
(2015) 10 AHC CK 0142
In the Allahabad High Court
Case No : Writ Petition No. 2908(SS) of 1998

Bal Mukund Tripathi

APPELLANT

Vs

U.P. State Road Transport Corporation and Others

RESPONDENT

Date of Decision : 29-10-2015

Acts Referred:

Citation : (2015) 10 ADJ 675 : (2016) 148 FLR 807 : (2016) 1 LLJ 76 : (2016) LLR 145

Hon'ble Judges : Devendra Kumar Arora, J.

Bench : Single Bench

Advocate : Akhtar Abbas, Learned Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Devendra Kumar Arora, J.—Heard learned Counsel for the petitioner and Sri Akhtar Abbas, learned Counsel appearing for the respondent-Corporation.

2. In short, the facts of the case are that on the basis of a report submitted by the Checking Staff on 2.2.1993, the petitioner, namely, Bal Mukund Tripathi, who was the Conductor and was posted in Mirzapur Depot of the U.P. State Roadways Transport Corporation [in short referred to as the Corporation], was placed under suspension by the Regional Manager of the Corporation vide order dated 1.3.1993 and subjected to disciplinary proceedings. Later on, a charge sheet dated 5.3.1993 containing 15 charges was served upon the petitioner and the main charge against the petitioner was that on checking, he failed to furnish the "Way bill" and he did not issue Tickets to the passengers though had realized fare from them and incited the passengers against the checking staff. The petitioner submitted his reply denying the allegations levelled against him and alleged that the checking staff had demanded illegal gratification from the petitioner and on his inability to satisfy their demand the checking staff had submitted a false report. Thereafter the Enquiry Officer concluded the enquiry and submitted the report finding the charges levelled against the petitioner to be proved. After submission of enquiry report, the Regional Manager [opposite party

No. 4] issued a show cause notice annexing therewith a copy of the enquiry report. Ultimately, the petitioner was removed from service vide order dated 20-5.1995 by the disciplinary authority/appointing authority.

3. On perusal of the record, it transpires that against the aforesaid punishment order, the petitioner preferred an appeal, which was dismissed by the Chief Zonal Manager [opposite party No. 3] vide order dated 8.3.1995. Being dis-satisfied by aforesaid two orders, the petitioner preferred a Revision Petition before opposite party No. 2 [Chairman, U.P. State Road Transport Corporation], which too met with the same fate and was rejected vide order dated 22.3.1996.

4. Hence this writ petition.

5. It has been contended by the learned Counsel for the petitioner that the disciplinary proceedings were conducted against the petitioner in utter disregard of the principles of natural justice. The appeal of the petitioner preferred against the punishment has been rejected in a mechanical way without application of mind. On the strength of the decision rendered in [2011(29) LCD 832] Abdul Salam v. State of U.P. and others, learned Counsel for the petitioner argued that the impugned orders are bad in law as enquiry proceedings were completed in blatant disregard of the principles of natural justice, as no opportunity was afforded to the petitioner to defend himself and rebut the alleged charges before the enquiry Officer. To substantiate his arguments, Counsel for the petitioner has also relied upon a Supreme Court decision rendered in State of U.P. and Others Vs. Saroj Kumar Sinha, .

6. Refuting the allegations of the petitioner's Counsel, it has been pointed out by the respondent's Counsel that the petitioner committed gross misconduct in collecting the money from 31 passengers and did not issue tickets to them, and he also misbehaved with the checking squad. There were 70 passengers travelling in the bus and only 39 passengers were issued tickets. In the enquiry, petitioner was given ample opportunity to defend himself and after the charges were found proved against the petitioner as he failed to prove his innocence. Therefore, it is incorrect to say that reasonable opportunity was not afforded to the petitioner. As a matter of fact the petitioner was given opportunity at every stage. The appellate as well as Revisional authority has also applied its mind and rejected the same on account of gravity of charges.

7. To substantiate his arguments, Counsel for the Corporation has relied upon Depot Manager, A.P.S.R.T.C. Vs. Raghuda Siva Sankar Prasad, , and U.P. State Road Transport Corporation Lucknow and another v. State Public Service Tribunal; [2009(27) LCD 1733].

8. Before dealing with the merits and demerits of the present case, it would be appropriate to mention that the post of Conductor is a post of trust and the person guilty of breach of trust is to be dealt with iron hand. The loss of confidence occupies the primary factor and not the amount of money and sympathy and generosity cannot be a factor, which is permissible in law in such

matters.

9. In the case of V. Ramana Vs. A.P.S.R.T.C. and Others, , the Apex Court has held that a Conductor holds a post of trust. A person guilty of breach of trust should be imposed punishment of removal from service. The appellant's conduct in collecting fare at the designated place and not collecting fare from persons, who had already travelled were in violation of various regulations contained in the A.P. State Road Transport Corporation Employees (Conduct) Regulations, 1963.

10. Again, in the case of APSRT v. Raghuda Siva Sankar Prasad [supra] which has been relied upon by the respondent, it has been held by the Apex Court that once an employee has lost the confidence of the employer, it would not be safe and in the interest of the Corporation to continue the employee in the service.

11. In Regional Manager UPSRTC, Etawah and others v. Hoti Lal and another; AIR 2003 SCC 1462(1) the employee was a conductor on duty in Bus No. UGG-108. While checking was done by the Assistant Regional Manager, it was found that 16 persons were without ticket. Even after realizing fare from the passengers, no ticket had been issued upto the time of Checking. These according to the authorities amounted to dereliction of duty, violation of Employee's Conduct Code and misappropriation of employer's money. After being subjected to the disciplinary proceedings, the employee was terminated. The order of termination was assailed in writ petition No. 4535/SS/1991, which was dismissed. The matter was carried in Special Appeal before the Division Bench by the employee and the Division Bench set aside the order of termination leaving it open to the employer to award any punishment but not of removal or termination or compulsory retirement. The correctness of the said judgment passed by the Division Bench was questioned by the Corporation before the Apex Court and the only point raised by the Corporation was whether the High Court was justified in interfering with the quantum of punishment awarded to the respondent No. 1-Hoti Lal.

12. The Apex Court while allowing the appeal and maintaining the order of removal held that the Court shall not intervene unless the punishment is wholly disproportionate. Further the Court or Tribunal while dealing with the quantum of punishment has to record reasons as to why it is felt that the punishment does not commensurate with the proved charges.

13. Recently, in the case of U.P. State Road Transport Corporation and others v. Gopal Shukla and others [decided on 1.9.2015] the first respondent, namely, Gopal Shukla, in identical situation like the petitioner, was visited with the punishment of dismissal. On an industrial dispute being raised, the Award was given in favour by the Labour Court and the employer was directed to reinstate the workman. The Corporation assailed the said award in a writ petition before the High Court and the High Court concurred with the award relating to reinstatement but as far as the grant of back wages is concerned, it reduced the

same to 25 percent. The correctness of aforesaid orders was questioned by the Corporation before the Hon"ble Supreme Court and the Apex Court observed that in corruption cases, degree of corruption is immaterial and no lenient attitude is required to be shown. The Apex Court upheld the order of disciplinary authority who had dismissed the Bus Conductor for allowing 25 passengers to travel in the bus without ticket, and reversed the concurrent findings of the Labour court and High Court, who had taken a lenient view, and had reinstated him to service. The Apex Court held that both the Labour Court and the High Court have fallen in error by imposing a lesser punishment on the workman whereas the only punishment, on establishment of the charges which have been accepted by the labour court, should have been dismissal and not a lesser one. It would useful to reproduce the relevant observations:--

"The reasoning, if we allow ourselves to say, constrains us to ruminate whether the Labour Court has been swayed away by the concept "forgiveness is the economy of the heart" and dominantly affected by the conception "mercy among the virtues is like the moon among the stars", totally remaining oblivious to the basic principle that when the workman shatters the "institutional trust" and his act has the potentiality to corrode the faith and belief of the employer, does he deserve any leniency. It is not the quantum per se but the breach of trust with reference to duty and obligation of the employee that must be the edifice of consideration for imposition of punishment."

14. In the instant case, the petitioner was found to be carrying on ticket-less passengers while carrying bus No. UP 70/8232 on Allahabad -Mahoba route and failed to produce "Way Bill" when demanded by the Checking Staff. The stand of the petitioner was that the story of ticket-less travellers has been concocted by the Checking staff as he refused their demand of illegal gratification which ultimately led to filling of false report with wild allegations. In the enquiry, the Enquiry Officer has mentioned about the statement of Bhagirathi Singh, TS and Sri Parmanand Yati, ATI [members of checking staff] who had deposed that out of 70 passengers, 31 ticket-less passengers were found. The Petitioner was communicated about the date fixed for the purposes of leading evidence and putting his version but he did not participate. It may be added that had any demand of money was made by the checking staff, the petitioner would have reported the matter to the higher authorities/authorities concerned at the first possible opportunity but that was not done, which establishes that the stand of the petitioner is an afterthought.

15. In view of the aforesaid discussions, I find no infirmity in the impugned order of removal dated 20.5.1995. It is relevant to mention that against the order of removal the petitioner, as averred above, had preferred appeal and thereafter Revision before the competent authority. Both the appeal and Revision, as averred above, had been rejected. Surprisingly, these two orders have not been challenged in the instant writ petition. However, I have carefully gone through the same and did not find any infirmity in the said orders.

16. Accordingly, the writ petition is dismissed. Costs easy.