

(1999) 01 AHC CK 0090
In the Allahabad High Court
Case No : C.M.W.P. No. 23679 of 1987

Assistant Regional Manager, U.P.S.R.T.C., Kanpur and others	APPELLANT
Vs	
State of U.P. and others	RESPONDENT

Date of Decision : 12-01-1999

Acts Referred:

Constitution of India, 1950 — Article 226, 311(2)

Citation : (1999) 1 AWC 727 : (1999) 2 UPLBEC 872

Hon'ble Judges : D.S. Sinha, J;B.K. Sharma, J

Bench : Division Bench

Advocate : Vijay Manohar Sahai, for the Appellant;

Final Decision : Dismissed

Judgement

B.K. Sharma, J.—This writ petition under Article 226 of the Constitution of India is directed against the order dated 31.8.1987 passed by the U. P. Public Services Tribunal, Vth, Lucknow in Claim Petition No. 149/F/V/198}. Thakur Prasad v. State of V. P. and others, whereby it had allowed the claim petition of Thakur Prasad, conductor (respondent No. 3 in the writ petition) of the U.P.S.R.T.C, against the order dated 22.9.1978 passed by the Assistant Regional Manager (C.B.S.). Kanpur removing him from service as conductor of the U.P.S.R.T.C, and the order dated 13.2.1979 passed by the Regional Manager. U.P.S.R.T.C, dismissing his appeal and quashed both the orders and further ordered that he shall be deemed to continue in service with consequential benefits of pay and allowances etc.

2. Heard counsel for the parties. The charges against the said conductor Thakur Prasad were that on 15.4.1978 while conducting Bus No. U.S.F. 2654, on a surprise checking raid made by the Traffic Superintendent, he was found carrying 13 passengers without ticket and has also made obstructions in the inspection by the checking authority and misbehaved with the same. The enquiry officer found him guilty on the said charges and thereafter, he was given a show-cause notice and after it, the punishing authority had passed an order of removal from

service. His order has been upheld in appeal by the appellate authority.

3. The conductor had denied the charges and claimed that the memo of evidence or copies of the statements of the witnesses recorded in the course of the preliminary enquiry had not been supplied to him and thereby reasonable opportunity of defending himself had been denied to him ; that the traffic-superintendent had not recorded statements of any of the passengers of the bus on the relevant occasion of the checking raid in question ; that despite request by the petitioner, he had not been supplied with the copies of the documents relevant to the enquiry and thereby he was handicapped in submitting his reply to the charges levelled against him ; that he had also not been given any opportunity to produce his witnesses in his defence : that he had also not been supplied the copy of the statement recorded at the time of personal hearing and instead had been directed to take pencil notes of those statements from the concerned file in the office ; that after great difficulty, the petitioner had been allowed to take pencil notes on 22.9.1978 and was directed to submit his reply to the show-cause notice on that very date (22.9.1978) which was practically Impossible for him ; that he had not been allowed even 24 hours time for submitting reply to the show-cause notice after taking pencil notes from the concerned file and the impugned removal order had been passed against him on that very date ; that the impugned order of removal was thus clearly violative of the principles of natural justice as well as of the provisions of Article 311(2) of the Constitution of India. It was also contended by him before the Tribunal that he happens to be an employee of the U. P. Government on deputation with the Corporation, and he could not be removed from service by the Assistant Regional Manager of the Corporation, nor was the Corporation competent to initiate disciplinary proceedings against him and so, the impugned order of removal was wholly illegal, invalid and was also ultra vires of the powers of Assistant Regional Manager in the matter of his removal from service.

4. The claim petition was contested. It was claimed that the A.R.M, who had passed the removal order was fully competent to pass it and that the charges brought against him (the employee) had been fully established and so he was rightly removed from service. It was also claimed that he had been afforded reasonable opportunity of defending himself in the disciplinary proceedings. The Tribunal found that the A.R.M., U.P.S.R.T.C, was fully competent to pass the impugned order of removal.

5. On the merits of the case the Tribunal found that the petitioner before It or the conductor had not been afforded reasonable opportunity of putting forth his defence in the disciplinary proceedings In question. It also held that the enquiry officer clearly appeared not to have applied his mind at all to the evidence that existed on record before him and had merely acted on the conjectures and surmises ; that the enquiry thus suffered from the patent infirmity of non-application of mind and stood vitiated, it proceeded to reassess and reappraise the evidence on record to find out whether there was enough evidence to

support the findings reached by the enquiry officer, or that the findings arrived at by the enquiry officer were based purely on conjectures and surmises. The Tribunal recorded that in the Impugned order of removal dated 22.9.1978 itself it was noted regarding the charge of carrying passengers without ticket in the bus in question subjected to surprise checking raid that it has been clearly mentioned in the impugned order of removal dated 22.9.1978 that it was true that the checking authorities had not found any traveler without ticket in the bus and on its basis, it (the Tribunal) held that it clearly showed that all the passengers who were traveling in the bus on the relevant occasion were found with their valid tickets. Regarding the finding of the enquiry officer as well as of the punishment authority that the conductor had hurriedly issued tickets to 13 passengers after the checking squad had signaled for stoppage of the bus for checking purposes and that the conductor had also made entry hurriedly in the way bill the Tribunal held that this finding was clearly based-on conjectures and surmises. The Tribunal had also found that there was no evidence of independent and creditworthy character from the side of the department in the disciplinary proceedings to show that the conductor had issued tickets to 13 passengers and had made entry in the way bill after the checking squad had signalled for stoppage of the bus for checking purpose.

6. It (the Tribunal), therefore, concluded that there was no creditworthy evidence of independent nature to substantiate the charges brought against the petitioner (the conductor) and consequently held that the impugned order of removal passed against him was untenable and unfounded.

7. Regarding the contention of the conductor before it in para 10 of his petition that he had been allowed to take pencil notes of the statement from the concerned file on 22.9.1978 and had been directed to submit his reply to the show-cause notice then and there which was practically not possible for him and that he has not even been allowed 24 hours time for submitting reply to the show-cause notice and that the impugned removal order has been passed against him on the very same day, i.e., on 22.9.1978, the Tribunal recorded that the opposite party i.e., the U.P.S. R.T.C, in reply to para 18 of the claim petition, had stated simply this much in para 20 of the written statement/ counter-affidavit, after bare denial of the aforesaid para 18 of the claim petition, that since the petitioner (the conductor) had not submitted any explanation to the show-cause notice, finally the impugned orders had been passed on 22.9.1978 and finding that this was in fact, no specific denial of the said averment of the conductor in the claim petition, accepted the allegations made by him (the conductor) in para 10 of his claim petition and held that he had not been allowed even 24 hours time after taking pencil notes for submitting his reply to the show-cause notice. The Tribunal further held that all these exhibited that the conductor had been denied reasonable opportunity of putting forth his defence in the disciplinary proceedings. The Tribunal had also recorded a finding on the basis of the material appearing on record that the conductor had been denied the opportunity of leading his defence by examining his witnesses in the disciplinary

proceedings.

8. Regarding the other charge that the conductor had snatched the way-bill which consequently got torn, the Tribunal took note of the conductor's contention that the waybill was got torn when the traffic superintendent had snatched it from his hands and observing that there was no independent evidence from the side of the department corroborating this piece of charge, held that it could hardly be said that this charge either had been substantiated against the conductor. In the result, the Tribunal had passed the order dated 31.8.1987 which has been impugned before us.

9. After having heard the parties' counsel, we are of the view that this writ petition has no force. The petitioners before us (i.e. the U.P.S.R.T.C.) have claimed that the impugned order of the Tribunal suffered from error apparent on the face of the record inasmuch as its finding that the conductor was not afforded 24 hours' time after taking pencil notes for submitting his reply to the show-cause notice, is factually incorrect and that the facts were that the pencil notes were taken by the conductor on 24.8.1978 and in spite of the show-cause notice delivered on him on 14.9.1978, he did not submit his reply within 7 days and as such, the removal order was rightly passed on 22.9.1978 and that the appellate authority had considered this fact and without considering this aspect of the matter, the Tribunal allowed the claim petition acting on assumption and supposition. It was also claimed that the enquiry report showed that the enquiry officer had given full opportunity of hearing to the conductor and had applied its mind to the facts of the case and the findings to the contrary were based on conjecture and surmises which were wholly illegal. It was also claimed that the charges had been duly proved by the evidence, it was also claimed that though the Tribunal had set aside the order passed by the appellate authority, it had not reversed the findings recorded by it (the appellate authority) and for this reason also, the impugned judgment was illegal and was fit to be quashed.

10. It is well-settled that the jurisdiction in certiorari is not appellate and so the findings of fact reached at by the Tribunal as a result of appreciation of evidence and inference of fact drawn by it from the materials before it, cannot be reopened in a proceeding for certiorari unless it could be shown that there was such error apparent on the face of record which showed non-application of mind or misreading of evidence or that the finding was not based on evidence or that no reasonable man would have arrived at the conclusion on the materials before it. The High Court would not sit to reassess the evidence or material on record. In the present case, the Tribunal found that there was denial of opportunity to the conductor (the employee) to lead his defence during the enquiry before the enquiry officer itself. In para 8 of the counter-affidavit before this Court, also the conductor had claimed that he had not been given due opportunity to examine his witnesses before the enquiry officer and some documentary evidence had also been annexed with the same (the counter-affidavit) in support of this claim and no rejoinder-affidavit has been filed by the present petitioners to challenge

or explain away this material. Furthermore, the present petitioner-department S.R.T.C, has not placed any material before this Court to show that as a matter of fact, full opportunity was accorded to the conductor (the employee) to lead his defence. So merely challenging the finding of the Tribunal would not serve.

11. Then there is a finding of the Tribunal about the denial of opportunity at the stage of show-cause notice, it has been repeatedly argued by the learned counsel for the petitioners that there is misreading of the evidence by the Tribunal and so its finding on the point is wholly untenable. A reading of the award of the Tribunal makes it clear that there was no categorical denial by the petitioner S.R.T.C, to the claim of the conductor that he was allowed to take pencil notes of the documents on 22.9.1978 and was not given even twenty four hours" time for submitting his reply and that on that very date (22.9.1978) the final orders were passed by the punishing authority. It Is settled law of pleadings that those averments of fact, which are not categorically denied by other side, are deemed to have been admitted by it. The learned counsel for the present petitioner S.R.T.C, has referred to the judgment in appeal by the appellate authority to show that the show-cause notice was served on the conductor (the employee) on 14.9.1978 and despite it, he did not submit his reply to the same till the date of the final order itself. Even taking this averment of fact, as such, the subsequent fact remains that the punishing authority allowed him to inspect the record on 22.9.1978. If sufficient opportunity had already been given to the conductor {the employee) to inspect the record and then further inspection on 22.9.1978 had been denied to him, it might have made some sense but once the punishing authority allowed the inspection of record on 22.9.1978, it implied that in the opinion of the punishing authority itself, such an opportunity was necessary to be given and it follows that when, since this permission to inspect the record by the conductor (the employee) was accorded, it was Incumbent upon the punishing authority to give reasonable time to the conductor [the employee) to submit his explanation to the show-cause notice. Obviously, it was impossible to expect the conductor (the employee) to submit his explanation within a few hours on the same date and so it is not surprising that the conductor (the employee) had not submitted any reply on the date and the final order passed by the punishing authority on the same day (i.e., 22.9.1978) had rightly been found by the Tribunal to have suffered from fatal flaw of the denial of opportunity to the conductor (the employee) to show-cause against the notice.

12. The Tribunal had itself assessed the evidence on record which was led at the enquiry before the enquiry officer and come to the conclusion on appreciation of evidence and circumstances that the enquiry officer has not applied its mind to the evidence on record and based its finding against the conductor (the employee) on conjecture and surmises. This finding of the Tribunal has also been assailed before us but there is absolutely no ground to upset this finding of fact arrived at by the Tribunal.

13. For the reasons aforementioned, the petitioner has failed to make out a case

for interference with the impugned order of the Tribunal and the writ petition is accordingly dismissed as devoid of merit.