



2025:DHC:3106



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on: 30.04.2025.

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+ W.P.(C) 3419/2012
RAJPAL

.....Petitioner

Through: Mr. M.K. Bhardwaj, Mrs. Priyanka
M. Bhardwaj, Mr. Maria Mughesh
Kannan & Mr. Himanshu
Bhardwaj, Advocates.

versus

GM HARYANA ROADWAYS, DELHI

.....Respondent

Through: Mr. Devender Kumar Saini,
Advocate. [M:-9868070910,
8588814210]

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

JUDGMENT

1. By way of this petition under Article 226 of the Constitution, the petitioner assails a disciplinary order dated 30.11.2010, and an appellate order dated 11.08.2011, by which the original disciplinary order was modified.

A. Facts:

2. The petitioner worked as a bus conductor with the respondent – Haryana Roadways, since the year 1981. At the time of the incidents mentioned in the disciplinary proceedings, he was posted with the respondent in Delhi.

3. A chargesheet was issued to the petitioner on 10.01.2006, under Rule 7 of the Haryana Service (Penalty & Appeal) Rules, 1987, on the



following Articles of Charge:

“It has been reported by the Inspectors of this Unit against you Shri Rajpal, Conductor No. 134 that on 4.1.2006, you were on duty at vehicle No. 5641 from Kharkhoda to Bahadurgarh route, which was inspected (checked) at Khurmpur Turn. On inspection, it was found that three passengers from travelling from Kharkhoda to Khurmpur Turn, you had charged total rent at the rate of Rs. 4/- per passenger and had not issued tickets to them and thus, have committed fraud of Rs. 12/-. Three passengers were travelling from kharkhoda to Bahadurgarh, you had charged Rs. 14/- per passenger from them and had not issued tickets to them, thus you had committed fraud of Rs. 42/- of the Government money, in addition to above, eight (8) passengers who were travelling from Kharkhoda to Jasor Kheri, you did not recover the fare from them and while getting down, you were to charge total Rs. 56/- from them at the rate of Rs. 7/- per passenger because on demanding tickets by the passengers, you asked them that you will give tickets to them later. Thus, you had committed fraud of the Government fund of total Rs. 110.00 (12 + 42 + 56). Inspectors charged total Rs. 56/- from these eight passengers and got deposited this amount in the Cash branch of Bahadurgarh. You snatched Way Bill from the hands of the Inspectors and refused from giving unpunched tickets and misbehaved as well.”

4. In summary, the charges against the petitioner were that, while he was on duty on 04.01.2006, the vehicle was inspected and it was found that :-

- A. Three passengers had been charged Rs. 4 each without issuance of tickets, amounting to a fraud by the petitioner of Rs. 12.
 - B. Three passengers had been charged Rs. 14 each, but no tickets were issued to them, leading to an allegation of fraud against the petitioner of Rs. 42.
 - C. The petitioner did not charge eight passengers at all, who ought to have been charged Rs.7 per passenger, leading to a fraud of Rs.56.
- On the basis of these allegations, the chargesheet alleged fraud of Rs.110 by the petitioner against the government exchequer.



5. An inquiry was held, pursuant to which the Inquiry Officer submitted a report, which has been placed on record as Annexure P-3 to the writ petition¹. The inquiry report records that both sides were called on 12.08.2009. Details of the proceedings are enumerated, as follows:

- (a) The joint statement of two witnesses, being the Inspector and the Deputy Inspector, were recorded.
- (b) After recording the statements of the witnesses, it was noted that the conductor (i.e., the petitioner herein) was then given the opportunity to examine the two witnesses, and the questions and answers are available on the file.
- (c) The Inquiry Officer also asked some questions to the Inspectors, which were also stated to be available on the file.
- (d) Thereafter, the petitioner's statement was recorded, in which he stated that, at the time of inspection, the Inspectors found that ten to twelve girls, who were students, were travelling without passes or tickets. The petitioner stated that, upon being questioned by the Inspectors, the said passengers gave Rs.5 each to the Inspectors, and that he (the petitioner) had requested the Inspectors to charge them ten times the normal fare, because they travelled every day for free. However, he alleged that the Inspectors instead filed a false report against him.
- (e) The Inquiry Officer thereafter recorded that he inquired of the petitioner as to whether he had any personal enmity with the Inspectors in question, to which he said that he had made a

¹ The original inquiry report, disciplinary order and appellate order, are in Hindi, but the petitioner has produced translated versions, the correctness of which have not been disputed by the respondent.



complaint against them to the General Manager, with regard to false signatures on way bills.

(f) The petitioner thereafter produced two other witnesses. Their statements are partially recorded in the report, while others are stated to be available on the file.

6. After recording the evidence as aforesaid, the Inquiry Officer has recorded as follows:

“ FINDINGS

I have carefully perused all the documents available in the enquiry file and the statements of both the parties, questionnaire and statements of witnesses produced by the conductor and the statements of passengers travelling in the vehicle.

Therefore, I have reached on the conclusion that the charges levelled against Sh. Rajpal, Conductor No. 83 are found fully proved.”

7. Based on this inquiry, a show cause notice dated 25.10.2010 was issued to the petitioner with a copy of the report, to which he replied on 29.10.2010, on lines similar to his defence, as recorded in the inquiry report.

8. The Disciplinary Authority passed the impugned order dated 30.11.2010 after hearing the petitioner. The findings of the Disciplinary Authority have been recorded in the following terms:

*“On 29.11.2010, the employee was heard. **The employee did not produce any strong evidence in his defence.** Complete record of the employee perused. **The employee is habitual of committing fraud.** I have carefully perused the Report of the Enquiry Officer and Reporting Inspectors. The fact mentioned, by the Reporting Inspectors in their report about defame of the Department and misconduct, clearly seem **that this employee is habitual of misconduct also in addition to committing fraud. Five other cases besides this one are pending against the employee.** I have carefully perused the report of the Enquiry Officer and file.*

Keeping in view all the above-mentioned point, it is not appropriate



to keep the employee engaged in service in the interest of service. Such employees, who work for defamation of the department, have no right to remain in the Service. Complete opportunity of defence was given to the employee but the employee/workman could not produce any such evidence in his defence, which may prove his innocence. HENCE, finally I reach at this conclusion that the services of the employee be terminated with the immediate effect.

*HENCE, I give order to terminate your services i.e. the services of Shri Rajpal Conductor No. 83 with immediate effect”.*²

9. Against this order of termination, the petitioner filed an appeal. The Appellate Authority, by its order dated 11.08.2011, modified the punishment imposed upon the petitioner from the penalty of dismissal, to an order that he would be placed on the minimum pay scale for the post of a conductor, and no financial benefit would be paid to him for the intervening period. The relevant observations are as follows:

*“After perusal of the complete file and record, I have reached at this conclusion that the appellant has been found guilty in the departmental enquiry conducted by the Enquiry Officer. **On examining the complete record of the employee, it was found that five cases of embezzlement by the appellant are pending but the appellant has given about 30 years service in the department and the penalty of dismissal/termination seems very harsh. Besides above, he has assured that he will not commit any such mistake in future. Therefore, having a sympathetic view towards his family and taking a lenient view, I order to amend the order dated 30.11.2010 passed by the General Manager and by giving final opportunity of service to Sh. Rajpal Singh, Conductor No. 83, order for his reinstatement in service on the minimum pay-scale of Conductor.** This order will not make any effect on other cases pending against the employee and no financial benefit will be payable to him for the intervening period.”*³

B. Discussion:

10. I have heard Mr. M.K. Bhardwaj, learned counsel for the petitioner, and Mr. Devender Kumar Saini, learned counsel for the

² Emphasis supplied.



respondent.

11. Although the jurisdiction of the writ Court to interfere with disciplinary orders is sparingly exercised⁴, I am of the view that the present case falls within the narrow class of cases in which interference is justified. My reasons are based upon two-fold violations of the principles of natural justice, occasioned by (a) complete failure to record reasons, and (b) reliance upon past conduct of the employee, of which he was not put on notice.

(a) **Re: failure to record reasons:**

12. On the first aspect, I find that the factual findings in the inquiry report with regard to the petitioner's misconduct, which have been accepted in the orders of the Disciplinary Authority and the Appellate Authority, are wholly lacking in reasoning. The Inquiry Officer has adopted the curious procedure of referring in the report to the statements of the management's witnesses in some detail, but not to the questions put to them by the petitioner, for which he has only recorded that the evidence is available on file. The questions put by the Inquiry Officer himself to the petitioner and the petitioner's witnesses have also been recorded partially. It is only this inquiry report, with its incomplete recording of evidence, that was forwarded to the petitioner for his response.

13. The Inquiry Officer has thereafter recorded findings against the petitioner without any discussion of the petitioner's defence, or any analysis of the evidence whatsoever. Although an inquiry report need not

³ Emphasis supplied.

⁴ *B.C. Chaturvedi v. Union of India*, (1995) 6 SCC 749.



record detailed reasons or evidentiary assessment, an analysis of the material upon which the conclusion is reached, howsoever brief, is the minimal requirement of natural justice. The Inquiry Officer must act as a quasi-judicial authority and consider the evidence brought on record with an open mind and without bias⁵. To ensure that the charged officer is treated fairly, it is necessary that reasons also be reflected in the inquiry report, even briefly. Reference in this connection, may be made to the following observations of the Supreme Court in *Allahabad Bank vs. Krishna Narayan Tewari*⁶:

*“7. We have given our anxious consideration to the submissions at the Bar. It is true that a writ court is very slow in interfering with the findings of facts recorded by a departmental authority on the basis of evidence available on record. But it is equally true that in a case where the disciplinary authority records a finding that is unsupported by any evidence whatsoever or a finding which no reasonable person could have arrived at, the writ court would be justified if not duty-bound to examine the matter and grant relief in appropriate cases. The writ court will certainly interfere with disciplinary enquiry or the resultant orders passed by the competent authority on that basis if the enquiry itself was vitiated on account of violation of principles of natural justice, as is alleged to be the position in the present case. **Non-application of mind by the enquiry officer or the disciplinary authority, non-recording of reasons in support of the conclusion arrived at by them are also grounds on which the writ courts are justified in interfering with the orders of punishment.**”⁷*

14. The present case is conspicuous for a complete lack of any rationalisation whatsoever. There is no link drawn at all between the evidence recorded and the conclusion, except for a single sentence stating that the Inquiry Officer has examined all the documents and statements

⁵ *Roop Singh Negi v. Punjab National bank and Ors.* [(2009) 2 SCC 570], paragraph 10 and *State of Uttar Pradesh and Ors. v. Saroj Kumar Sinha* [(2010) 2 SCC 772], paragraphs 27 and 28.

⁶ (2017) 2 SCC 308 [hereinafter “*Allahabad Bank*”].

⁷ Emphasis supplied.



produced before him. The duty to give reasons has, time and again, been held to be a concomitant of the principles of natural justice, but has been given a complete go-by in this report. Both the Disciplinary Authority and the Appellate Authority have also accepted the factual findings of the Inquiry Officer.

(b) Reliance upon past conduct:

15. I am of the view that the Disciplinary Authority and the Appellate Authority have also erred in relying heavily upon allegations with regard to past conduct of the petitioner, and pendency of other proceedings against him. There was no allegation in the chargesheet dated 10.01.2006, or even in the Show Cause Notice dated 25.10.2010, with regard to his past conduct. The Disciplinary Authority has nonetheless held that the petitioner has the habit of committing fraud and misconduct, as well as bringing disrepute to the Department. It is specifically noted that five other cases were pending against him. The Appellate Authority has also recorded these facts while discussing the Disciplinary Authority's order, and has noticed the same even in his own reasoning.

16. The question of whether past conduct can be relied upon in disciplinary proceedings, has been considered by a Constitution Bench of the Supreme Court in *State of Mysore v. K. Manche Gowda*⁸. The Court emphasised that the officer must be put on notice that the employer intends to consider his past conduct for the purpose of inflicting punishment upon him. The relevant observations of the Court are as follows:

“7..... **If the proposed punishment was mainly based upon the**

⁸ AIR 1964 SC 506.



previous record of a government servant and that was not disclosed in the notice, it would mean that the main reason for the proposed punishment was withheld from the knowledge of the government servant. It would be no answer to suggest that every government servant must have had knowledge of the fact that his past record would necessarily be taken into consideration by the Government in inflicting punishment on him; nor would it be an adequate answer to say that he knew as a matter of fact that the earlier punishments were imposed on him or that he knew of his past record. This contention misses the real point, namely, that what the government servant is entitled to is not the knowledge of certain facts but the fact that those facts will be taken into consideration by the Government in inflicting punishment on him. It is not possible for him to know what period of his past record or what acts or omissions of his in a particular period would be considered. If that fact was brought to his notice, he might explain that he had no knowledge of the remarks of his superior officers, that he had adequate explanation to offer for the alleged remarks or that his conduct subsequent to the remarks had been exemplary or at any rate approved by the superior officers. Even if the authority concerned took into consideration only the facts for which he was punished, it would be open to him to put forward before the said authority many mitigating circumstances or some other explanation why those punishments were given to him or that subsequent to the punishments he had served to the satisfaction of the authorities concerned till the time of the present enquiry. He may have many other explanations. The point is not whether his explanation would be acceptable, but whether he has been given an opportunity to give his explanation. We cannot accept the doctrine of "presumptive knowledge" or that of "purposeless enquiry", as their acceptance will be subversive of the principle of "reasonable opportunity". **We, therefore, hold that it is incumbent upon the authority to give the government servant at the second stage reasonable opportunity to show-cause against the proposed punishment and if the proposed punishment is also based on his previous punishments or his previous bad record, this should be included in the second notice so that he may be able to give an explanation.**

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9. In the present case the second show-cause notice does not mention that the Government intended to take his previous punishments into consideration in proposing to dismiss him from service. On the contrary, the said notice put him on the wrong scent, for it told him that it was proposed to dismiss him from service as the charges proved against him were grave. **But, a comparison of paras 3 and 4 of the order of dismissal shows that but for the previous record of the**



government servant, the Government might not have imposed the penalty of dismissal on him and might have accepted the recommendation of the Enquiry Officer and the Public Service Commission. This order, therefore, indicates that the show-cause notice did not give the only reason which influenced the Government to dismiss the respondent from service. This notice clearly contravened the provisions of Article 311(2) of the Constitution as interpreted by Court.”⁹

17. The aforesaid judgment has been considered in the later decision of two learned Judges in *Govt. of A.P. v. Mohd. Taher Ali*¹⁰. In this case, the Court was considering an order of compulsory retirement imposed upon a police official who absented himself from election duty. The Court’s conclusion were as follows:

“5.....In our opinion there can be no hard-and-fast rule that merely because the earlier misconduct has not been mentioned in the charge-sheet it cannot be taken into consideration by the punishing authority. Consideration of the earlier misconduct is often only to reinforce the opinion of the said authority. The police force is a disciplined force and if the respondent is a habitual absentee then there is no reason to ignore this fact at the time of imposing penalty. Moreover, even ignoring the earlier absence, in our opinion, the absence of 21 days by a member of a disciplined force is sufficient to justify his compulsory retirement.”

18. Referring, *inter-alia*, to these judgments, the Supreme Court in *Union of India v. Bishamber Das Dogra*¹¹, held that it is desirable that an employee be informed that his past conduct would be taken into consideration while imposing the punishment. However, in the case of grave nature of indiscipline, it was held that, even in the absence of statutory rules, the authority may take into consideration the indisputable past conduct/service record of the employee for adding weight to the decision of imposing punishment if the facts of the case so required.

⁹ Emphasis supplied.

¹⁰(2007) 8 SCC 656.

¹¹(2009) 13 SCC 102.



19. The principle that emerges from these decisions is that an employee must normally be put to notice that the employer intends to impose a punishment upon him, based on his past record. This may be mentioned in the chargesheet or, if not, at least in the show cause notice issued to him after the completion of the inquiry. However, this is not an inflexible rule, and an exception may be permissible, if the Court comes to the conclusion that the punishment is sustainable even on the charges proved in the subject proceedings, or that the past conduct was not a weighing factor in the employer's decision, but only intended to reinforce the conclusions reached by it.

20. Analysing the facts of the present case, I am of the view that the Disciplinary Authority and the Appellate Authority have both been influenced largely by the allegations with regard to petitioner's past conduct. The extracts of the order of the Disciplinary Authority quoted above show that it has referred time and again to the petitioner being in the habit of committing fraud and misconduct. I am not able to accept that the order of dismissal imposed by the Disciplinary Authority, was passed independently on the allegations which were the subject matter of the present proceedings, or that the past conduct has been referred only to lend weight to its conclusions. Similarly, in the order of the Appellate Authority, the petitioner's guilt and pendency of five cases of embezzlement against him have been weighed against thirty years of service to modify the penalty imposed upon him. A reading of the orders of the Disciplinary Authority and the Appellate Authority, in my view, leave little doubt that the authorities were guided, to a large extent, by allegations of the petitioner's past conduct rather than the allegations of



fraud of Rs.110/-, which was the subject matter of the present inquiry. In such a situation, the authorities ought to have put the petitioner on notice, either in the chargesheet or at least in the show cause notice issued after the inquiry report, of their intention to consider his past conduct while imposing punishment upon him.

(c) **Consequential Orders:**

21. Having come to the conclusion, on the aforesaid grounds, that the orders of the Disciplinary Authority and the Appellate Authority are unsustainable, the question arises as to whether the respondent is to be granted liberty to institute fresh *de novo* proceedings against the petitioner.

22. When a disciplinary order is set aside on grounds of natural justice, the normal consequence is that the matter is required to be remanded back to the Disciplinary Authority for considering the matter afresh. However, the judgments of the Supreme Court and this Court, indicate that there may be cases which justify a departure from this normal rule.

23. In *Allahabad Bank*, cited above, the Supreme Court noted that a writ petition had remained pending before the High Court for seven years, during which period the petitioner therein had superannuated. Looking into the facts of the matter, the Supreme Court upheld the order of the High Court declining to remand the matter to the respondent authorities.

24. In *Som Dutt and Anr. v. Commissioner of Police*¹², a Division Bench of this Court has also refused to remand the matter to the Disciplinary Authority for a *de novo* inquiry on the ground that the

¹² WP (C) 3854/2017, decided on 19.09.2018.



incident had occurred more than fifteen years before, during which the petitioners had suffered an unwarranted penalty. Holding that a fresh departmental inquiry would be futile at that stage, the orders of the respondents therein were quashed without any order of remand.

25. I am of the view that a similar course is warranted, in the present case, in line with the aforesaid judgments. Factually, the charges relate to an incident of 04.01.2006, close to two decades ago, and the quantum of fraud alleged against the petitioner was only Rs.110/-. The consequence of the order of the Appellate Authority was to place him at the minimum of the pay scale for a conductor, which deprived him of the financial benefits earned for twenty-five years between 1981, i.e. when he joined the respondent, until 2006, when the incident in question occurred. He has long since superannuated. It is also highly unlikely that, at this length of time, relevant witnesses would be available, or able to depose without considerable inconvenience, effort and expenditure of resources.

C. Conclusion:

26. For the aforesaid reasons, the writ petition is allowed. The orders of the Disciplinary Authority dated 30.11.2010, and the Appellate Authority dated 10.08.2011, are set aside. Consequential arrears of pay be disbursed to the petitioner within a period of three months.

27. There will be no order as to costs.

PRATEEK JALAN, J

APRIL 30, 2025

'Bhupi/kb'