
(2014) 02 AHC CK 0121

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 9250 of 2009

Govardhan Yadav

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 06-02-2014

Acts Referred:

Citation : (2014) 3 ADJ 37 : (2014) 4 AWC 3734 : (2014) 1 UPLBEC 804

Hon'ble Judges : Manoj Misra, J

Bench : Single Bench

Advocate : B.P. Yadav and Ari Mardan Singh, Advocate for the Appellant; Amit Manohar, Advocate for the Respondent

Final Decision : Allowed

Judgement

Manoj Kumar Gupta, J.—By means of this writ petition, the petitioner has assailed the validity of the order dated 24.8.2007 passed by Assistant Regional Manager, U.P.S.R.T.C., Fatehpur Depot., whereby a minor penalty for recovery of a sum of Rs. 1,78,136/- has been imposed on the petitioner in purported exercise of power under Regulation 65 of the U.P. State Road Transport Corporation Employees (other than Officers) Regulation, 1981 and the order dated 30.12.2008 passed by Regional Manager, U.P.S.R.T.C., Kanpur Region, Kanpur dismissing the appeal. The petitioner is working as conductor with the respondent Corporation. While he was posted at Fatehpur Depot, Kanpur Region, Kanpur, he was issued Bag No. 94 Abstract 30883996 on Allahabad-Agra Route, on 25.5.2007. After reaching Agra Fort Bus Station at about 1 A.M. (25/26 night), the petitioner was extremely tired. He took food, at about 1.30 in the night. It was extremely hot. He alongwith the driver of the bus, Shri Arun Kumar, went to sleep on the bus top, keeping the bag containing money and unused tickets underneath his head, in order to ensure it's safety. When he got up in the morning, he found the bag missing and immediately informed the police by making a report in writing at Police Station Raqabganj, Agra. The application given to S.H.O., Raqabganj, Agra dt. 26.5.2007 has been brought on record as

Annexure-1 to the writ petition in which it is stated that the bag containing Rs. 4328/- in cash, being the sale value of the tickets, unused tickets and waybills were stolen by some unknown persons and the Police may register the report and take necessary action. The incident was duly reported in the newspaper Amar Ujala. On coming back to Fatehpur, he immediately informed the Senior Station In-charge, Fatehpur Depot about the said incident by making an application dated 27.5.2005 annexing therewith the copy of the First Information Report and the news publication. In pursuance thereof, the Senior Station In-charge, Fatehpur Depot by letter dated 30.5.2007 made a report to respondent No. 3 regarding the incident. A notice dated 22.6.2007 was served by respondent No. 3 on the petitioner seeking his explanation why the value of unused tickets and waybill amounting Rs. 1,78,136/- be not recovered from him. The petitioner submitted his explanation on 7.8.2007 categorically stating that he was not negligent, rather the incident took place on account of circumstances beyond his control. He furnished detailed explanation, regarding the circumstances in which bag was kept underneath the head. He cited the case of conductor Awadhesh Awasthi, who also became victim of similar theft, but the department only realised price of paper and printing charges from him after holding that at bus stations, in absence of any facility to the conductors for keeping their bags in safe custody, such incidents often take place. The order of the appellate authority passed in his case was enclosed with the explanation. He further stated that unless there is proof of misuse of stolen tickets, their value should not be recovered from him. The petitioner further stated that he has been in service of the Corporation since 1980 and in the past there has never been any charge of dereliction of duty. He accordingly, prayed for the matter being considered sympathetically.

2. The explanation submitted by the petitioner did not find favour with respondent No. 3 and he passed an order dated 24.8.2007 directing recovery of Rs. 1,78,136/- from the petitioner as cost of unused tickets and waybills. Challenging the said order, the petitioner filed an appeal, where he again cited the case of Sri Awadhesh Awasthi, conductor from whom the appellate authority only directed for realization of the cost of paper and printing. The petitioner further pleaded that even after the petitioner had duly intimated the authorities about the incident, they have not held any inquiry nor have verified any fact but have straightaway proceeded to pass the order for recovery. However, the appellate authority namely, Regional Manager, Kanpur vide order dated 30.12.2008 rejected the appeal after holding that a sum of Rs. 23,636/- has already been deducted and the remaining amount be deducted forthwith. Certain other modifications were made which relates to the correction of error in calculation of the value of unused tickets and waybills. Aggrieved by the said orders, the present writ petition has been filed.

3. The first contention of the learned counsel for the petitioner is that the impugned order for recovery has been passed by the Assistant Regional Manager, without considering the explanation of the petitioner. He has rejected the

explanation by simply holding that it is not satisfactory. It does not amount to consideration of the explanation submitted by the petitioner. No reason has been assigned for not accepting the explanation. It is, thus, contended that the order for recovery, is in fact a non-speaking order, is liable to be set aside.

4. Refuting the submission made by learned counsel for the petitioner, Sri Amit Manohar appearing for the respondents has drawn the attention of the Court towards the appellate order which according to him, is a detailed order taking into consideration the explanation submitted by the petitioner. He thus contends that once the explanation of the petitioner has been taken into consideration by the appellate authority, the inherent lacunae in the order of the Disciplinary Authority stands cured.

5. I have considered rival submissions of learned counsel for the parties, and perused the record.

6. A perusal of the punishment order dt. 24.8.2007 passed by the Assistant Regional Manager would show that it merely mentions that the explanation submitted by the petitioner is not satisfactory and he is guilty of negligence, therefore, recovery order is being passed against him. The detailed explanation submitted by the petitioner in response to the show-cause notice has not at all been considered. Merely saying that the explanation is not satisfactory, without assigning any reason, tantamounts to non consideration of the explanation given by the petitioner. Such an order cannot be sustained.

7. As regard the order of the Appellate authority, it holds the petitioner negligent, for using the bag as a pillow, and for not keeping it in safe custody. It does not take into consideration the circumstances in which the incident took place, which according to the petitioner, were beyond his control. The explanation of the petitioner that after undertaking several hours of journey from Fatehpur to Agra, he reached Agra Fort Bus Stand at 1:00 in the night and was extremely tired, went to sleep on the bus top, keeping the bag underneath his head, in order to ensure its safety, has not at all been considered. Although, the order holds the petitioner to be negligent in performance of his duty for not keeping the bag in safe custody, but the entire order is absolutely silent as regards the place where petitioner was supposed to keep the bag. The order passed by the departmental authorities in appeal, in similar case of conductor Awadhesh Awasthi, has not at all been adverted to. On the other hand, the Appellate Authority got swayed by wholly irrelevant considerations. It laid undue emphasis on the fact that the application submitted by the petitioner about the incident at the police station was not registered as a formal First Information Report on account of not being in the proper format. The Appellate Authority had failed to appreciate that once report about the theft of the bag containing tickets (Government property) was made to the police, it is the responsibility of the police to register the same as a FIR in the prescribed form. The petitioner cannot be blamed for the same, especially, when it is not disputed that the petitioner did report the incident to the police. It also transpires from the record that the respondents have not held

any inquiry to find out whether the alleged incident had taken place or not. It has been the specific case of the petitioner that the driver was also sleeping alongwith the petitioner when the incident took place. The respondents did not care to examine the drive, or other staff at the bus station, to find out the truth. Thus, even the appellate authority had decided the appeal in a slipshod manner.

8. It is pertinent to mention here that before the Appellate authority, the petitioner had taken a specific plea that in identical circumstances, the order of recovery passed against one Sri Awadhesh Awasthi conductor was modified by the Appellate authority after recording a categorical finding that such incidents are frequent at the bus stations. Sri Awadhesh Awasthi took exactly similar defence viz. that on account of extreme heat, he alongwith the driver were sleeping on the bus top, with ticket bag under his head. The appellate authority found the explanation to be satisfactory and directed only for recovery of an amount equivalent to the price of the bag and cost of paper and printing. Counsel for the petitioner submitted that despite specific plea having been raised in this regard before the Appellate authority, there is absolutely no consideration of the same and which not only amounts to non consideration of a relevant plea but also hostile discrimination against the petitioner.

9. A perusal of the impugned order of the Appellate authority reveals that there is no application of mind to the aforesaid aspect of the matter. The order of the Appellate authority passed against Sri Awadhesh Awasthi dated 19.12.1996 has been brought on record as Annexure-10 to the writ petition and after perusing the same, I find that there were similar allegations leveled against him. He had come up virtually with the same defence viz. the ticket bag was stolen while he was sleeping on the top of the bus with the bag underneath his head. As such, non-consideration of the plea of discrimination by the Appellate authority also vitiates the order passed by it.

10. In the end, counsel for the respondent tried to justify the impugned orders by placing reliance on Circulars dated 2.1.2002 and 21.2.2002 which lay down the guidelines to be followed in cases where printing cost is to be recovered and cases where the recovery of the value of lost tickets and waybills is to be made from the delinquent.

11. A perusal of the Circulars aforesaid would reveal that in cases where the incident had taken place on account of circumstances beyond the control of the employee, he is made liable only for the value of paper and printing cost. However, in other cases where lost is attributable to the negligence of the employee, recovery of the value of lost tickets is to be made from him. Sri Amit Manohar, counsel for the Respondent placed reliance on clause 3 of the Circular dated 21.2.2002, in contending that in cases of theft, the only option is to recover the cost of lost tickets. He submits that it is only in cases covered by clause 4 that the matter could be referred to higher authorities for recovering only the cost of paper and printing. I have perused both the circulars and particularly clause 3 and 4 of circular dated 21.2.2002 on which reliance has

been placed. Clauses 3 and 4 are not mutually exclusive but are overlapping. Clause 4 includes cases of loot which admittedly could be referred to Head Office for realising only cost of paper and printing. The word "loot" used in clause 4 is not defined under the Indian Penal Code. In common parlance, it connotes snatching of any valuable movable property from a person. The Merriam Webster Dictionary defines "loot" as something that is stolen or taken by force. Theft of ticket bag from underneath the head of the petitioner could well be leveled as an incident of loot. It cannot be forgotten that these circulars are mere guidelines and cannot be interpreted like statutes. The real test is whether the incident had occurred on account of negligence of employee or despite due diligence, it had happened on account of factors beyond the control of the employee. For determining the same, entire facts and circumstances including the explanation of the employee has to be considered. In the instant case, as held above, the authorities have passed the orders in a most perfunctory manner, without considering the explanation of the petitioner. In view of the above, impugned orders cannot be sustained.

12. As a result of the above discussion, the impugned orders dated 24.8.2007 passed by the respondent No. 3 and the order dated 30.12.2008 passed by the respondent No. 2 are quashed. The writ petition is allowed. The matter is remitted back to the respondent No. 3 to take fresh decision, in accordance with the observations made above. No order as to costs.