

**(2006) 03 AHC CK 0172**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ Petition No. 44287 of 2005

Jata Shankar Lal Srivastava and Ram Laut Prasad

APPELLANT

Vs

Chief General Manager, General Manager (Personnel) and  
Regional Manager

RESPONDENT

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**Date of Decision :** 28-03-2006

**Acts Referred:**

Road Transport Corporations Act, 1950 — Section 45(2)

**Citation :** (2006) 7 AWC 6919

**Hon'ble Judges :** Rakesh Tiwari, J

**Bench :** Single Bench

**Advocate :** Satish Mandhyan and B.D. Mandhyan, for the Appellant; S.S. Singh, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

Rakesh Tiwari, J.—Heard counsel for the parties and perused the record.

2. The factual matrix of the case are that petitioner No. 1 was appointed as Junior Clerk in 1971 and at the relevant point of time he was working as Senior Clerk in Rapti Nagar Depot. Petitioner No. 2 was initially appointed as Conductor in 1981 and at the relevant point of time he was working as Booking Clerk.

3. Brief facts of the case are that one Sri Mahendra Pratap Singh, a retired Junior Station Incharge was President of Roadways Mazdoor Sabha, MP Group, Gorakhpur. It is alleged that he was indulging in nefarious activities and whenever employee objected he used to make complaint against him. He used to get allotted bus duties of long distance to his son Bhanu Pratap Singh. After his retirement as he could not get duty of his choice for his son on long distance buses as such he moved a complaint against one Sri Viveka Nand Tiwari, Senior Station Incharge in order to pressurize him.

4. It is submitted that duty is allotted by the Senior Station Incharge on the basis of Headquarter circular dated 29.12.1992 and the clerks are not authorized

to allot duties to the employees. The petitioners as such were never involved in allotment of duty to the conductors at any level. It is stated that during the relevant period in question i.e. from April, 2002 to June, 2002 there was shortage of conductors hence 5 contract conductors out of 150 were given duties to meet the exigency of peak season.

5. It is further submitted that Sri Mahendra Pratap Singh said nothing against the petitioners in the complaint against Senior Station Incharge Sri Viveka Nand Tiwari. During the preliminary enquiry Sri Mahendra Pratap Singh also submitted a sworn affidavit to the effect that his grievance was only against Senior Station Incharge Sri Viveka Nand Tiwari and not against the petitioners. A copy of the affidavit sworn by Sri Mahendra Pratap Singh has been filed as Annexure-7 to the writ petition, yet the petitioners were served with charge-sheet dated 11.6.2003 wherein the following charges were levelled against the petitioners:

^^,rnokjk vki ij fuEufyf[kr vkjksi yxk;sa tkrs gS& ;g fd mRrj izns"k jkT; IMd ifjogu fuxe] jkIrhuxj fMiksa cl LVs"ku ij ofj"B fyfid in ij dk;Zjr jgrs gq, vkidh rSukrh ifjpkdyd O;oLFkk fyfid iVy ?fM;wVh fyfid? ij yxk;h x;h Fkh A mDr iVy ij dk;Zjr jgrs gq, vkidk nkf;Ro Fkk fd vki LVs"ku ij miyC/k ifjpkdyd tu"kfDe ds vuq#i muls ifjpkdyu dk;Z IEikfnr djkr ijUrq bl fn"kk esa vkids fd;k dyki foHkkxh; fgrksa ds foijhr] vfu;fer ,oa fuxe fojks/kh ik;sa x;s A ekg vizSy 2002 ls twu 2002 rd LVs"ku ij miyC/k vfHkys[kksa dks Nkuchu ,oa ifj{k.k djus ij ;g ik;k x;k fd LVs"ku ij fu;fer ifjpkdyksa ds miyC/k jgrs gq, Hkh lafonk ifjpkdyksa ls ifjpkdyu dk;Z fy;k x;k gS] tks vfu;fer] voS/kkfud rFkk foHkkxh; fu;eksa ds foijhr gS A mDr vof/k ds ifjpkdyd mifLFkr iaftdk ds voyksdu ls ;g ik;k x;k fd dfri; ifjpkdyksa dks ftudk fooj.k layXu rkfydk esa vafdr gS dks mifLFkr iaftdk esa mifLFkr rks n"kkZ;k x;k gS ijUrq muls ifjpkdyu dk;Z ughsa fy;k x;k gS vFkkZr fu;fer ifjpkdyksa dks fM;wVh ij u Hkst dj vfirw mUgsa QthZ gkftjh nh x;h gS] nwljh vksj lafonk ifjpkdyksa ls lkWB xkWB dj mUgsa fM;wVh ij Hkstdj miyC/k tu"kfDr dk nqji;ksx djrs gq, foHkkx dks {kfr igqWpkbZ x;h gS A\*\*

6. It appears from perusal of the charge sheet that the aforesaid charges have been levelled in pursuance of a complaint (details of which have not been given in the complaint). In the preliminary enquiry Sri Viveka Nand Tiwari accepted before the Enquiry Officer that even in the presence of regular conductors the duties were allotted to contract conductors for the benefit and securing the interest of the Corporation as regular conductors were put on duty on cash counters in Bag Section, Inquiry, Picking Point and Cash Counter due to excessive shortage of clerks. The petitioners submitted their reply denying the charges inter alia, that the duty was assigned by the Senior Station Incharge on regular or on contract basis and that they only carried out the lawful order of their superior officer and had nothing to do with actual allotment of duties of conductors.

7. On behalf of the petitioner the counsel for the petitioners contends that no date, time and place of enquiry was fixed in the matter and it was completed behind the back of the petitioners imposing punishment on them in violation of

principles of natural justice. The contention of the counsel for the petitioners that the Enquiry Officer was bound to follow procedure and afford an opportunity of cross-examination of witnesses to the petitioners as well as permit them to give their evidence in support of their case but the enquiry report has been submitted by him in utter violation of the principles of natural justice can not be sustained. It is further contended that a show cause notice was thereafter served on the petitioners on 15.6.2004, which was replied by them. It is stated that the Disciplinary Authority also without applying his mind to the procedure in the enquiry proceedings passed an order of termination in a routine manner though the petitioners were not at all involved at any stage in the allotment of duties or in illegal act or misconduct.

8. In support of his contentions the counsel for the petitioners has relied upon the case of State of U.P. and Others Vs. Lala Ram Chaturvedi and Another, in which it has been held that where no date, time and place was fixed for holding enquiry and no opportunity was given to the delinquent employee, in that case setting aside the order of dismissal is justified. The Court held that-

The delinquent employee has a right to challenge the enquiry report on procedural grounds or on substantive grounds, namely, the enquiry can be said to be void, defective, illegal or arbitrary on the ground that sufficient opportunity or reasonable opportunity was not afforded to the delinquent by the enquiry officer or the enquiry is bad on any such technical or legal defect which may include violation of principles of natural justice. The enquiry report can also be challenged by the delinquent on the ground that the charges could not be proved and the material available could not have been relied upon or that it was inadmissible in evidence. There may be various other reasons also for challenging the enquiry report.

It is the duty of the appointing authority/punishing authority to be convinced that the enquiry officer has proceeded with the enquiry in accordance with law and in case it has not been done, he should order for a de novo enquiry from the stage where the defect has occurred. It is only thereafter that the appointing authority shall see as to whether the charges stand proved on the basis of the evidence on record or not. The charges whether stand proved or not on the basis of the evidence on record is altogether a different question which has to be considered by the appointing authority apart from the question whether in holding the enquiry, the enquiry officer has proceeded in accordance with law or not. In case the appointing authority fails to consider these questions, he would be lacking in performance of his duties and would be passing an order which obviously when brought under judicial scrutiny may not be justified.

9. To the same effect is 2003(4) ESC-1930, Dharam Pal Singh v. Appellate Authority/Regional Administrative Committee, Agricultural Cooperative Society Centralized Service Meerut and Ors. in which it has been held where inquiry held without giving written information of date, time and place of enquiry and name of enquiry officer, the impugned order of dismissal on basis of such enquiry is

illegal and the Court quashed the impugned order and reinstated the workman in service.

10. Reliance has been placed by the counsel for the petitioners on paras 4 and 5 in *Madan Mohan Singh v. Nagar Palika, Bijnor and Ors.* 2004(3) ESC 1327 wherein it has been held that since no date, time and place was fixed in the enquiry the procedure adopted for terminating the services was vitiated in law and against settled principles of natural justice.

11. Aggrieved the petitioners preferred representation/appeal before the D.G.M. (Personal)/Incharge Eastern Zone, UPSRTC Headquarters Lucknow.

12. Emphasis has been laid by the counsel for the petitioners upon averments made in para 20 of the writ petition wherein it is averred that the appellate authority i.e. General Manager (Personal) who was entrusted with the Eastern Zone had asked the petitioners to grease his palms otherwise he will pass orders against them. In the circumstances, it is stated that the petitioners were left with no option but to move for transfer of the appeal to some other competent authority. It is emphatically asserted that the complaints of the petitioners were ignored deliberately with ulterior motives. They were not at all attended to and the appellate authority, in the mean time passed order dated 3.5.2005 rejecting the appeal of the petitioners devoid of any cogent reasons being his conclusion only on the contentions of the department.

13. It is lastly urged by the counsel for the petitioners that the petitioners were allotted the work of keeping the record of allocation of duty to the conductors and their attendance register; that the petitioners were acting strictly in accordance with the directions issued by Sri Viveka Nand Tiwari the Senior Station In charge but the department instead of proceeding against him has rewarded him by granting promotion making scapegoat of the petitioners process to justify its action, It is stated that the petitioners are not liable to be punished and pray that the order dated 3.5.2005 may be set aside and any other competent officer may be directed to decide the appeal of the petitioners.

14. On behalf of the respondents the counsel for the respondents submits that serious charges have been levelled against the petitioners and that the petitioners have acted illegally and arbitrarily during the course of their employment as it was their responsibility to ensure that interest of the Corporation does not suffer and they ought to have ensured availability of regular drivers. He further submits that since the Month of April, 2002 to June, 2002 the petitioners provided duty to the contractual drivers, neglecting the regular drivers of the Corporation, though regular drivers were available they have acted against the interest of the Corporation. According to the counsel for the respondents this was done under a conspiracy with the contract drivers to run the buses of the Corporation and that in the preliminary enquiry conducted by Sri R.R. Prajapati, Assistant Regional Manager (Finance). Gorakhpur it was found that the petitioners were actually involved in the conspiracy by making

forged signatures in the attendance register showing the presence of regular bus drivers who were not sent on duty. After the charges were levelled against the petitioners vide letter dated 11.6.2003 an enquiry was entrusted to the Assistant Regional Manager (Karmik), Gorakhpur appointing him as Enquiry Officer. It is urged that the charges against the petitioners have been established and proved and they were dismissed (removed) from service by the competent authority. The appeal filed by them was also dismissed by the authority concerned and that the petitioners have an efficacious and alternative remedy of revision before the Chief Manager (Karmik), UPSRTC, Head quarter, Lucknow against the order of dismissal which they have not availed.

15. It is lastly urged that the petitioners were appointed as "Parichalak Vyavashta Lipik" (Duty clerk) at the concerned bus station, hence they are wholly responsible for any kind of illegal, irregular work, which have been illegally during the period of their employment. It is state that the charges against the petitioners were fully established and proved in the preliminary enquiry conducted by the Assistant Regional Manager (Finance) Gorakhpur and that the enquiry was concluded after the full satisfaction of the petitioners and thereafter action has been taken against them which is just, proper, valid, legal and in accordance with law.

16. The counsel for the respondents has relied upon JT 2005 (8) SC-134, V. Ramana v. A.P.S.R.T.C. and Ors. wherein it has been held that conductor of APSRTC has failed to collect fare from passengers and issue tickets. He was found guilty of charges as the Corporation was not satisfied with the explanation offered by the delinquent during the enquiry and dismissed him from service. In writ the High Court held the order of termination justified and valid. Dismissing the appeal the Hon''ble Supreme Court has held that the Court would not interfere with administrator''s decision unless it was illegal or suffered from procedural propriety or was shocking to the conscience of the Court in the sense that it was in defiance of logic or moral standards. Only if the punishment is shocking disproportionate it would be appropriate for the Court to direct the disciplinary authority or appellate authority to reconsider the punishment. Since the High Court''s decision did not suffer from any infirmity it called for no interference.

17. With regard to the allegations of bribe demanded by the Chief Manager (Personal) for deciding the appeal of the petitioners, the counsel for the respondents has relied upon the averments made in paras 18 of 19 of the counter affidavit in which it has been stated that the representations of the petitioners have been properly considered by the Chief Manager (Karmik) UPSRTC Headquarter, Lucknow and thereafter the same have been rejected on the grounds that they are devoid of merits by order dated 3.5.2005. It is also stated that due to illegal act of the petitioners salaries were paid by them to those regular drivers who did not attend their duties as driver on account of which the Corporation has suffered irreparable loss and hardship.

18. In reply to the averments made in para 26 of the writ petition that in spite of serving 3 transfer applications for transferring the matter from the office of General Manager (Personel) to any other officers of the equivalent rank, no decision was taken by the Corporation, it is stated by the respondents that the averments made in para 26 of the writ petition are come within the realm of the policy matter of the UPSRTC Headquarter Lucknow.

In rebuttal

19. The counsel for the petitioners submits that there was no denial in the counter affidavit by the respondents that the petitioners had moved three transfer applications for transferring the matter to some other officers as the appellate authority was demanding bribe and the reply of para 26 of the writ petition is wholly evasive stating that it is policy matter of the Headquarter and if there is any complaint and the complainant is a prime witness it has to be examined by the authority. He also submits that the second appeal/revision which is alleged to lie before the Chairman of the Corporation was not available to the petitioners as post of Chairman was vacant during the relevant time, hence it is wrong to say that the petitioners have an efficacious and alternative remedy.

From the record.

20. Since the case of the petitioners is that they were not informed about the date, time and place of enquiry for cross-examination of the witnesses of Corporation and reasonable opportunity of defence was not given to them, the Court directed the Corporation to produce the Original records of the enquiry and supply a photocopy thereof before the Court at the time of hearing. Fairness and transparency in the enquiry are essential ingredients, which are missing in the enquiry and vitiates the entire enquiry. It appears from the record that a supplementary affidavit was filed by the counsel for the petitioners appending copy of the enquiry report as well as show cause notice which could not be appended with the writ petition, though the necessary averments have been made in the writ petition with regard to the enquiry initiated against the person named in the complaint namely, Sri Viveka Nand Tiwari against whom enquiry was also initiated but after report was submitted the charges were dropped against him.

21. Two supplementary counter affidavits have also been filed on behalf of the respondents in which it is admitted that Senior Station Incharge Sri Viveka Nand Tiwari has been promoted on the post Yatayat Adhikshak" by the Headquarter UPSRTC, Luckow and that the UPSRTC has framed its Service Regulations known as UPSRTC Employees (Other than Officers) Service Regulations, 1981 u/s 45(2) (c) of the Road Transport Corporation Act, 1950 laying down the terms and conditions of the services of its employees. It is averred in para 5 that on 16.10.2003 an opportunity for oral arguments were given to the petitioners by the enquiry officer and on 25.9.2003 and 30.9.2003 an opportunity to cross-

examine the witnesses was also given to the petitioners but no one appeared as a witness on behalf of the petitioners and the enquiry proceeded as such the enquiry is not vitiated as alleged by the petitioners and was held in accordance with law.

22. From perusal of Annexure-S.CA-1 and S.CA-2 it is evident from the statements of the petitioners that the Enquiry Officer has admitted that during the month of April, 2002 to June, 2002 in the peak season many employees go on leave and in these circumstances in order to run the buses of the Depot contract drivers were given duty within the prescribed limits in the interest of the Corporation. Sri Jata Shankar Lal Srivastava has stated in his evidence that those drivers whose attendance has been marked as "P" the word "NS" (Non-supply) has been endorsed. The attendance register has been signed by the Senior Station In charge and verified by the Assistant Regional Manager also.

### Conclusions

23. The undisputed facts are that it is the responsibility and duty of the Senior Station Incharge to allot duties of drivers and conductors. Out of 150 contract drivers only 5 contract drivers were utilized during the peak period, April, 2002 to June, 2002 within the permissible limits. It is indicative of the fact that a large number of contract drivers were not being utilized for running of the bus Depot as such question of undue financial gain by the petitioners is very remote and is without any basis.

24. The charges against Sri Viveka Nand Tiwari. Senior Station Incharge whose duty was to allot the bus to the drivers were dropped. He was also given promotion. If the charge against Sri Viveka Nand Tiwari has been dropped there can be no such complicity with him and the petitioners in these circumstances. It is also undisputed that it was not the work of the petitioners to allot the duty to the drivers and the conductors that in view of Headquarter circular letter dated 29.2.92.

25. It is evident from the perusal of the enquiry proceedings that Sri R.R. Prajapati, Assistant Regional Manager (Finance), Gorakhpur has given evidence before the Enquiry Officer on 25.9.2003. The petitioners moved an application for cross-examination of the complainant on the next date. Thereafter 30.9.2005 was fixed. The proceedings of 30.9.2003 bear the signatures of the petitioners and their application for cross-examination is also available on the proceedings of the enquiry submitted before the Court. On 25.9.2003 the next date was fixed for 16.7.2003, which was also noted by the petitioners. On that date the petitioners have stated that they do not want to cross-examine the witnesses which are specified in the enquiry, hence the contention of the counsel for the petitioners that the petitioners were not given reasonable opportunity of hearing is not borne out from the original record and is incorrect.

26. The contention of the counsel for the respondents that the petitioners had made forged signatures of the regular drivers showing them on duty but in fact

they were not on duty and contract drivers were given duty for financial gain is fallacious for the reasons that Sri Viveka Nand Tiwari in the preliminary enquiry before the Enquiry Officer has accepted that even in the presence of regular drivers contract drivers were allotted duty which was for the benefit of the Corporation as the many employees of the Corporation had gone on leave and the period of April 2002 to June, 2002 was the peak season and that due to excessive shortage of drivers contract drivers were allotted duty in order to run the buses smoothly. It is apparent that the petitioners were only clerks and they had marked on the attendance of the employees who were present and also marked register "NS" (Non-supply) as confirmed in their evidence before the Enquiry Officer. The entries in Registers were verified and authenticated by the Senior Station Incharge as well as by the Assistant Regional Manager.

27. It is evident from the record that the petitioners were charged and punished for alleged irregularities, which were not committed by them, Moreover, charges against were dropped. The impugned order passed against the petitioners is illegal, arbitrary and without application of mind. In the circumstances, the impugned order is liable to be set aside.

28. For the reasons stated above, the impugned order is quashed. The writ petition is allowed. No order as to costs.