
(1992) 05 AHC CK 0065
In the Allahabad High Court
Case No : C.M.W.P. 18269 of 1988

Janardan Singh

APPELLANT

Vs

U.P. State Road Transport Corporation

RESPONDENT

Date of Decision : 14-05-1992

Acts Referred:

Uttar Pradesh State Road Transport Corporation Employees (Other than Officers)
Service Regulations, 1981 — Regulation 21

Citation : (1992) 65 FLR 904 : (1993) 1 LLJ 623

Hon'ble Judges : M. Katju, J

Bench : Single Bench

Advocate : T.P. Singh, for the Appellant; S.K. Sharma, for the Respondent

Final Decision : Disposed Of

Judgement

M. Katju, J.—The petitioner was appointed as Bus Conductor in the service of the erstwhile U.P. Government Roadways on September 8, 1958, and after creation of the U.P. State Road Transport Corporation the service of the petitioner was transferred to the Corporation in 1972. The petitioner has alleged that he was confirmed on April 1, 1972. In 1985 it is alleged that he was carrying 10 passengers without tickets, and consequently, he was charge-sheeted and after enquiry he was given a minor punishment by the order dated October 31, 1985 (Annexure 2 to the writ petition). By this order he was given the punishment of withholding of five annual increments without future effect.

2. On June 6, 1986 a seniority list was published in which petitioner's name was at Serial No. 2 vide Annexure-3 to the writ petition. However, the petitioner was not promoted to the post of Junior Clerk when the promotion list was issued on April 27, 1987 (Annexure-4 to the writ petition), 39 persons junior to the petitioner were promoted. The petitioner, consequently, made a representation dated February 24, 1988 (Annexure-5 to the writ petition) but to no avail.

3. Thereafter another promotion list was issued on August 12, 1988 (Annexure-6

to the petition,) and again the petitioner was not promoted while 10 persons junior to him were promoted.

4. After filing of this petition another promotion list was issued on March 17, 1989, and this time also the petitioner was not promoted. The petitioner by this petition claims that he should have been promoted to the post of Junior Clerk.

5. A counter affidavit has been filed in this case, in which the detailed facts have been given. In paragraph 3 (xi) it has been stated that on April 27, 1987, 89 conductors junior to the petitioner were promoted but the petitioner was not promoted because of his poor record. In paragraph 3 (xiii) the criteria for promotion is mentioned as seniority subject to rejection of unfit vide Regulation 21 of the U.P. State Road Transport Corporation Employees (Other than Officers) Services Regulations, 1981. It has also been stated that in view of the departmental instructions the Selection Committee had to take into consideration the previous five years' work and conduct and the previous 10 years integrity certificate, and a circular was issued to that effect by the Managing Director of the Corporation on January 15, 1988 (Annexure-4 to the counter affidavit). It has been stated in paragraph 3 (xiv) of the counter-affidavit that the case of the petitioner was considered by the Selection Committee but in view of the following poor record of the service during the past five years, he was not found fit for promotion to the post of Junior Clerk:

"(a) On November 1, 1983 the petitioner was found carrying 28 passengers without tickets and he also misbehaved with the checking party. Accordingly, departmental proceedings were initiated against him and since the charges were proved against him, his annual increments for two years were stopped by order dated January 4, 1984 (Annexure 5 to the counter affidavit)

(b) On May 12, 1984 the petitioner was found carrying 9 passengers without ticket and he did not stop the Bus when the checking authority gave him the signal to stop the Bus. Departmental proceedings were initiated against the petitioner, and even though the charges were proved against him, the authorities took a lenient view by order dated October 31, 1985 and reinstated him with the stoppage of five years increment, and forfeiture of salary for the suspension period, vide Annexure 2 to the counter-affidavit.

(e) Six months good conduct allowance was forfeited by order dated June 28, 1983 as charges of corruption stood proved against him."

6. For the above three punishments and also because of the order dated June 6, 1988 (Annexure-6 to the counter-affidavit) by which the petitioner had been warned and two months good conduct allowance was forfeited, the petitioner was not found fit for promotion.

7. The order (Annexure 6 to the counter-affidavit) shows that when the Bus which was being taken by the petitioner met with an accident, the petitioner did not make available another bus to the passengers.

8. A rejoinder affidavit has been filed, and in para 9 it has been stated that the petitioner cannot be given a double punishment since he has already undergone the punishment given to him earlier.

9. In my opinion, the petitioner has already been adequately punished for the misconduct committed by him. He has been superseded several times by his juniors. By order dated October 31, 1985 his five annual increments were stopped, but without future affect. This: order was passed on October 31, 1985 and the five years period has now elapsed. Consequently, this order cannot now come in the way of the petitioner's promotion vide Balwant Singh v. JA Dave 1981 (1) SLR 610 (SC). Similarly the; petitioner has already been given punishment by the order dated January 6, 1984 for the offence he committed on November 1, 1982. As regards the order dated June 6, 1988 no doubt the petitioner should have taken more care and helped the passengers of the Bus which met with an accident to get another Bus, but it is not such a serious offence that the petitioner should be further punished.

10. In the totality of the circumstances, I am of the opinion that whenever the next promotion from the post of conductor to the post of Junior Clerk is held, the petitioner will be considered by the selection committee ignoring the orders dated June 28, 1983, January 6, 1984, October 31, 1985 and June 6, 1986. If the petitioner is found fit for promotion ignoring these orders, he shall be promoted but only with prospective effect. I wish to make it clear that I am passing this order not because I am of the opinion that the petitioner is not guilty of several offences in the past, but because I believe that justice should be tempered with mercy. The petitioner was rightly superseded and punished for his serious offences in the past, and hence he cannot be given promotion with retrospective effect, but he will be considered for promotion with prospective effect whenever the selection is next held.

11. With these observations the writ petition is disposed of finally. There is no order as to costs.