
(2008) 10 AHC CK 0011
In the Allahabad High Court
Case No : Spl. A. No. 1168 of 2004

Mahatam Singh

APPELLANT

Vs

U.P. State Road Transport Corporation and Others

RESPONDENT

Date of Decision : 15-10-2008

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (2009) 1 AWC 464 : (2009) 120 FLR 941

Hon'ble Judges : H.L. Gokhale, C.J.; Dilip Gupta, J

Bench : Division Bench

Advocate : B.N. Tiwari, for the Appellant; Avanish Mishra, for the Respondent

Final Decision : Dismissed

Judgement

H.L. Gokhale, C.J.—Heard, Mr. B. N. Tiwari in support of this special appeal.

2. The appeal seeks to challenge the order dated 30.4.2004 passed by a learned Judge of this Court, dismissing the writ filed by the Appellant herein.

3. The short facts giving rise to this appeal are this wise. The Appellant was working as a Bus Conductor in the first Respondent-U.P. State Road Transport Corporation in district Ballia. On a surprise checking on 25th August, 1988 when his bus reached the Bus Station at village Jamuan, it was found that there were 39 passengers who were without ticket. The Inspector asked for the way bill, which the Appellant resisted. The Appellant even abused the Assistant Regional Manager and the checking staff at that time. This incident led to a charge-sheet on 21st October, 1992 and a departmental enquiry. The enquiry led to an order of dismissal. Internal remedies were also resorted to but they resulted into failure and hence the writ petition was filed.

4. Mr. Tiwari, learned Counsel for the Appellant submitted that the passenger Shaifullah whose statement was recorded at the time of checking was not examined in the enquiry. It is, however, to be noted that the statement of the Assistant Regional Manager, who was in the checking squad, was recorded before

the Inquiry Officer and he has proved the incident.

5. As far as the domestic enquiries concerning industrial employees are concerned, it has been laid down way back in *State of Haryana and Another Vs. Rattan Singh*, that in a domestic enquiry, the strict and sophisticated rules of evidence under the Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. In the instant case, the evidence of the Assistant Regional Manager cannot be said to be hearsay evidence for the reason that he himself was present at the time of checking and it is his report that 39 passengers were found without ticket and that the Appellant refused to give way bill and, in fact, used bad language.

6. In the case before the Supreme Court cited above also, the Bus Conductor was charged for not collecting fares from some 44 passengers. There also, the statement of the officers were relied upon and the Supreme Court held that the procedure followed was valid and permissible procedure even if the statement of the passengers was not recorded.

7. We may as well add that this judgment has been reiterated and followed by the Apex Court subsequently from time to time—firstly, in *Devendra Swamy Vs. Karnataka State Road Transport Corpn.*, and later on in *Divisional Controller, KSRTC (NWKRTC) Vs. A.T. Mane*, In the second case, the Supreme Court quoted the relevant observations of the Apex Court in *State of Haryana and Anr. v. Rattan Singh* (supra) in paragraph 8 and thereafter in paragraph 9, criticized the High Court where it substituted the finding of the Domestic Tribunal by its own findings on the ground that the evidence of the ticketless passengers was not recorded. Paragraph 9 of the judgment reads as under:

9. From the above it is clear that once a domestic Tribunal based on evidence comes to a particular conclusion, normally it is not open to the appellate Tribunals and Courts to substitute their subjective opinion in the place of the one arrived at by the "domestic Tribunal. In the present case, there is evidence of the Inspector who checked the bus which establishes the misconduct of the Respondent. The domestic Tribunal accepted that evidence and found the Respondent guilty. But the courts below misdirected themselves in insisting on the evidence of the ticketless passengers to reject the said finding which, in our opinion, as held by this Court in the case of *Rattan Singh* is not a condition precedent. We may herein note that the judgment of this Court in *Rattan Singh* has since been followed by this Court in *Devendra Swamy v. Karnataka S.R.T.C.*

8. Mr. Tewari learned Counsel for the Appellant, relied upon a few other judgments, which are all concerning public servants governed under Article 311 of the Constitution of India. Firstly, he relied upon the judgment of *State of Madhya Pradesh v. Chintaman Sadashiva Waishampayan* AIR 1961 SC 1623 and particularly paragraph 10 thereof, where the Apex Court observed that the report of the inquiry had to be furnished to the public servant concerned and if it was

not given, it would be a serious infirmity and denial of reasonable opportunity. The other judgment was in the case of Kuldeep Singh Vs. The Commissioner of Police and Others, and particularly paragraphs 32 and 42, which laid down that the witnesses in the departmental enquiry were to be examined in the presence of the delinquent concerned.

9. As stated above, there cannot be any quarrel to this proposition. But what is to be noted is that these are the cases under Article 311 of the Constitution of India concerning public servants, who have specific protection under the Constitution of India. As far as the industrial employees are concerned, what is expected is undoubtedly a fair enquiry. However, as has been held in *State of Haryana v. Rattan Singh* (supra) and which has been followed consistently thereafter, when it comes to the departmental enquiries against the employees, there is no allergy to hearsay evidence and as pointed out the instant case is in fact not a case of hearsay evidence since the Assistant Regional Manager himself was part of the checking squad and he himself checked the bus and found that there were so many ticketless passengers and that the Conductor declined to give way bill and used bad language.

10. The other submission of Mr. Tiwari is that this incident took place way back in August, 1988 and after preliminary enquiry the matter was not pursued. It is very interesting to note that in his reply to the charge-sheet dated 28 October, 1992 the Appellant pointed out that he had furnished writings of all the passengers at the relevant time and that the case has been filed. The Inquiry Officer has dealt with this objection and recorded that there was no such entry in the file, nor has the Appellant produced any material in support thereof. Obviously, if the Appellant had procured any such writings from the passengers, he would have produced them before the Inquiry Officer and, therefore, there is no substance as far as this ground is concerned.

11. Last submission of Mr. Tiwari is that in any case, this enquiry was initiated nearly four years subsequent to the incident and he relied upon a judgment of the Apex Court in the case of an employee governed under Article 311 of the Constitution of India, in the case of *State of Andhra Pradesh Vs. N. Radhakishan*, As far as this submission is concerned, we note that this submission was not specifically raised before the learned single Judge nor are there any Rules as in the case of Government employees prohibiting such enquiry being held after any particular lapse of time. In the instant case, there was a serious allegation against the Appellant. The members of the checking squad were examined. Their evidence was led before the Inquiry Officer and on that evidence, the Inquiry Officer arrived at a conclusion that the misconduct has been established. Not only that, the Inquiry Officer has looked into the past record of the Appellant and has noted that earlier also, the Appellant had been caught in similar instances. It is only on this background that the order of removal from service was passed, which has been upheld by the learned single Judge. In our view, there is no error on the part of the learned single Judge in passing the order impugned.

12. The appeal is dismissed.