

Government of West Bengal
Labour Department, I. R. Branch
N.S. Building, 12th Floor
1, K.S. Roy Road, Kolkata - 700001

No. Labr/ 998. /(LC-IR)/11L-90/12

Date: 18-11-2022.

ORDER

WHEREAS under the Government of West Bengal, Labour Department Order No. Labr/248-IR/I.R./4L-05/2003 dated 24/02/2006 the Industrial Dispute between M/s. West Bengal Surface Transport Corporation Ltd., 37 Deshpran Sasmal Road, Kolkata - 700040 and its workman Sri Samarendra Nath Mistry, Village - Joynagar Rathtala, P.O. - Joynagar Mazilpur under P.S. - Joynagar, Dist. - 24 Parganas (South) regarding the issue mentioned in the said order, being a matter specified in the Second Schedule to the Industrial Dispute Act, 1947 (14 of 1947), was referred for adjudication to the Judge, First Industrial Tribunal, West Bengal.

AND WHEREAS the First Industrial Tribunal, West Bengal, has submitted to the State Government its award dated 29/03/2022 on the said Industrial Dispute vide memo no. 1519 - L. T. dated. 11/10/2022.

NOW, THEREFORE, in pursuance of the provisions of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Governor is pleased hereby to publish the said award as shown in the Annexure hereto.

ANNEXURE

(Attached herewith)

By order of the Governor,

sdt
Joint Secretary
to the Government of West Bengal

HLH ZIR
 No. Labr/998/1/5/1(LC-IR)

Date: 16-11-2022.

Copy, with a copy of the Award, forwarded for information and necessary action to:

- Amanda
 17/11/2022
1. M/s. West Bengal Surface Transport Corporation Ltd., 37 Deshpran Sasmal Road, Kolkata - 700040.
 2. Sri Samarendra Nath Mistry, Village - Joynagar Rathtala, P.O. - Joynagar Mazilpur under P.S. - Joynagar, Dist. - 24 Parganas (South).
 3. The Assistant Labour Commissioner, W.B. In-Charge, Labour Gazette.
 4. The O.S.D. & E.O. Labour Commissioner, W.B. New Secretariate Building, 1, K. S. Roy Road, 11th Floor, Kolkata- 700001.
 5. The Sr. Deputy Secretary, IT Cell, Labour Department, with the request to cast the Award in the Department's website.

Joint Secretary

No. Labr/998/2/2/1(LC-IR)

Date: 16-11-2022.

Copy forwarded for information to:

1. The Judge, First Industrial Tribunal, West Bengal with reference to his Memo No. 1519 - L. T. dated. 11/10/2022.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata -700001.

Joint Secretary

In the matter of an Industrial Disputes exists between M/s West Bengal Surface Transport Corporation Ltd., 37 Deshpran Sasmal Road, Kolkata – 700 040 and their Workman named Sri Samarendra Nath Mistry of village – Joynagar Rathtala, P.O. – Joynagar Mazilpur under P. S. – Joynagar, Dist. – 24 Parganas (South).

G.O. No. 248-I.R./IR/4L-05/2003, dated 23/24-02-2006

BEFORE THE FIRST INDUSTRIAL TRIBUNAL: WEST BENGAL

PRESENT

**SHRI UTTAM KUMAR NANDY, JUDGE
FIRST INDUSTRIAL TRIBUNAL, KOLKATA**

Date of Order: 29.09.2022

Case No.: VIII – 19/2006

This is a case initiated on receipt of a copy of Government Order No. 248-I.R./IR/4L-05/2003, dated 23/24-02-2006 from the Labour Department, Government of West Bengal referring an Industrial Dispute between M/s West Bengal Surface Transport Corporation Ltd., 37 Deshpran Sasmal Road, Kolkata – 700 040 and their Workman named Sri Samarendra Nath Mistry of village – Joynagar Rathtala, P.O. – Joynagar Mazilpur under P. S. – Joynagar, Dist. – 24 Parganas (South), for adjudication whether the dismissal of the Workman from his service w.e.f. 29.01.2005 by the Management is justified and secondly what relief if any is the Workman entitled to before this Tribunal.

The fact of the case as revealed from the written statement of the applicant namely Sri Samarendra Nath Mistry is in short that Sri Samarendra Nath Mistry was an employee who was appointed as Casual/Temporary Bus Conductor and thereafter confirmed as Regular/Permanent in the post of Conductor after probationary period having Badge/Employee Code No. 614 under Opposite Party Company which is a statutory body constituted under Road Transport Corporation Act, a State Government Undertaking Concern having its own Employees Service Rules and Regulations etc. Applicable in the establishment and his last posting was at Salt Lake Depot.

On 08.09.2001 the applicant was allotted his duty with passenger Bus No. 3971, a long distance bus service from Rajabazar to Kanmari Route with night halt at Kanmari.

It is further stated that the route was created by 3 (three) buses as per schedule but on 08.09.2001 only one bus was allotted on the said route and the bus was fully crowded with passengers and booking tickets by to and fro moving inside the bus was impossible apart from carefully looking after the gate for alighting and boarding the passengers.

At this circumstances on the eventful day on way to Kanmari some checking staffs boarded the bus route when the Workman informed them some tickets at the other

side were yet to be booked. Then the checking staffs took some tickets from the Conductor, collected fares from the unbooked passengers but without issuing the tickets to said passengers without the knowledge of the applicant Workman and also without obtaining his endorsement signature on the reverse of the tickets without having any statement of the concerned passengers in order to make out a case for victimization against the applicant/Workman with ulterior motive.

Then at Kanmari Bus Stand the checking staffs checked the cash bag of the Workman and prepared a bag check sheet No. 1394, dated 08.09.2001 and falsely stating therein 6 (six) tickets of 20 denomination each in the remark column and took the signature forcibly of the applicant thereon which inter-alia indicated the Conductor's admitting the said remark recorded by the checking staffs whatever false and twisted it might be.

Thereafter the applicant lodged an written complaint on 18.10.2001 along with a copy of bag check sheet dated 08.09.2001 to the Managing Director of the OP Corporation for making a preliminary enquiry and after lapse of 3½ months an impugned charge sheet along with a copy of bag charge sheet dated 08.09.2001 was served upon the applicant.

It is further stated that the said Managing Director of OP Company did not pay any heed to the complaint filed by the Workman, no enquiry was held, nor the applicant was informed of the result of the said complaint but served the alleged charge sheet followed by suspension being No. 2323/WBSTC, dated 18.12.2001.

The Workman demanded that the said impugned charge sheet is biased, malafide and illegal one having main allegations of

- (i) A deficit of Rs. 12/- in cash bag.
- (ii) Keeping unbooked passengers for misappropriation of corporation money's for Workman's personal gain.
- (iii) Unspecific inter dependent charges.

The applicant by his reply dated 26.12.2002 fully denied the impugned charges on the ground stated inter-alia seeking the requirement of copies of relevant documents/information etc. lying in the custody of the management for advance defence preparation to face the domestic enquiry.

The applicant further states that he was not paid his due wages for his working days for December 2001 and admissible subsistence allowance @ 75% beyond the statutory period in time which the applicant claimed through his letter dated 17.04.2002 addressed to the Managing Director and the same remained unattained and un-replied.

Thereafter, domestic enquiry was proceeded vide office order No. 552(5)/WBSTC, dated 11.06.2002 which vehemently protested by the Workman by his letter dated 26.06.2002 and the same was neither attained nor replied too.

Applicant further raised his protest for the change of Enquiry Officer (E.O.) on the grounds as stated by his letter dated 07.10.2002 addressed to the Enquiry Officer seeking inter-alia compliance of formalities and supply of copies of relevant documents/information etc. to the Workman in response to Enquiry Officer's hearing notice dated 25.09.2002.

The Workman was given notice of exparte hearing from Enquiry Officer without fulfilling his requirements as above.

The applicant demanded that he was forcibly refrained from attaining the domestic enquiry by ignoring his letters dated 27.12.2002, 07.04.2003, 26.05.2003, 10.11.2003 and without supplying of the required copies of relevant documents and information etc. lying in the custody of the management.

It is further case of the Workman that the Enquiry Officer eventually conducted exparte hearing on 11.11.2003 which was known by the applicant from the second show-cause notice on 18.08.2004 vide No. 665/WBSTC, dated 18.08.2004 after lapse of 9(nine) months from the date of conclusion of the hearing and after 8(eight) months from the date of perverse findings dated 12.12.2003.

It is the demand of the applicant that in the said perverse proceeding the Enquiry Officer picked up the applicant's letters dated 26.12.2001, 26.06.2002, 07.10.2002, 07.04.2003 and 26.05.2003 along with a false letter dated 10.09.2001 which was not submitted by the applicant and deliberately suppressed the applicant's letters dated 18.10.2001, 17.04.2002, 26.12.2002 and 10.11.2003 with ill motive and malafide intention.

It is further demanded by the applicant that the witness in his evidence at the time of domestic enquiry held on 11.11.2003 deposed about his ignorance regarding the main charge of deficit of Rs. 12/-, the alleged seized tickets were not produced or shown in proceedings records to prove the allegedly 6 (six) passengers unbooked and his evidence was not corroborated with evidence of other management witness in support of the alleged charges.

The applicant further demands that the alleged perverse proceedings and the findings were not sent to him with the second show-cause notice so that he could have file his defence reply properly, which according to the Workman is gross violation of principle natural justice.

It is further demanded by the applicant that none of the alleged charges was proved in view of above facts, documents and evidence on record. However, the applicant submitted his representation dated 07.09.2004 apprehending illegal dismissal from his service addressed to the Chairman and the Managing Director of OP Company to restrain the Managing Director taking further action in this regard till his decision on the said representation.

The applicant Workman thereafter submitted two reminders on 05.11.2004 and 14.01.2005 but no order and/or no reply was received by the applicant from the Chairman rather the Managing Director passed his order No. 1438/WBSTC, dated 31.01.2005 dismissing the applicant Workman from his services with immediate effect without replying his letters as mentioned above which were within the knowledge of the Managing Director and according to Workman the dismissal order was nothing but a reflection and replica of previous perverse show-cause notice.

By suppressing the replies of the applicant's letter dated 07.09.2004 and also by suppressing the direction of the Chairman with his decision on the basis of representation dated 07.09.2004 and subsequent reminders were pending.

Thereafter the Workman made his appeal on 21.02.2005 before the Chairman Appellate Authority with a prayer to quash the said illegal dismissal order and to reinstate him in his service with retrospective effect within 10(ten) days from the date of reply of the said appeal.

But no reply and/or order was passed. Then the applicant raised the instant dispute by filing written complaint before the Labour Commissioner, West Bengal.

Thereafter, joint seating were held on 25.05.2005, 16.06.2005, 12.07.2005 and 02.08.2005 by Deputy Labour Commissioner and the same ended with failure due to adamant attitude of the Management denying to settle up the issue in conciliation.

The applicant further states that during conciliation proceeding it is revealed that the Chairman of the OP Corporation rejected his appeal dated 21.02.2005 by his order dated 11.07.2005. However, the applicant Workman claims that the domestic enquiry and its result, the reply of his second show-cause notice and the rejection order of Chairman are wholly illegal and against statutory provisions and the dismissal order is disproportionate to the alleged offence being not proved at all on the basis of the fact and documents on record and therefore, the applicant pleads not guilty of any of the impugned charges brought against him and as such he is entitled to reinstate in his service with payment of full back wages with fringe service benefits retrospectively and accordingly necessary order may kindly be passed by this Tribunal.

On the other hand the OP Corporation appeared and contested the case by filing written statement on their behalf denying of all material allegations against them contending inter-alia to the effect that the applicant was engaged in the office of the O.P. as no work no pay basis on a temporary post of conductor. Thereafter he was continued in his service as a probationer w.e.f. 01.09.2000. The applicant never confirmed in his said post i.e. Bus Conductor.

That on 08.09.2001 while the applicant was on duty in the vehicle No. 3971, Route No. Kanmari, the checking staff boarded in his vehicle at Malancha and detected 6(six) unbooked passengers. It is to be stated that out of the said 6(six) passengers,

4 (four) passengers were travelling from Sealdah to Kanmari and 2 (two) passengers were travelling from Science City to Kanmari, the total cost of the tickets was Rs. 120/- which was collected through the applicant by the checking staff and ceased 6(six) tickets. It was detected at that time from the way bill that 61 numbers of tickets of Rs. 20/- issued to him but he has not issued any ticket of Rs. 20/- (Denomination of ticket) to any passenger. The checking staff also checked his cash bag at Kanmari Bazar Bus Stand and found an amount of Rs. 12/- as deficit in his cash bag. It would be worth mentioning that after checking the bag, the said checking staff has prepared 1(one) Bag Check Report and applicant had duly signed in the said report/statement without raising any protest whatsoever.

Thereafter, the applicant was issued one charge-sheet dated 18.12.2001 levelling some charges against him. He was directed to submit his written explanation within 7 (seven) days from the date of receipt of the said charge-sheet. He was placed under suspension by the said letter till the departmental proceedings is concluded. It was assured by the Opposite Party that he will get subsistence allowance as per rule during the period of suspension. He was further directed by the authority to deposit his identity card to the office of Salt Lake Depot which was issued to him by the Opposite Party.

After the Opposite Party being dissatisfied with the reply of the charge-sheet initiated one departmental proceeding by appointing one officer as an Enquiry Officer. The said Enquiry Officer issued several notices upon the applicant for attending hearing of Domestic Enquiry, but in each and every occasion the applicant preferred not to appear by taking flimsy pleas. After that the said Enquiry Officer after following all formalities asked the Presenting Officer to establish the case of the management and heard the case on ex parte.

After the said Enquiry Officer duly submitted his report, finding the applicant guilty of the charges levelled against him. On the basis of such findings the Opposite Party issued 2nd show-cause notice upon the applicant asking him as to why punishment of major penalty should not be imposed upon him. He was asked to reply the said 2nd show-cause notice within 15 days from the date of receipt of the said letter. But this time also he did not reply the said 2nd show-cause notice, so the management upon concurring with findings of the Enquiry Officer, dismissed him from services with immediate effect which was intimated to him by the letter dated 28.01.2005.

The management submits that if the Ld. Tribunal ultimately held that the departmental proceedings conducted by the management is invalid, then the Ld. Tribunal may give the management an opportunity to prove the charges levelled against the applicant by adducing fresh evidence before the Ld. Tribunal.

Lastly the corporation submits that the order of dismissal against the Workman is fair and proper and that should be upheld by the Ld. Tribunal and therefore, the O.P. Corporation prayed for passing necessary order to uphold the order of dismissal passed by the authority as well as declared the departmental enquiry held by the

management is fair and proper and rejected the prayer of the applicant in limine and to pass any other order/orders as the Tribunal may deem fit and proper.

Be it mentioned here on 24.04.2012 vide Order No. 78, this Tribunal held Ld. Counsels for both sides altogether kept silent as regards adjudication of the preliminary issue on the point of validity of domestic enquiry and therefore, the Tribunal passed an order to the effect that the Tribunal was not in a position to adjudicate upon the merit of the case. So, it is held that both the points as asked for by the Company are being decided jointly by this Tribunal.

ISSUES

The following issues are referred for adjudication:

- 1) *Whether the dismissal of Shri Samarendra Nath Mistry from his services with effect from 29.01.2005 by the management is justified?*
- 2) *What relief, if any, is he entitled to?*

Decision with reasons

In support of the case the petitioner is examined himself as PW-1 and filed some documents as follows:

- 1) Photocopy of appointment letter for reemployment to the post of daily rated CONDUCTOR (Bus) on "No Work No Pay" basis. Marked as **Exhibit- 1 & 1/a**.
Photocopy of letter No. 2280, dated 10.10.2000 issued by the Financial Adviser-cum- Chief Accounts Officer of W.B.S.T.C. Ltd. addressed to the Workman regarding offer of appointment in the post of Bus Conductor on probation for the period of one year. Marked as **Exhibit – 1/b**.
- 2) Photocopy of Letter dated 17.04.2002 by the workman to the management for confirmation of the post of Conductor w.e.f. 01.09.2001. Marked as **Exhibit – 2**.
- 3) Photocopy of Check-sheet issued to the Workman by the concerned authority bearing signature of the Workman in the column 'Conductor's Signature' admitting remarks. Marked as **Exhibit – 3**.
- 4) Photocopy of letter dated 18.10.2001 by the Workman to the Managing Director, West Bengal Surface Transport Corporation Ltd. with a request to preliminary enquiry regarding preparation of check-sheet by the concerned authority. Marked as **Exhibit – 4**.
- 5) Photocopy of chargesheet annexed with check-sheet served upon the Workman by the management. Marked as **Exhibit – 5**.
PW-1 claimed that calculation sheet annexed with chargesheet (Exhibit-5) was prepared behind him.
- 6) Photocopy of duly signed reply to the chargesheet denying allegations made against the Workman. Marked as **Exhibit – 6**.
- 7) Photocopy of letter dated 17.04.2002 regarding prayer of Workman to the management for passing arrear dues, which was duly received by the Company on 17.04.2002. Marked as **Exhibit – 7**.

- 8) Photocopy of reply letter dated 07.09.2004 of second show-cause by the Workman to the Managing Director of the Company. Marked as **Exhibit – 8**.
- 9) Photocopy of dismissal letter of Workman dated 28/31.01.2005 issued by the management. Marked as **Exhibit – 9**.
- 10) Photocopy of Workman's appeal to the Chairman of the Company against the illegal dismissal received by the Company on 21.02.2005. Marked as **Exhibit – 10**.
- 11) Photocopy Workman's letter dated 25.07.2005 to the Labour Commissioner for reconciliation, received by the Labour Commissioner on 25.07.2022. Marked as **Exhibit – 11**.
- 12) Photocopy of conciliation memo dated 04.08.2005 of the Deputy Labour Commissioner. Marked as **Exhibit – 12**.
- 13) Photocopy of order of Appellate authority dated 11.07.2005. Marked as **Exhibit – 13**.

WW-1 Shri Samarendra Nath Mistry has deposed in his chief vividly as he stated in his statement of facts his documents being filed have been marked as Exhibit – 1 to 13 respectively. The Workman (WW-1) demanded that he joined in OP Corporation on probation and his service was subsequently confirmed by the management. He admits that he did not file any document to show that his service has been confirmed by the management.

He admits that on 08.09.2021 out of six passengers on the bus running from Rajabazar to Kanmari, 4 (four) passengers were going to Kanmari from Sealdah and rest 2 (two) were going from Science City to Kanmari and they were unbooked, cost price of their tickets were 120/- (Rupees one hundred twenty) only and at the starting point 61(sixty one) numbers of tickets of Rs. 20/- were given to him which he did not use even in one of them and instead of that he used tickets of Rs. 10/-. The tickets of unbooked passengers were issued by the checking staffs who boarded the said bus on 08.09.2021 at Malancha. His bag was checked at Kanmari Bazar. He signed on the Bag Check Report after objection but the word objection is not found or has not been written in the said Bag Check Report.

That he demands that he informed the same to the Managing Director by Exhibit-4 on 18.10.2001 which relates to a representation with a request to hold preliminary enquiry regarding the preparation of check sheet by the concerned authority.

WW-1 also admits that he did not participate in the enquiry though the notice of enquiry was duly served upon him.

He also admits that he was asked to surrender his identity card but since the same was lost he could not submit the same for which earlier occasion he lodged a General Diary, but he could not file the General Diary Enquiry before this Tribunal.

He admits that he received the second show-cause notice and findings of the Enquiry Officer against which he replied and thereafter the management dismissed him from service.

On the other hand, the Company has cited a witness namely Sri Goutam Majumdar as CW-1. That apart the Company filed the following documents:

- 1) Photocopy of appointment letter of Workman dated 10.10.2000. Marked as **Exhibit – A**.
- 2) Photocopy of chargesheet dated 18.12.2001. Marked as **Exhibit – B**.
- 3) Photocopy of reply of chargesheet by the Workman dated 26.12.2001. Marked as **Exhibit – C**.
- 4) Photocopy of five notices of enquiry dated 30.09.2003, 07.05.2003, 11.03.2003, 19.12.2003 & 25.09.2002. Marked as **Exhibit – D** series.
- 5) Photocopy of enquiry proceedings dated 12.11.2003. Marked as **Exhibit – E**.
- 6) Photocopy of findings of Enquiry Officer. Marked as **Exhibit – F**.
- 7) Photocopy of two Bag Check Reports. Marked as **Exhibit – G & G/1**.
- 8) Photocopy of order of appointment of Enquiry Officer dated 11.06.2002. Marked as **Exhibit – H**.
- 9) Photocopy of Workman's letter to Enquiry Officer dated 07.10.2002. Marked as **Exhibit – I**.
- 10) Photocopy of second show-cause notice. Marked as **Exhibit – J**.
- 11) Photocopy of final order of disciplinary authority. Marked as **Exhibit – K**.

CW-1 named Shri Goutam Majumdar has been examined on behalf of the OP Corporation. CW-1 states that he is a Junior Traffic Officer, joined in the said Corporation on 04.06.1990. On the day of examination, he was posted at Baguihati Central Traffic Post Office.

CW-1 states that the WW-1 joined in the OP Corporation as Bus Conductor on daily rated. He was regularized in service but his service was not confirmed.

He also states that W-1 has been dismissed from service and prior to his dismissal order a charge-sheet was served and departmental enquiry was held against him followed by suspension.

CW-1 filed the appointment letter to WW-1 which has been marked as Exhibit-A. He states that he was the presenting officer of the said enquiry.

CW-1 claims that service of WW-1 was not confirmed because from the date of regularization and till confirmation there was cash discrepancy.

He further states that on 08.09.2001 Checking Inspector inspected the vehicle of WW-1 which was running from Rajabazar to Kanmari route and at that time they found 6(six) unbooked passengers in the vehicle at Malancha which is 32 Kilometer away from Rajabazar and even after a sum of Rs. 12 was found shortage from the WW-1's bag.

He further states that Kanmari is at distance of 10 Km away from Malancha. He claims that at the time of putting signature by WW-1 on the check report WW-1 did not signed the same on protest.

He further claims that during suspension period it was the duty of the WW-1 to return his identity card issued by the authority concern.

CW-1 further states Mr. Koushik Kundu the then Junior Traffic Officer was appointed as Enquiry Officer. But WW-1 did not participate in the said enquiry though notice of enquiry was duly served upon him.

CW-1 further claims since WW-1 did not seek for any adjournment the Enquiry Officer finding no other alternative proceeded the enquiry on exparte and found WW-1 guilty on the charges labelled against him.

Thereafter the authority dismissed the WW-1 from service followed by second show-cause notice and thereafter WW-1 preferred an appeal before the Chairman who was pleased to set aside the appeal.

WW-1 prior to dismissal prayed before the management with an apprehension that he might be dismissed from service which prayer was rejected and after rejection WW-1 raised the instant dispute before the Labour Commissioner before whom OP Corporation participated in the conciliation proceeding.

CW-1 denied that on 08.09.2001 the impugned bus was over crowded or signature of WW-1 was taken forcibly on the Bag Check Report.

CW-1 claims unbooked tickets were seized in presence of WW-1. It is claimed by CW-1 that the Conductor retained Rs. 20/- in his bag and maximum of Rs. 20/- for his personal use and after adding the bag money it was noticed that there was a deficit of Rs. 12/- in the bag of WW-1 on checking.

He also proves that proceeding dated 12.11.2003 being marked as **Exhibit-E**, findings on the Enquiry Officer, being marked as **Exhibit-F** and 02(two) Bag Check Reports duly signed by Tarapada Das, the Checking Staff and Basudeb Sengupta and Gobinda Chandra Das as witness being marked as **Exhibit-G & G/1**.

CW-1 admits in his cross-examination by seeing **Exhibit-1/b** that the probation period WW-1 will continue in the forenoon of 01.09.2000.

CW-1 could not state whether **Exhibit-2** of WW-1 was replied. He admits that bag money of Rs. 20/- and personal money of Rs. 21/- have been noted in **Exhibit-3** filed by WW-1. Personal money has not been added with the bag checking money.

In **Exhibit-3** WW-1 signed on the endorsement written in Bengali after admitting the bag checking slip, WW-1 signed his name in English language.

Bag checking sheet was prepared by Gobinda Chandra Das, Basudeb Sengupta and Tarapada Das.

CW-1 has claimed that at the time of depositing the self-proceeds, the Cashier will only received the self-proceeds, rest of the tickets which were not sold, cash bag and tickets, tickets way bill sheet and the same will not be checked in present of the Conductor when the cash checked by the Cashier, if he found short, excess then disciplinary action will be taken against the Conductor.

At the time of argument Ld. Advocate for the Workman submits that on the eventful day when the checking staffs boarded the bus towards Kanmari was informed that some passengers were unbooked. And since the bus on midway for which the checking staffs collected the fares of unbooked passengers. Ld. Counsel demands that it is the duty of the checking staffs to help the Conductors in crowded bus, and the Ld. Counsel alleges the checking staffs took some tickets from the Workman by collecting fares from the other side and kept them in their custody without the knowledge of the applicant and without his endorsement thereon with a motive to make out a case against the applicant with victimization attitude.

It is also alleged that the checking staffs compelled the applicant to sign checking report in the remark column admitting the said remark without allowing him to record his protest.

Ld. Counsel admits that a copy of check sheet was handed over to the applicant being No. 1394, dated 08.09.2001 in incomplete form vide **Exhibit-3 Exhibit-2**, but he alleges the applicant's personal money of Rs. 21/- was recorded like as bag money, applicant's body was searched as per format and total self proceeds recorded in the check sheet.

He further alleges that no preliminary enquiry was held in pursuance of the letter of the Workman dated 18.11.2001 and the applicant was not informed about its result. Ld. Counsel also alleges that in the check sheet the bag money was counted for but not the applicant's personal money to show actual amount found in bag checking.

He further alleges that the applicant was not paying his due wages for his working days in December 2001 and not paid his statutory subsistence allowances @75% as admissible and the applicant's letter dated 17.04.2002 vide **Exhibit-7** claiming his said dues received officially by the OP management was neither replied to nor complied with till finalization of the perverse hearing of the case violating the natural justice.

He further alleges the unbooked tickets were seized from the applicant. So, the value of unbooked tickets decided as misappropriation of corporation money, could not be charged.

He further argues that the short or excess in ticket in a crowded bus is a natural occurrence.

He further argues that the management did not pay any heed to the prayer of the applicant, seeking change of Enquiry Officer and according to him it is against the principle of natural justice.

The Ld. Counsel also claims that the Workman was not offered the least chance to defend himself which is a gross violation of natural justice and the Enquiry Officer carried out ex parte hearing on 11.11.2003 in presence of the presenting officer and one witness who was the checker, when the bag checker was examined by the Enquiry Officer with leading question and other witness was ignored.

He further alleges that in the bag check sheet, the bag money as recorded counted, whereas conductor's personal money of Rs. 21/- did not find place there and the same was added like bag money in check sheet.

Ld. Counsel also argues that second show-cause notice was not in conformity with the proceeding, findings, evidence and documents on records and suffered from omission, addition or alteration etc. regards.

Lastly Ld. Counsel for the Workman after stating the case and counter case of the parties, case states that **Exhibit-C** goes to show that the Workman sought for copies of several documents relevant to the dispute to prepare himself defence to face Enquiry but none of them were supplied to him as per records of the OP management placed before the Ld. Tribunal on 30.10.2009 and claims the quantum of punishment being given by the authority concern is very high which has snatched the livelihood of the applicant as well as his family members and therefore, he prays for quashing the alleged dismissal of the applicant by reinstating him with full back wages and consequential benefits retrospectively.

In support of the case Ld. Counsel for the Workman has cited the followings:

- 1) 1986 1 LLJ Page 101 Para-6 Supreme Court – role of Enquiry Officer. Conclusion of report must be supported by evidence.
It is the demand of the Ld. Counsel that in the present case no supportive document produced by the Company to justify the chargesheet.
- 2) 1972 (1) LLJ Page 110-187 Para-25 Supreme Court – If findings is not supported by the evidence then it becomes perverse.
- 3) 1996 (1) LLJ Page 1211 concerned Page 1200 Calcutta High Court – it is claimed that in the present case the enquiry proceeding was nothing but a mockery. No rule of law was followed.

- 4) 1993 (III) LLJ Para-8 Calcutta High Court – it is claimed by the Ld. Counsel for the Workman that the biasness of Enquiry Officer need not be proved – but can be inferred from circumstances.
- 5) 1996 (1) LLJ Page-332 Bangalore High Court – Management should include present nature of charge and also documents upon which the charges were based. It is claimed by the Ld. Counsel for the Workman that in the present case charges are vague one and also the supporting documents were produced by the Company in support of the charges.
- 6) 1984(II) LLJ Para-17 – findings perverse as the said report of the Enquiry Officer is not based on the evidence on record.
- 7) 1996 LLB I.C. 2595 Para – 7-8. The burden of proofs upon the Company, charge would not be held established merely on failure of employee to prove his innocence.

It is claimed by the Ld. Counsel for the Workman for the present case that the Workman was denied justice as enquiry was held ex parte keeping Workman in dark.

Ld. Counsel further claims that the case laws cited by the management are irrelevant, have no applicability in the instant case in any form and manner of application.

On the other hand, Ld. Counsel for the Company has filed Written Notes of Arguments on behalf of the Company and also submitted to the effect that the Workman was engaged in the Corporation under reference as No Work No Pay basis on a temporary post of Conductor and continue his service as a probationer and he never be confirmed in the said post.

Ld. Counsel for the Company has narrated the case of the Company. It is the main allegation of the Company that at the time of checking on 08.09.2001, the Checking staffs found that 6(six) passengers (4 passengers from Science City to Kanmari and 2 passengers from Sealdah to Kanmari) were un-booked passengers and the total cost of tickets was Rs. 120/- (Rupees one hundred twenty) only. The same tickets were issued by the Checking staffs found Rs. 12/- (Rupees twelve) as deficit at the time of checking the bag at Kanmari Bazar.

The matter was reported to the management.

The Workman was issued chargesheet on 18.12.2001 and placed under suspension. The Applicant duly replied to the said chargesheet. Being dissatisfied with the said reply the authority held departmental enquiry against the Workman, who intentionally refuse to attained the same by taking plea the ground.

Thereafter, enquiry was held on ex parte by Enquiry Officer and submitted his report on 22.12.2003, whereby the Enquiry Officer held the Workman guilty and observed that

- 1) The concerned Conductor/Workman kept un-booked passengers for his personal gain.
- 2) There was a deficit of Rs. 12/- (Rupees twelve) in the cash bag without any valid reason.
- 3) The concerned Conductor committed misconduct.
- 4) The concerned Conductor failed to discharge his duties.

After that second show-cause notice was issued to the Workman on 18.08.2004 against which the Workman replied and since authority got no base of his reply letter to consider otherwise dismissed him from his service on the basis of the report of the Enquiry Officer.

It is claimed Ld. Counsel for the Company that Exhibit-3 & 5 are same Bag Check Report. One was given on spot and one was filed at the time of issuing chargesheet wherein the value of notes and coins against the tickets were filled in and a prudent man after going through the said 2 (two) documents shall come into the conclusion that both the documents are same and there was deficit of Rs. 12/- (Rupees twelve) for which the Workman was responsible.

It is also submitted by the Ld. Counsel for the Company that the Workman was not diligent of his work and therefore, the Company has lost its faith on the concerned Workman.

Ld. Counsel further submits that the Workman concerned tried that he failed to book the tickets to the said un-booked passengers as the bus was crowded but in the evidence of the management it has been proved that the bus was not that much crowded and therefore, the concerned Workman intentionally for his personal gain did not book those passengers, rather his intension was to mis-appropriate the said money which could not be done as the Inspector boarded and booked those un-booked passengers.

In this context Ld. Counsel for the Company by citing the judgement reported in 2008 LLR Page 946 that non-issuance of ticket is grave misconduct and dismissal is appropriate punishment.

Accordingly, to the Ld. Counsel for the Company the present case is a clear case of corruption and dismissal is the actual punishment. In this context Ld. Counsel citing after judgement reported in JT 1996(3) SC Page 96 where the Supreme Court held that charge of corruption is serious in nature and dismissal is appropriate punishment and in another judgement reported in 2009 AIR SC W 6380 Hon'ble

Supreme Court held that if the Labour Court wants to interfere into the order passed by the authority the court has to assigned cogent reason for which interference and conductor charging for carrying passengers without tickets, the Hon'ble Supreme Court held the punishment of dismissal is appropriate.

It is also submitted that when Ld. Tribunal is being heard the point of validity of domestic enquiry along with the merit of the case Ld. Tribunal will see whether the punishment imposed upon the concerned employee is proportionate with the offence committed by the said employee and the same shall be revealed from the proceedings of the departmental enquiry as well as from the evidence adduced by the parties to the case.

It is demanded by the Ld. Counsel for the Company that the employee never alleged that the domestic enquiry was conducted by violation of natural justice and he has not given any opportunity to defend his case, i.e. to say that the employee did not specifically challenged the domestic enquiry on the point of violation of natural justice or alleged that said enquiry was perverse and therefore, the enquiry conducted by the Company was fair and proper and accordingly Tribunal has limited scope to interfere into the merit of the case save and except to decide that the punishment has been imposed upon the concerned employee is proportionate or not.

Lastly Ld. Counsel for the Corporation prayed for passing an Award upholding the order of dismissal as the authority after giving full opportunity to the concerned employee after holding the proper enquiry and considering the gravity of misconduct has passed the said order and reject the prayer of the Workman in limine.

I have carefully perused the record particularly in respect of evidence as come out at the time of enquiry proceeding being taken up by the Enquiry Officer, Bag Check Report and evidence on merit of both parties being adduced orally, as well as the ruling cited by the parties.

It is the admitted position of the case that on 08.09.2001 the Applicant Workman was the Conductor on duty in the vehicle No. 3971, Route No. Kanmari from Sealdah to Kanmari. It is also the admitted position, the Workman was probationer at the time of dismissal though Workman claimed that he was confirmed employee because his probation period was over but the Workman cannot place any evidence that he was confirmed or his probation period was not extended, if that be so it cannot be claimed that the employee was confirmed at the relevant point of time. But it is admitted by CW-1 that the employee was regularised in due course of time.

It is further admitted that 6 (six) passengers were un-booked with the Checking staffs boarded the vehicle on the relevant day and time at Malancha 10 Kilometre away from Kanmari. The value of those tickets was Rs. 120/- (Rupees one hundred twenty). The tickets of un-booked passengers were issued by the Checking staffs and also did not issue any ticket of denomination of Rs. 20 to establish the fact that the intention of the concerned employee was to grab the Corporation's money and

those ticket/tickets Nos. were not also produced nor any passenger's name and address was come or recorded by the Checking staffs.

It is claimed by the Conductor that due to crowded bus he could not timely issue tickets to those un-booked passengers. It is the case of the Company that the said vehicle was not so crowded at the relevant day. In this regard the Workman has taken a plea that on 08.09.2001 the applicant was allotted duty with Bus No. 3971, a long-distance Bus Service from Rajabazar to Kanmari route with night halt at Kanmari.

He further claims that route was created by 3 (three) buses as per schedule but on 08.09.2001 only 1(one) bus was allotted on the said route and the bus was fully crowded with passengers and booking of tickets by to and fro moving inside the bus was quite impossible apart from carefully look after the gate for alighting and boarding the passengers.

From Bag Check Report, Exhibit-3 & 5 along with the original one it is revealed that in that bus on that relevant day there were 132 passengers were boarding at some point of time in that bus and if that be so, the plea taking by the Conductor cannot be overthrown rather it has not been denied in the written statement of the Company and it has not specifically asked by the Company to deny the matter at the time of evidence.

I have carefully examined the enquiry proceeding which was heard on exparte. It is revealed from the recording of evidence that the witness Gobinda Chandra Das was examined on the footing of leading question which is not permissible in law when a matter is being heard on exparte, the duty of the Enquiry Officer should be too high to consider the case as possible very very impartial which is not happened in the instant proceeding. No neutral witness is asked to come and depose to state the actual facts of the case.

Checking Staff namely Basudeb Sengupta also was not examined.

Moreover Mr. Gobinda Chandra Das cannot state the actual scenario of their conduct of inspection either specifically or vividly and therefore, I am not inclined to accept the enquiry proceeding being done by not maintaining all legal procedure and formalities and therefore, the punishment imposed upon that fanciful enquiry report cannot also be accepted as legal and valid.

Nevertheless, it cannot be said the conduct of the Workman towards enquiry proceeding is too good to overlook the same and that is why he should be suffered proportionately and in my opinion, he may be reinstated with 50% back wages only but he should be suffered by losing 2 (two) increments in 2 (two) next consecutive years after joining his service and thereafter he may be enjoyed regular increments.

In sum, the instant case under reference succeeds to the limit of my above observations.

Hence it is

Ordered

that the case being No. VIII-19/2006 be and same is allowed on contest but without any cost. The employee named Samarendra Nath Mistry is entitled to be reinstated in his job as Conductor and he is also entitled to 50% of his back wages since his dismissal from the job only and he should be suffered by losing 2 (two) increments in 2 (two) next consecutive years after joining his service and thereafter he may be enjoyed regular increments.

The Corporation under reference is directed to comply the order within 02 (two) months from the date of this order i/d the employee shall execute the order as per provision of existing provision of law.

This is my Award.

Let the Award be sent to the Government of West Bengal.

Sd/-

(Uttam Kumar Nandy)
Judge
First Industrial Tribunal
Kolkata

Dictated & corrected by me

Sd/-

(Uttam Kumar Nandy)
Judge