(2009) 09 AHC CK 0126

In the Allahabad High Court

Case No : Civil Miscellaneous Writ PetitionNo.34035 of 2007

Anand Kumar Singh APPELLANT

Vs

U.P. State Road Transport Corpn.& Ors. RESPONDENT

Date of Decision : 01-09-2009

Acts Referred:

Road Transport Corporations Act, 1950 — Section 45
Uttar Pradesh State Road Transport Corporation Employees (Other than Officers) Service Regulations, 1981 — Regulation 2

Citation : (2009) 09 AHC CK 0126

Hon'ble Judges : Sudhir Agarwal, J

Final Decision : Allowed

Judgement

Sudhir Agarwal, J.—Heard Miss Anuradha Sundaram, learned counsel for the petitioner and Sri Vivek Saran, learned counsel appearing for the respondents.

2. Since the pleadings are complete, as requested and agreed by learned counsel for the parties this writ petition has been heard and is being decided finally under the Rules of the Court at this stage.

3. The petitioner is aggrieved by the order dated 30.03.2007 whereby the Service Manager, U.P. State Road Transport Corporation, Allahabad (hereinafter referred to as the "disciplinary authority") has imposed punishment of withholding of one increment without any cumulative effect for a period of one year and the appellate order dated 18.07.2007 whereby the appeal of petitioner was rejected.

4. The submission in brief of learned counsel for the petitioner is that the inquiry officer found the charges not proved against the petitioner but the disciplinary authority disagreeing with the said finding, without communicating any note of disagreement and without affording any opportunity to petitioner to submit his reply against such disagreement of the disciplinary authority, has passed straightway the impugned order of punishment. The learned appellate authority has also failed to consider this aspect of the matter that before disagreement

with the findings of inquiry officer, it was incumbent upon the disciplinary authority to communicate its decision of disagreement to the delinquent employee giving him opportunity to reply the same and only thereafter the order can be passed. She further submitted that on the date of inspection i.e. 03.02.2005 the petitioner was not present in the workshop and was admittedly on leave yet he has been implicated and punished on the allegation that he has been guilty of committing attempt of theft though the disciplinary authority has also not found in the impugned order that the petitioner was present on that day in the workshop. She contended that finding is perverse. It is further submitted that two other employees namely, Sri Satya Prakash Tiwari, Fitter and Sri Arsad Masood, Assistant Mechanic who were present at the time of inspection when certain items were found packed in a plastic pack kept in a position wherefrom could have been taken away out of the workshop but the said incumbents who were also found guilty by the inquiry officer have not been awarded any punishment but only give warning has been administered.

5. In the counter affidavit filed by the respondents it is said that the disciplinary authority while not agreeing with the report of the inquiry officer issued a show cause notice to the petitioner on the proposed punishment and thereafter a minor punishment was imposed upon the petitioner and, therefore, there is no error in the disciplinary proceeding. It is further stated in para 11 of the counter affidavit that the inquiry officer did not conduct inquiry on every aspect of the charge sheet as such the punishing authority rightly disagreed with the conclusion of inquiry officer.

6. I have heard learned counsel for the parties and perused the record.

7. From the averments contained in the writ petition it does appear that a charge sheet was issued to petitioner on 05.02.2005 with the following allegations:

(i) On 03.02.3005 during course of inspection six numbers of elements (Hino) in polythene were found in the drain upon testing machine.

(ii) Out of six issued hino elements instead of not fitting in F.I. Pump with the intention to theft, kept the same in drain situate upon the testing machine.

(iii) Instead of fitting six numbers of elements fitting in pump, old elements were used.

(iv) Causing financial loss to the Corporation.

(v) Conducting against the U.P. S.R.T.C. Employees (Other than Officers) Service Regulations, 1981.

8. One Sri Ajit Singh, Assistant Regional Manager (Incharge) was appointed as inquiry officer. The petitioner denied the charges and the inquiry officer after conducting oral inquiry submitted his report dated Nil (Annexure5 to the writ petition) holding the charges as not proved. The disciplinary authority thereafter issued a notice dated 18.02.2006 stating that he does not agree with the findings

of inquiry officer and, therefore, the petitioner cannot be exonerated. He recorded his conclusion that the petitioner is entirely guilty of the charge levelled against him and, therefore, the punishment of withholding of three increments with cumulative effect is likely to be awarded whereagainst he was given opportunity to submit his reply. The show cause notice does not contain either reason of disagreement or the findings of disciplinary authority and does not give opportunity to petitioner to submit his reply against the tentative findings of disagreement. The impugned order also does not show that the copy of inquiry report was annexed alongwith the above show cause notice. The petitioner submitted a reply to the proposed punishment vide representation dated Nil (Annexure7 to the writ petition) and thereafter the disciplinary authority passed the impugned order of punishment dated 30.03.2007 (Annexure1 to the writ petition) imposing punishment of withholding one increment without cumulative effect for one year. The petitioner thereafter submitted his appeal dated 12.04.2007 which has also been rejected by the appellate authority vide order dated 18.07.2007 (Annexure2 to the writ petition).

9. From the pleadings and record available before this Court it is evident that the inquiry officer found the petitioner not guilty of the charges levelled against him. It is well settled that the disciplinary authority is not bound to accept the findings of inquiry officer and can record his own opinion different from what has been recorded by the inquiry officer after considering the report of the inquiry officer and other material on record. However, before acting upon such findings which are different than what was recorded by the inquiry officer, it is incumbent upon the disciplinary authority to inform such findings of disagreement to the employee concerned and give him opportunity to make his representation thereagainst. If the inquiry officer forms an opinion which is in favour of the employee concerned and the disciplinary authority forms opinion different from such favourable report, he has to inform the delinquent employee about his own findings otherwise it would amount to acting upon a material which was never disclosed to the delinquent employee. The findings of disagreement consists a material which have arrived subsequently i.e. after the inquiry by inquiring authority is over and, therefore, it is incumbent upon him to communicate the said findings to the employee concerned. This aspect was initially considered by the Apex Court in the case of Punjab National Bank Vs. Kunj Behari Misra, 1998 (7) SCC 84 and following the Constitution Bench judgement in Managing Director, ECIL, Hyderabad Vs. B. Karunakar, 1993 (4) SCC 727 it was held that when the inquiry officer holds the charges proved then that report has to be given to the delinquent officer who can make a representation before the disciplinary authority takes further action which may be prejudicial to the delinquent officer. When, like in the present case, the inquiry report is in favour of delinquent officer but the disciplinary authority proposes to differ with such conclusions then that authority which is deciding against the delinquent officer must give him an opportunity of being heard for otherwise he could be condemned unheard. In departmental proceedings what is of ultimate

importance is the findings of the disciplinary authority and, therefore, whenever the disciplinary authority disagrees with the inquiry authority on any article of charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its final findings. The report of the inquiry officer containing its findings of disagreement will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the inquiry officer and not to proceed with his tentative findings which are contrary from the report of the inquiry officer. It was held by the three Judge Bench of the Apex Court in Kunj Behari Misra (supra) that non compliance of the above would vitiate the proceedings. This has been followed consistently by the Apex Court in Yoginath D. Bagde Vs. State of Maharashtra & another, AIR 1999 SC 3734; SBI & others Vs. Arvind K. Shukla, JT 2001 (4) SC 415; State Bank of India & others Vs. K.P. Narayanan Kutty, 2003 (2) SCC 449; and Ranjit Singh Vs. Union of India and others, 2006(4) SCC 153.

10. Besides, it is also evident from the record that on the date of inspection the petitioner was on leave. In fact he was absent from the duty from 02.02.2005 to 08.02.2005 having been granted earned leave. The inspection was made on 03.02.2005. There is nothing on record to show that he in any manner acted or helped anybody in keeping the aforesaid items in such a condition so as to afford an opportunity to anybody to take it away from the workshop. Nothing has been said either in the counter affidavit or in the order of disciplinary authority that the petitioner in any manner could have enabled any other person to keep the said items in such condition. The allegations of attempt of theft or theft is a serious matter and unless by cogent material or evidence it is found that a person of ordinary prudence would be justified in drawing such conclusion, such finding could not have been recorded by the disciplinary authority particularly when he has not found the presence of the employee i.e. the petitioner in the workshop from 02.02.2005 and onwards. In my view, even otherwise, the findings recorded by the disciplinary authority is perverse and based on no evidence at all, but, is based on conjectures and surmises. The Constitution Bench of the Apex Court in Union of India Vs. H. C. Goel, AIR 1964 SC 364 held that conjecture and surmises cannot be the basis for recording a finding against the employee concerned but the charge has to be proved on cogent material. It is true that normally this Court does not sit in appeal over the findings recorded by the disciplinary authority but where it is evident from the record that the conclusion drawn is perverse and is vitiated on the ground of conjectures and surmises, this Court in judicial review can set aside such findings.

11. In the result, the writ petition succeeds and is allowed. The orders dated 30.03.2007 and 18.07.2007 are hereby quashed. The petitioner shall be entitled for all consequential benefits. No costs.