is based on no evidence the same can be interfered with.

The petitioner alleges that there is absolutely no evidence against him and the inquiry officer acted with bias in passing the impugned order of punishment.

8) ***Robert Xess -vs- Union of India*** reported in ***2011(4) CHN (Cal) 176*** on the self-same issue.

The petitioner prays for setting aside the disciplinary proceeding culminating in the order of punishment.

The respondents have vociferously opposed the prayer of the petitioner. It has been contended that the writ petition is not maintainable in view of the availability of an alternate forum. The impugned order being appealable, the

instant writ petition ought not to be entertained by the court. The learned advocate relies upon Regulation 41 of the Calcutta State Transport Corporation Employees' Service Regulations. It has been submitted that the said Regulation is applicable in respect of all the employees of the Corporation and the petitioner is liable to follow the same.

The respondents have contended that the petitioner was provided adequate opportunity of hearing. Repeated notices were served upon the petitioner and he accepted the same. The notices which the petitioner alleges to have not received had actually been served upon him and he had accepted the same by putting his signature on the acknowledgment due card. One of the acknowledgment due cards is available on record. The track reports of the postal items obtained from the official website of the postal authority show that the notices were delivered to the petitioner.

It has been argued that this is a clear case of admission of guilt. The charge against the petitioner is keeping excess money in the cash bag. The petitioner himself has admitted in his explanation to the charge sheet that the said money was held by him in excess of the sale proceeds of the tickets. The petitioner has, however, tried to give an explanation to the said excess cash. According to the service condition a bus conductor is not supposed to carry his personal cash in the cash bag. In the event there is any personal cash the same has to be notified to the concerned person prior to commencement of the journey. The petitioner was charged with similar offence on earlier occasions. He is a repeat offender of the said offence. The checking squad consisted of the employees of the Company and no outsider was a part of the said squad.

The petitioner from the very beginning was aware of the charges and the service Rule according to which he is guided. He has intentionally and deliberately relied upon several irrelevant documents with the sole view to bypass the issue in

question by misleading the Court. It has been submitted that the affidavit allegedly affirmed by Officer on Special Duty in a separate case is not at all relevant for arriving at a decision in the instant case. The respondents have taken a very lenient stand in case of the petitioner and awarded the punishment of reduction of pay. The offence of the petitioner is such that he deserves to be terminated from service. The petitioner has misused the faith and trust which the Company reposed upon him.

The allegation of bias has also been refuted by the respondents. It has been stated that the entire proceedings was conducted strictly in accordance with the provisions of law and in conformity with the principle of natural justice. The respondents have submitted that the charge sheet issued to the petitioner clearly mentions the allegations against him and the charges levelled against him. The copy of the depositions was duly forwarded to him. Though the petitioner participated in the hearing which was conducted by the inquiry officer but the petitioner deliberately refrained from cross-examining the witnesses who deposed against him. The letter written by the petitioner to the Managing Director of the Company praying for changing of the inquiry officer is an afterthought.

Even though the petitioner admitted his offences the Company with the sole view of complying with the principle of natural justice provided opportunity to the petitioner to defend the charges levelled against him so as not to punish him unheard.

It has been submitted that the petitioner has not been prejudiced in any manner whatsoever because of change of the presenting officer.

The respondents have relied upon the following judgments in support of their case:

1) ***Dharmarathmakara Raibahadur Arcot Ramaswamy Mudaliar Educational Institution –vs- Educational Appellate Tribunal and Anr.*** reported in ***(1999)7 SCC 332*** paragraph 8 on the issue that no enquiry is necessary when one admits one's violations.

In the instant case the petitioner admitted his guilt of holding excess money in the cash bag and it was not necessary to give an opportunity of hearing to the petitioner.

2) ***Chairman-cum-Managing Director, Coal India Ltd. & Anr. –vs- Ananta Saha & Ors.*** reported in ***(2011)5 SCC 142*** paragraphs 36-44 on the issue of mala fide and bias.

It has been submitted that particulars provided by the petitioner does not establish either mala fide or bias and accordingly the said allegations ought not to be relied upon.

3) ***Sanjay Kumar Singh –vs- Union of India & Ors.*** reported in ***(2011)14 SCC 692*** paragraphs 16-20 on the issue that in the absence of any prejudice caused to the petitioner the inquiry proceeding cannot be said to be vitiated.

In the instant case the departmental inquiry proceeded strictly on the basis of the charges mentioned in the charge sheet and there has been no violation of the principles of natural justice. The list of documents and the list of witnesses were forwarded to the petitioner along with the charge sheet. The depositions of the witnesses were also forwarded to the petitioner. The petitioner was not prejudiced in any manner whatsoever.

4) ***Union of India & Ors. –vs- Alok Kumar*** reported in ***(2010)5 SCC 349*** on the issue that the onus is upon the employee to show that he was prejudiced due to any action or inaction on the part of the respondent.

In the instant case there has been no violation of the principles of natural justice. No prejudice was caused to the petitioner. Accordingly, interference with the order of penalty is not called for.

5) ***K. L. Tripathi -vs- State Bank of India & Ors.*** reported in ***(1984)1 SCC 43*** paragraphs 31-33 on the point that when the facts are admitted no real prejudice is caused to the party aggrieved by not allowing formal opportunity of cross-examination.

As the petitioner herein has admitted his guilt he intentionally did not avail the opportunity of cross examining the witnesses.

The respondents pray for dismissal of the writ petition.

I have heard the submissions made on behalf of both the parties.

The admitted facts of the case are that the petitioner was and still is an employee of the Calcutta State Transport Corporation. He is guided by the Calcutta State Transport Corporation Employees' Service Regulations. Though the petitioner has tried to raise the issue that the Calcutta State Transport Corporation stood merged with the other transport undertaking of the State Government and has since been renamed as the West Bengal Transport Corporation but the respondent Company has specifically denied the said statement. The aforesaid statement of merger was made by the petitioner relying upon an affidavit which was affirmed in a contempt proceeding by an officer on special duty of the West Bengal Transport Corporation which was formerly known as the Calcutta Tramways Company (1978) Ltd. The alleged merger is not supported by any documentary evidence.

The learned advocate of the Company has specifically submitted before the court that though there was a proposal for merger of the Transport undertakings under one umbrella the said proposal did not materialise and the Calcutta State

Transport Corporation never merged with any other Company. The Company all along maintained its independent identity and the employees of the Company are covered by the Calcutta State Transport Corporation Employees' Service Regulations. The said submission of the Company is evident from all the communications that was made by an on behalf of the Company to the petitioner. All along the letter head of the Calcutta State Transport Corporation has been used. Moreover, the Company is the best person to know whether it is stood merged with any other body/organisation. When the Company has categorically maintained the stand that it is functioning independently there is no reason to disbelieve the said submission.

Hence, it is admitted that the petitioner is an employee of the Calcutta State Transport Corporation and covered by the Calcutta State Transport Corporation Employees' Service Regulations.

While the petitioner was on duty the vehicle on which he was performing his duty was checked by the checking squad headed by the Assistant Traffic Manager. Apart from the Assistant Traffic Manager the Squad consisted of three other members all of whom are employees of the Calcutta State Transport Corporation. The petitioner raised an allegation of an outsider being the member of the checking squad, but the said allegation has been refuted by the Company. It has been submitted that all the members of the checking squad are designated officers of the Company and the squad was headed by the Assistant Traffic Manager.

The checking squad detected an excess amount of Rs.398/- in the cash bag of the petitioner. The petitioner failed to give proper account with regard to the excess money held by him. He was suspended by an order of suspension dated 29th October, 2018. A charge sheet was issued to the petitioner on 4th December, 2018 in respect of the following charges:

i) Failure to maintain correct and proper account in the cash bag for a sum of Rs.398/- which was detected as excess.

ii) Failure to perform duty with due devotion and care, diligence and sincerity each of whom constituted misconduct.

iii) Habitual offence of failure to maintain correct and proper account in cash bag.

The petitioner was directed to submit his written statement either admitting or denying the charges and whether he desired to be heard in person. Copy of the report and the bag check report were forwarded to the petitioner along with the said charge sheet. In his written statement the petitioner admitted that he had Rs.400/- with him and he had kept the said money for purchasing medicines. The petitioner claims to have disclosed the fact to the members of the checking squad at the time of checking of his bag. From the report in form F-91 it appears that at the time of checking the bag the petitioner tried to remove money from the cash bag and did not cooperate with the officers. With the active support and timely intervention of all the members, the checking squad was successful in checking the cash bag of the petitioner and detected a sum of Rs.398/- as excess. Though the petitioner claimed that the said money was kept with him for purchasing medicines but the petitioner failed to show any document in support of his claim. The petitioner did not possess the doctor's prescription according to which he claimed to purchase medicines. The report form in F-91 and the bag check report were prepared in presence of the petitioner. The bag check report was countersigned and a copy of the same was handed over to the petitioner. It appears that the petitioner has himself admitted that there was Rs.400/- in excess in his cash bag.

The bag check report further mentions that the petitioner had Rs.20/- as his personal money. As the petitioner was performing the duty of handling cash it was incumbent of him to disclose the amount of personal cash that he was carrying prior to starting his duty. Any money in excess of the disclosed amount of Rs.20/-, which remains unaccounted for, becomes the liability of the petitioner. He is bound to give a satisfactory explanation, with supporting documents, for holding the said money in excess.

A bus conductor can certainly carry money with him for his own use and expenditure but the said money ought to have been disclosed by him prior to start of his duty. The primary duty of a bus conductor is to handle cash. There is every possibility of mixing up of the cash collected from the sale of tickets with personal cash held by the conductor. To prevent and avoid mixing up of personal cash with the cash collected officially, the Company has a rule of disclosure of personal cash prior to embarking upon a journey. Non-observance of the said rule leads to the unmistakable conclusion that the excess money is unaccounted for and the same reflects lack of devotion and care, diligence and sincerity. Unless there is a disclosure of the personal cash at the start of duty any amount held in excess of the sale price of the tickets is unaccounted for money. That is the time tested method adopted by the Company to detect excess cash or shortfall in the accounts. As the petitioner has himself admitted that he carried the money with him without disclosing the same prior to start of duty the same amounts to admission of the charge levelled against him.

According to the service Regulation of the Company there is no requirement of holding an inquiry in respect of the charges admitted by the charged employee, but as the employee offered an explanation in his written statement that he was holding the excess money for purchasing medicines the Company though it fit and proper to proceed with the regular trial before passing any order in the matter.

An inquiry officer was appointed to enquire the charges mentioned in the charge sheet. The petitioner filed the instant writ application on a specific plea that the charges framed against him were vague and not definite. The charge sheet does not contain the Article of Charges.

A bare reading of the charge sheet will make it distinctly clear about the charges levelled. The allegations have been set out in the former part of the charge sheet and the Article of Charges in the latter part. The names of the members of the checking squad and the details of the transaction as well as the amount held in excess by the petitioner were clearly mentioned.

The fact that the petitioner was a repeat offender of the same nature of offence was also spelt out in the charge sheet. The details of his previous offences indicating the charge sheet number, date, final order number and the date were also disclosed. The charges which were brought against the petitioner were serially numbered and categorically mentioned. The copy of the documents relied upon in support of the charges were also mentioned therein.

Though the learned advocate for the petitioner made a feeble submission that the copy of the bag check report was not forwarded to him along with the charge sheet but it appears that the petitioner never raised an issue with regard to the non-supply of the required documents. From the noting in the report Form F-91 it appears that a copy of the report was handed over to the petitioner at the time of preparation of the same. Moreover, it appears that the petitioner was in possession of the said report as he annexed the same in the instant writ proceeding.

The petitioner as well as the respondents both have relied upon the judgment delivered in the case of **Surath Chandra Chakravarty vs The State of West Bengal** reported in **AIR 1971 SC 752** that the grounds on which the

departmental action is proposed to be taken have to be reduced to the form of definite charge and/or charges which have been communicated to the person charged together with the statement of allegations on which each charge is based.

A plain reading of the charge sheet impugned herein gives a fair picture of the allegations levelled against the employee and the charges against him. There is no manner of doubt with regard to the definiteness of the charges brought against the petitioner. The same is very specific, unambiguous and clear.

The petitioner has raised the issue of violation of the principles of natural justice as according to him he did not get a reasonable opportunity to cross-examine the management witnesses because of non-receipt of the hearing notices. The petitioner claims that he did not receive the notices of the hearing fixed on 13th February, 2019 and 11th March, 2019. The respondents have averred in the affidavit in opposition that the said notices were duly served upon the petitioner. To satisfy the conscience of the court that the notices were actually served upon the petitioner, direction was passed for production of the records. The track reports available on record indicate that the notices were delivered to the addressee i.e. the petitioner herein. In fact, the notices which the petitioner admits to have received also bear similar recordings of delivery of item to the addressee.

The petitioner stress upon the fact of non-receipt of the hearing notices. Assuming that two notices were not served upon the petitioner, but it cannot be denied that the rest three notices were duly served upon him, pursuant to which he appeared in the proceeding. The depositions which were recorded in the absence of the petitioner were forwarded to him. The petitioner also sought time for production of his defence witness, but thereafter he did not produce any witness in his favour. On the contrary he raised an allegation of bias against the inquiry officer on the plea that he compelled him to sign on certain pre-written

documents. The same appears to be a very conscious and desperate attempt on the part of the petitioner to stall the disciplinary proceeding.

The inquiry report was also forwarded to the petitioner and he was given an opportunity to submit his representation on the inquiry report. The petitioner made a representation before the Managing Director of the Company alleging that the inquiry report was never communicated to him.

The petitioner alleges that the disciplinary proceeding was conducted in violation of the due process of law and in violation of the principles of natural justice.

The petitioner has also raised the issue of mala fide and bias. According to the petitioner the inquiry officer, with a pre-determined mindset did not afford him a proper opportunity to defend himself and compelled him to sign on pre-written documents. The allegation of the petitioner has been denied by the respondents. Disputed facts raised by way of allegations and counter allegations cannot be gone into, far less be decided in a writ petition. The allegation of mala fide and bias is not borne out of records. Accordingly, the same cannot be taken into consideration for deciding the instant petition.

It is settled law that in domestic enquiries strict rules of evidence is not required to be followed. The charge is decided upon preponderance of probabilities. As long as there is some evidence in support of the charges the disciplinary authority can act on the basis of the same. In the case at hand the evidence lies heavily against the petitioner. There does not appear to be any apparent illegality in conducting the disciplinary proceeding. There is no scope or reason to interfere with the same. The punishment imposed upon the petitioner does not shock the conscience of the court and does not call for any interference.

The facts of the case do not reveal or indicate that any prejudice was caused to the petitioner at any stage. The Supreme Court in the matter of Alok Kumar (supra) held that the onus is upon the employee to show that he was prejudiced due to any action or inaction on the part of the respondent.

Similarly, the petitioner has failed to establish either mala fide or bias in the conduct of the respondents. The petitioner has miserably failed to show that he suffered due to any conduct of the respondents.

The principle that when the Statute lays down a particular manner for proceeding with the disciplinary proceeding then it has to be conducted in the prescribed manner and in no other manner, is a time tested one. The records reveal that the prescribed method has been followed for conducting the disciplinary proceeding. There has been no infraction in the service rules.

The submission of the respondent as regards the maintainability of the writ petition on the ground of availability of alternative remedy is well taken. Keeping in view the consistent stand of the Hon'ble Supreme Court that availability of an alternative remedy will not be a complete bar in entertaining writ petition alleging violation of the principle of natural justice and when the principle allegation of the petitioner was that the action of the respondent was contrary to the said principle the Court thought it fit to hear the petition and decide it on merits. But upon hearing the parties and upon perusal of records it appears that the petitioner was given adequate opportunity to defend himself which the petitioner failed to do. There is hardly any instance of violation of the said principle. On the contrary the petitioner is trying to make out an issue by raising unsubstantiated claims. As the Court has already come to a considered opinion that the principle allegations of the petitioner are not tenable, accordingly, remanding the matter to the appellate authority for a fresh decision in the matter will amount to sheer wastage of productive working hours. The appellate authority will not be in a position to

revisit the issue when the Court has expressed opinion and decided the matter on merits. Hence, the prayer of the respondents for dismissal of the writ petition on the ground of availability of alternative remedy is rejected.

The writ petition is devoid of merits and is liable to be dismissed.

GA 1260/2019 and WP 77 of 2019 are dismissed.

Urgent certified photocopy of this judgment, if applied for, be supplied to the parties on compliance of usual legal formalities.

(Amrita Sinha, J.)