
(2011) 02 OHC CK 0012
In the Orissa High Court
Case No : Writ Petition (C) No. 10020 of 2004

Dandapani Muli

APPELLANT

Vs

P.O. Industrial Tribunal BBSR and Others

RESPONDENT

Date of Decision : 18-02-2011

Acts Referred:

Industrial Disputes Act, 1947 — Section 33(2)
Orissa State Road Transport Corporation (Classification, Recruitment and Conditions of Service) Regulations, 1978 — Rule 136(34), 136(69)

Citation : (2011) 130 FLR 773 : (2011) 4 LLJ 20 : (2011) 1 OLR 721

Hon'ble Judges : R.N. Biswal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.N. Biswal, J.—As per the writ petition, the Petitioner was working as conductor under the Orissa State Road Transport Corporation (in short "OSRTC") in Keonjhar Zone during the year 1996. On 19.10.1996 at about 9.20 A.M. while he was conducting Keonjhar-Sambalpur (UP) bus bearing registration No. OSJ-1202 it is alleged that on signal the bus was stopped at a distance of 1/4th K.M. before Kalamati. The checking squad consisting of A.T.M. (Vigilance) OSRTC and two traffic inspectors, namely Sanat Kumar Mishra and Fakir Charan Panigrahi entered into the bus and took possession of the ticket book. On counting, 59 passengers were found to be there in the bus, but the Petitioner had issued only 27 full and four half tickets. In other words 32 passengers were found traveling without ticket. Accordingly, the A.T.M. (Vigilance) prepared the checking report in presence of the Petitioner and asked him to put his signature there, but he refused to do so. Thereafter, A.T.M. (Vigilance) reported the matter to the District Transport Manager (A), OSRTC, Keonjhar (disciplinary authority) on receipt of which he put the Petitioner under suspension on 2.11.1996 and framed charge against him under two counts. Charge No. 1, which is the main charge, reads as follows:

That on 13.10.96 while he was conducting Keonjhar- Sambalpur (UP) bus No. OSJ-1202, the said bus was signaled, stopped and checked by Sri S.K. Pradhan, A.T.M. (Gig.) and Sri F.C. Panigrahi, T.I. Hqrs at a distance of 1/4th K.M. before Kalamati at about 9.20 A.M. During the course of checking it was found by the checking officers that there were 53-4/2 passengers traveled in the bus as against 27-4/2 valid tickets and the rest 32 passengers were permitted by him (the conductor) to board into the bus and carry them without ticket in a transport vehicle of the Corporation at the place and time of checking. It is further reported that the check report No. 3 dt. 13.10.96 duly filled in at the spot by the checking officers was refused to sign the same by him (the conductor) along with driver of the bus at the spot. These speaks of his misconduct as per Rule 136(34) and (69) of OSRTC (CR and CS) Regulations, 1978 and (Amendment) Regulations 1986.

The 2nd charge relates to the past misconduct and punishment imposed against the Petitioner.

2. An explanation was called for from the Petitioner to explain the above charges. In his explanation, the Petitioner, inter alia, contended that the bus in question was checked at Kalamati bus stand and not 1/4th K.M. before it as alleged, just before a private bus which was competing with the bus conducted by the Petitioner, suffered breakdown at Kalamati and a Kirtan Dal got down from that bus and forcibly entered into the bus of the Petitioner. Since the explanation submitted by the Petitioner was held not to be satisfactory, the then Asst. Manager (Administration), Keonjhar was appointed as enquiry officer to enquire into the matter. Accordingly, he enquired into the matter and in course of enquiry examined the A.T.M. (Vigilance), Sri Fakir Charan Panigrahi, Transport Inspector, Sri Ratnakar Maharana, the driver of the bus in question, Akshya Kumar Mishra, an independent witness and the delinquent. After completion of enquiry he submitted his report holding as follows:

In view of the above mentioned foregoing paras the enquiry hold that there were 32 passengers who were entered into the bus. Prior to issue of tickets violating the departmental circulars as such the charge No. 1 is partly proved for negligence in duty.

As regards charge No. 2 the past punishment were inflicted basing on recordal evidence with due knowledge of the delinquent and hence it is proved.

3. The disciplinary authority different with the view of the enquiry officer in respect of charge No. 1 and held that it was fully proved. So, he dismissed the Petitioner from service vide order dated 7.11.1997 and treated the period under suspension as such. Since I.D. Case Nos. 19 of 1989 and 45 of 1991, in which the Petitioner was concerned, were pending before the Industrial Tribunal, Bhubaneswar the Disciplinary Authority filed an application u/s 33(2)(b) of the I.D. Act before the said Tribunal seeking approval of his action in dismissing the Petitioner. The said application was registered as I.D. Misc. Case No. 51 of 1997

and the Petitioner was asked to file show cause. In his show cause the Petitioner took the same plea as he had taken in reply to the charge memo. Four witnesses were examined on behalf of the Management as against only one witness on behalf of the Petitioner before the tribunal. After going through the oral and documentary evidence, the learned tribunal, vide order dated 21.5.2003 held that there was no infringement of the principle of natural justice, while holding the domestic enquiry against the Petitioner and the statutory compliance as prescribed u/s 33(2)(b) of the I.D. Act and accordingly approved the action of the management in dismissing the Petitioner from service and allowed I.D. Misc. Case.

In this writ petition, the Petitioner has challenged the order of dismissal dated 7.11.97 passed by the disciplinary authority (Annexure-5) and the order dated 21.5.2003 passed by the learned Presiding Officer (Annexure-6).

4. Learned Counsel for the Petitioner submitted that while adjudicating a petition u/s 33(2)(b) of the I.D. Act, it is the primary duty of the tribunal to enquire whether the principle of natural justice had been followed in the domestic inquiry. In the present case, the enquiry officer held that charge No. 1 was partly proved and charge No. 2 was proved, but the disciplinary authority differed with his finding holding that charge No. 1 was also proved. So, it was the duty of the disciplinary authority to record its tentative reasons for disagreement and call for an explanation on the same from the Petitioner. But it has not been done so. So, the order of dismissal passed by the disciplinary authority under Annexure-5 deserves to be quashed, as there was violation of natural justice. In support of his submission, learned Counsel for the Petitioner relied on the decisions in the case of Purna Chandra Pattnaik Vs. State of Orissa and Others, , S.B.I. and Ors. v. Arvind Kumar Shukla AIR 2001 SC 2398 and Rushi Guman Singh Vs. State of Orissa and Others, . On the other hand, learned Counsel for the opp. party-management supported both the orders passed under Annexures-5 and 6. In the decision Purna Chandra Pattnaik (supra), a division bench of this Court held that:

If the competent authority does not agree with the inquiry officer, he must record reasons for disengagement and supply the same to the delinquent to file his comments/objections - Otherwise, the order would stand vitiated for non-compliance of the principles of natural justice.

In the decision S.B.I. and Ors. (supra), the Apex Court held that the disciplinary authority is required to record its tentative reasons for disagreement with the enquiry officer and to communicate the said reasons to the delinquent to represent, before it records its ultimate findings. In the case of Rushi Guman Singh (supra), this Court has also taken the same view.

5. Admittedly, as rightly submitted by learned Counsel for the Petitioner, in the present case, the disciplinary authority has not given any chance to Petitioner to file show cause on the tentative reasons of his disagreement with the view of the enquiry officer. So, there was violation of the principles of natural justice. The

Tribunal while according approval to the order of dismissal passed by the disciplinary authority did not take this fact into consideration.

Therefore, the writ petition is allowed and the orders passed under Annexures-5 and 6 are quashed. No cost.