
(1999) 12 AHC CK 0096
In the Allahabad High Court
Case No : Special Appeal No. 493 of 1999

Moti lal	Vs	APPELLANT
State of U.P.& Ors.		RESPONDENT

Date of Decision : 16-12-1999

Acts Referred:

Citation : (1999) 12 AHC CK 0096

Hon'ble Judges : S.H.A.Raza, J and M.Katju, J

Final Decision : Allowed

Judgement

1. According to the allegations against the appellant when the bus was checked it was found that 16 ticket less passengers were travelled and forged ticket were also recovered from his possession. A departmental enquiry was held and the appellant was ordered to removal from the service.

2. Being aggrieved against the order of removal from the service, the appellant preferred a writ petition. The writ petition was dismissed by Hon''ble the Single Judge of this Court on 28/9/1999. Being aggrieved by the said order the present special appeal has been filed.

3. We are of the view that Hon''ble Single Judge delved into the matter very deeply and found that the appellant was given full opportunity during the course of the enquiry and hence the order of the retrieval from service cannot said to be vitiated on the ground that a proper enquiry was not held. The only question which remains to be decided by this Court appears to be as to whether the order of removal is disproportionate. We feel it is certainly too harsh a punishment and is not commensurate with the gravity of the alleged charges of the misconduct.

4. In Bhagat Ram v. State of U.P., AIR 1983 SC 1171 it has been held that the "penalty imposed must be commensurate with the gravity of the misconduct and that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution." In Major G.S. Sodhi v. Union of India, AIR 1991 SC 1617 Hon''ble Supreme Court directed "in

place of dismissal the appellant shall be taken compulsory retirement from the service from the date of dismissal became operative". In the case of ExNaik Sardar Singh v. Union of India and others, 1991 SCC 213 it was observed:

"Even assuming that the offence committed by the appellant Jawan is covered by the residuary Section 63, the Court Martial has to keep in view the spirit behind Section 72 of the Act in awarding the punishment and it has to give due regard to the nature and degree of the offence. Section 63, provides for awarding any of the lesser punishments enumerated in Section 1 of the Act. Therefore, much depends on the nature of the act or omission of which the person is found guilty."

5. In the instant case the petitioner was found to be carrying ticket less passengers and certain old and used tickets were recovered from his possession but it was asserted before the learned Hon"ble the Single Judge that after issuing of the chargesheet no oral enquiry proceeded and the petitioner was punished. It was submitted that the punishment is too severe and harsh in proportion to the alleged misconduct in which the State suffered only a loss of Rs. 16.

6. Considering the facts and circumstances of the case, we are of the view that the punishment awarded to the petitioner is not commensurate with the gravity of the charge, hence the writ petition deserves to be allowed.

7. The writ petition is accordingly allowed. The impugned removal order is quashed. However, it will be open for the respondents to award any lesser punishment to the petitioner other than the removal/termination or compulsory retirement. Termination order is quashed.