
(1999) 09 AHC CK 0052

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 4535 (S/S) of 1991

Hoti Lal

APPELLANT

Vs

The State of U.P. and Others

RESPONDENT

Date of Decision : 25-09-1999

Acts Referred:

Citation : (2000) 1 UPLBEC 74

Hon'ble Judges : Dev Kant Trivedi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Dev Kant Trivedi, J.—The present petition is directed against the order dated 30th March, 1991 whereby the petitioner was removed from service.

2. The petitioner was appointed as a Bus-Conductor on 1st June, 1976. On 9th July, 1988 he was on duty and was proceeding from Fatehpur to Etawah on Bus No. UGG 108. The Bus in question was checked by the Assistant Regional Manager, U.P. S.R.T.C. and 16 passengers were found without ticket. The petitioner was suspended from service. Chargesheet was served on 16th August, 1988. Reply was submitted on 22nd October, 1988. The suspension was revoked on 24th October, 1988. On 30th March, 1991 the petitioner was removed from service. The appeal filed against the said order of removal was dismissed on 23rd June, 1991.

3. The petitioner claims that 16 passengers which were found to be without ticket, caused a loss of Rs. 167- only as the fare from Bindki to Khajuha was only Rs. 1/- per head. Thus, the petitioner claimed that the punishment of removal was not commensurate with the misconduct. The petitioner denied that any forged tickets were recovered from his possession. It is also alleged that the Enquiry Officer did not record the statement of any of the 16 passengers found without ticket and had given wrong total. The enquiry according to the petitioner was not legally held and, therefore, the petitioner is entitled to reinstatement in

the service.

4. Opposite parties contested the petition wherein it was stated that 16 passengers were in fact found to be travelling in the bus without ticket and, therefore, enquiry was instituted, the petitioner was suspended, chargesheet was served and that after enquiry the petitioner was removed from service.

5. Heard the learned Counsel of parties and perused the record.

6. Assistant Regional Manager (Personnel) accompanied by Assistant Traffic Inspectors Sri C.H. Verma and Sri I.D. Bajpai made a surprise checking of the Bus No. UGG 108 on 9th July, 1988 at 9.35 when the bus was reaching Khajuha. It was found by the checking party was reaching Khajuha. It was found by the checking party that 16 passengers were found travelling without ticket. The fare from the ticket loss travellers had already been realised by the petitioner but tickets were not given to.

7. Since the fare was paid by the ticketless travellers, they were issued the tickets by the raiding party form SI. No. 5780806 to 5780821. The petitioner had shown ticket No. 584 to a passenger from Bindki to Jahanabad. From the search of the petitioner's bag ticket Nos. 3287584 to ticket No. 8080345 were recovered. Several other tickets of the denomination of Rs. 1.00, 50 paise, Rs. 5/- and Rs. 10/- were also recovered from the petitioner. On the basis of the surprise checking of the bus, chargesheet dated 16th August, 1988 was served on the Conductor. The charges against the petitioner were that he was carrying 16 ticketless travellers from Bindki to Khajuha, though the money was realised from ticketless travellers, the tickets were not issued though the bus was about to reach Khajuha, that the petitioner tried to embezzle the departmental money to his use, that the petitioner tried to give tickets to the ticketless travellers in a hurry when the bus was being checked, that basic and communication tickets were found in unauthorised possession of the petitioner that the petitioner was found in possession of old tickets with him which he wanted to re-use, that the petitioner was using corrupt means in discharge of duty, that the petitioner failed to work in the interest of the employer and that he was flouting the code of conduct.

8. The petitioner admitted the surprise checking of the bus near Khajuha by the Assistant Regional Manager (Personnel). According to him there was no ticketless passenger in the bus. The petitioner also denied that any old or forged tickets were recovered from his possession.

9. The enquiry of this case was conducted by Sri V.C, Jain, retired District Judge, who afforded ample opportunity to the petitioner. The Enquiry Officer found all the charges proved, on the basis whereof a show cause notice was given to the petitioner. Thereafter the order of removal from service was passed on 30th March, 1991.

10. It has been urged on behalf of the petitioner that the Driver was not

examined before the Enquiring Officer and, therefore, it should be held that the Enquiry Officer did not provide sufficient opportunity to the petitioner to defend himself and that non-examination of the driver amounts to a serious irregularity in the conducting of the disciplinary proceedings. It may be seen that the driver was not referred to as a witness when the chargesheet was served on the petitioner, nor he could have been a witness whether the passengers were without ticket. Even otherwise the driver was not a necessary witness for the employer particularly when the Assistant Regional Manager alongwith two Traffic Inspectors had themselves seen that the 16 passengers were without ticket. It was open to the petitioner to examine the driver in support of his defence. The mere omission to examine the driver in support of the charge cannot be deemed to be a sufficient cause for discarding the statements of the other witnesses or to discard the inquiry report.

11. It has been urged on behalf of the petitioner that non-examination of ticketless passengers has vitiated the enquiry. Reliance in this regard has been placed on *Khem Chand v. The State of Rajasthan and Ors.*, reported in 1985 (1) SLR 533. The facts of the present case are quite different from the facts of the case under the authority. In the present case before me the charge is not only non-issuance of ticket to the passengers but is also to the effect that the petitioner was found in possession of old and used tickets. There was no occasion for the petitioner to carry those tickets with him. In the present case the petitioner has been given an adequate opportunity and the statements of the Assistant Regional Manager and the Traffic Inspectors were recorded as is admitted to the petitioner himself in his reply, Annexure-6 wherein it is mentioned that the checking staff had given statements before the Enquiry Officer.

12. It was difficult rather impossible for the officials of the checking party to have recorded the names and addresses or the statements of the ticketless travellers who had to alight at Khajuhā itself while the bus was checked when it was nearing Khajuhā. In these peculiar circumstances the non-examination of the passengers does not give any benefit to the petitioner. The facts of the case under authority were quite different and that anyone travelling without ticket firstly will not depose against the Conductor and secondly there is no reason to disbelieve the checking staff. The statement of the petitioner in the present case is not of any importance, inasmuch as it could not be possible for him to explain as to how old and used tickets were found in his possession. The benefit of the authority in question is, therefore, not available to the petitioner and non-examination of the ticketless passengers cannot be a ground for setting aside the enquiry report.

13. It has been urged on behalf of the petitioner that the copies of the statements of the witnesses recorded in preliminary enquiry and the copies of the documents proposed to be utilised indicated in the chargesheet were not supplied to the petitioner. It may be seen that there is nothing on record to

suggest that any preliminary enquiry was held or any statement was recorded in the preliminary enquiry. So far as the papers required to be utilised in the enquiry were concerned, it is specifically mentioned in the chargesheet that the report of Assistant Regional Manager (Personnel) was to be utilised and a copy thereof was enclosed with the chargesheet. It was also mentioned in the chargesheet that basic and communication tickets will be utilised against the petitioner in the enquiry and it was specifically directed that the petitioner may inspect the same in the office. Similarly, the way bill was required to be utilised against the petitioner as is mentioned in the chargesheet and it is specifically mentioned that the petitioner could have inspected the same by attending the office. Thus, it cannot be said that the petitioner was denied opportunity of hearing. Reliance has been placed on State of UP. v. Shatrughan Lal and Anr., reported in 1998 (16) LCD 1278. The full compliance of the lay laid down in the aforesaid authority has been made by the opposite parties and it is evident that the papers indicated in the FIR were either supplied or an opportunity was afforded to the petitioner to inspect the same. Thus, the benefit of the above authority is not available to the petitioner.

14. Reliance has been placed on Assistant Regional Manager, UPSRTC and Anr. v. State of U.P. and Ors., reported in 1998 (16) LCD 734. Disclosure of evidence sought to be relied upon in the enquiry has already been made in the chargesheet, Annexure-2 and therefore, it cannot be said that the enquiry is vitiated on account of non-disclosure of evidence. The benefit of the authority in question is not available to the petitioner.

15. It has been urged on behalf of the petitioner that the oral enquiry has not been made and in this regard reliance has been placed on State of Bombay (Now Maharashtra) Vs. Narul Latif Khan, , therein it is held that failure to hold an oral enquiry will vitiate the order of punishment. In the present case enquiry has been made by a retired District Judge and evidence has been recorded, and an opportunity was afforded to the petitioner who himself also appeared in the enquiry. Hence the benefit of above authority is also not available to the petitioner.

16. In the present case the report of the checking staff was proved by the officers who were the members of the checking staff and, therefore, it cannot be said that fair opportunity was not granted to the petitioner to defend himself.

17. In the present case the report dated July 18, 1988 enclosed with the chargesheet supported by two Assistant Traffic Inspectors and the Assistant Regional Manager was in itself sufficient to establish the charge that the petitioner was carrying 16 ticketless passengers. The recovery of old and used tickets from the possession of the petitioner was also fully established at the enquiry. In view of the enquiry report, it cannot be said that the charges were not found established against the petitioner.

18. It may be seen that the petitioner was found guilty of misconduct in a full-

fledged enquiry conducted by a retired District Judge into the conduct of the petitioner and, therefore, the punishment awarded to the petitioner cannot be interfered with.

19. There is nothing on record to suggest that there has been any denial of fair opportunity to the petitioner. There is nothing on record to show that the report of the Assistant Regional Manager was in any way incorrect or false. In the circumstances, the petitioner as rightly removed from service and that there is no ground whatsoever to interfere with the said findings,

20. The petition has no force and the same deserves dismissal. The petition is accordingly dismissed. Costs on parties.