

(2009) 04 AHC CK 0474
In the Allahabad High Court

Hemant Kumar Tyagi

APPELLANT

Vs

Managing Director, U.P.State Road Transport Corporation
Pariwahan Bhawan Lucknow and others

RESPONDENT

Date of Decision : 07-04-2009

Acts Referred:

Citation : (2009) 04 AHC CK 0474

Hon'ble Judges : V.K.Shukla, J

Final Decision : Dismissed

Judgement

V.K.Shukla, J.

Present writ petition has been filed questioning the validity of the termination order of petitioner dated 1908.1994 by Regional Manager, U.P. State Road Transport Corporation Pariwahan Bhawan Lucknow as affirmed in Appeal and Revision on 10.07.1995 and 02.09.1996 respectively passed by Zonal Chief Manager and Chairman U.P. State Road Transport Corporation, Lucknow.

Brief background of the case is that petitioner had been performing duties as Conductor with U.P. State Road Transport Corporation Agra Region Agra. On 21.02.1993 when petitioner was performing and discharging duties as Conductor on vehicle No. UAV9193 at GwaliorDelhi route, an inspection was carried out by Rajan Lal Sharma, Traffic Inspector near Baba Deopuri at 11.00a.m. and during the course of physical checking, it was found that there were 70 passengers travelling on board and out of which 21 passengers were found travelling without ticket and the checking authority issued block ticket No. 7831. Report in this regard was submitted to concerned authority and as in the opinion of authority misconduct has been committed by the petitioner, as such petitioner was placed under suspension and charge sheet dated 16.03.1993 was issued to which petitioner submitted his reply on 07.04.1993. After reply in question has been submitted inquiry proceedings commenced and in the said proceedings evidence of Rajan Lal Sharma, Traffic Inspector was taken and on 02.07.1993 was the date fixed for which due information has been given to the petitioner but he did

not turn up. Inquiry Officer submitted its report and then based on inquiry report of Inquiry Officer show cause notice was issued to which reply has been submitted by the petitioner and thereafter after considering the said reply finding of guilt has been returned and order of dispensation of service has been passed. Appeal preferred against the same has been dismissed and during the pendency of Revision, present writ petition has been filed and now Revision has also been dismissed.

Counter affidavit has been filed and therein it has been contended that full opportunity was given and therein it has been found that passengers were travelling without ticket and when way bill was asked for finger of inspector has been cut, in this background it has been requested that no interference be made.

Rejoinder affidavit has been filed disputing the averments mentioned therein and reiterating the averments mentioned in the writ petition.

After pleadings mentioned above have been exchanged, present writ petition has been taken up for final hearing and disposal with the consent of the parties.

Sri D.K.S. Rathor, learned counsel for the petitioner contended with vehemence that in the present case defence set up by petitioner has not at all been considered and there were reason which existed on record which clearly substantiate the plea as to under what circumstance ticket could not have been issued, as such order of dispensation of service is liable to be quashed.

Countering said submission, learned counsel appearing for U.P. State Road Transport Corporation contended that finding of guilt has been returned and on the basis of appreciation of evidence orders in question has been passed, as such no interference is required.

After respective arguments have been advanced, factual position which is emerging in the present case is that on 21.02.1993 when inspection was carried out by the by Rajan Lal Sharma, Traffic Inspector at the said point of time, 21 passengers were found on board of bus without having valid ticket in their possession and in this background block ticket has been issued. This finding has also come that at the point of time when way bill was asked for, petitioner refused to part with it and finger of Traffic Inspector was injured. In the present case Inquiry Officer has been appointed and before Inquiry Officer Traffic Inspector proved his report and petitioner was given opportunity to produce evidence in support of his case but petitioner has miserably failed to adduce the same and thereafter Inquiry Officer recorded finding of guilt and same has been accepted by the Disciplinary Authority. Thus, in the present case there is evidence available on record which clearly reflects and demonstrate and connect petitioner with the misconduct i.e. carrying passengers without ticket.

The Hon''ble Apex Court in the said case of Regional Manager, U.P. SRTC Etawah and others vs. Hoti Lal and another, (2003) 3 SCC 605, has taken the view that that if the charged employee holds the position of trust where honesty and

integrity are inbuilt requirements of functioning, the matter should be dealt with iron hands and not leniently, and in the said case termination of service of a bus conductor for carrying ticketless passengers in the SRTC bus has been upheld. Relevant paragraphs 9 and 10 of the judgment are being quoted below:

"9. The decision in U.P. SRTC case was really in a different factual background making it distinguishable from the facts of present case, and has no application. In Karnataka SRTC vs. B.S. Hullikatti (1988) 2 SCC 52 it was held that it is misplaced sympathy by courts in awarding lesser punishments where on checking it is found that the bus conductors have either not issued tickets of a lower denomination knowing fully well the correct fare to be charged. It is the responsibility of the bus conductors to collect the fare from the passengers and deposit the same with the Corporation. They act in fiduciary capacity and it would be a case of gross misconduct if knowingly they do not collect any fare or the correct amount of fare. It was finally held that the order of dismissal should not have been set aside. The view was reiterated by a threejudge Bench in Regional manager, RSRTC vs. Ghanshyam Sharma (2002) 10 SCC 330, where it was additionally observed that the proved acts amount either to a case of dishonesty or of gross negligence, and bus conductors who by their actions or inactions cause financial loss to the corporations are not fit to be retained in service.

10. It needs to be emphasized that the court or tribunal while dealing with the quantum of punishment has to record reasons as to why it is felt that the punishment was not commensurate with the proved charges. As has been highlighted in several cases to which reference has been made above, the scope for interference is very limited and restricted to exceptional cases in the indicated circumstances. Unfortunately, in the present case as the quoted extracts of the High Court's order would go to show, no reasons whatsoever have been indicated as to why the punishment was considered disproportionate. Reasons are a live link between the mind of the decision taken to the contrary in question and the decision or conclusion arrived at. Failure to give reasons amounts to denial of justice (see *Alexander Machinery (Dudley) Ltd. v. Crabtree*, 1974 LCR 120 (NIRC)). A mere statement that it is disproportionate would not suffice. A party appearing before a court, as to what it is that the court is addressing its mind. It is not only the amount involved but the mental set up, the type of duty performed and similar relevant circumstances which go into the decision making process while considering whether the punishment is proportionate or disproportionate. If the charged employee holds the position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, the highest degree of integrity and trustworthiness is a must and unexceptionable. Judged in that background, conclusions of the Division Bench of the High Court do not appear to be proper. We set aside the same and restore order of the learned

single Judge upholding the order of dismissal."

Here, in the present case, petitioner has been found guilty of carrying tickless passengers, as such the order of dismissal is not liable to be interfered with.

Consequently, writ petition is dismissed.