

(2003) 03 KAR CK 0066
In the Karnataka High Court
Case No : Writ Appeal No. 2007 of 2002

North-West Karnataka Road Transport Corporation	APPELLANT
Vs	
K.S. Raghunathappa	RESPONDENT

Date of Decision : 25-03-2003

Acts Referred:

Industrial Disputes Act, 1947 — Section 10 (4-A), 11 A

Citation : (2003) 97 FLR 1178 : (2003) 3 KarLJ 176 : (2003) 3 KCCR 1943 :
(2003) 2 LLJ 989

Hon'ble Judges : S.B. Majage, J;G.C. Bharuka, J

Bench : Division Bench

Advocate : Puttige R. Ramesh, for the Appellant; Served, for the Respondent

Final Decision : Allowed

Judgement

S.B. Majage, J.—The appellant-Corporation has challenged the award passed by the Labour Court at Hubli and also the order of the learned Single Judge in not interfering with that award.

2. The respondent, though served with notice, remained absent and unrepresented. So, heard the learned Counsel for the Corporation only. It is submitted for the Corporation that though domestic enquiry conducted against the respondent was held as fair and proper, on some untenable grounds, the Tribunal wrongly held that the charge against the respondent was not proved, but the learned Single Judge did not appreciate the same and hence, interference by this Court is necessary. Perused the records carefully.

3. Facts giving rise to this appeal are.--The respondent, while working as conductor under the appellant-Corporation, was subjected to domestic enquiry on the charge that he had not issued tickets to 6 passengers travelling from Shimoga to Holalkere on 22-10-1988 despite collection of fare at Rs. 2.50 from each. On proof of it, he was dismissed from service by the Disciplinary Authority. He challenged it in appeal and thereafter by way of revision petition

unsuccessfully. Hence, he raised an industrial dispute by filing an application u/s 10(4-A) of the Industrial Disputes Act before the Labour Court at Hubli, which held that domestic enquiry conducted was fair and proper, but charge was not proved and consequently, set aside the order of dismissal and directed to reinstate the respondent into service with 50% of back wages. Aggrieved by it, the Corporation filed writ petition, which came to be dismissed by a learned Single Judge of this Court. Hence, this intra-Court appeal by the Corporation.

4. The Labour Court, though held domestic enquiry as fair and proper, set aside the order of dismissal after holding that the charge levelled against the respondent as not proved. The said finding has been recorded by the Tribunal on the grounds that: (1) the Corporation failed to examine any of the passengers, who boarded the bus and paid fare to the respondent; (2) passengers' statement recorded in printed pro forma cannot be used as substantive evidence; (3) cash bag of the respondent was not checked; and (4) statement of checking official, not corroborated by checking cash bag, was of no help to establish the charge. The learned Single Judge agreed with the said finding recorded by the Labour Court since, according to him, the Labour Court was right in not relying on the pro forma statement of the passengers, which was even supported by the statement of two passengers examined before the Enquiry Officer by the respondent, though did not feel it necessary to go into the question as to whether or not, not checking the cash bag of the respondent had any effect on the finding recorded by the Tribunal since the respondent himself stated that the passengers had paid only Rs. 10/-and he was demanding a further amount of Rs. 2.50 paise for issuing tickets to them as per the correct fare to be paid for the destination. It is the said finding recorded by the Tribunal and learned Single Judge, which has been seriously assailed by the Corporation. So, whether or not, said finding is perverse, is for consideration.

5. At the outset, it may be noted that in the case of State of Haryana and Another Vs. Rattan Singh, the Supreme Court has held as under:-

"It is well-settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian 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. It is true that departmental authorities and administrative Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act".

It has further observed that:

"... The simple point is, was there some evidence or was there no evidence--not in the sense of the technical rules governing regular Court proceedings but in a fair common sense way as men of understanding and worldly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic Tribunal is beyond scrutiny".

(emphasis supplied)

However, the said aspect of the matter was not considered by the learned Single Judge much less by the Tribunal.

6. On the other hand, the Tribunal and more so, the learned Single Judge gave no importance to the statement of passengers found recorded in printed pro forma since, according to them, such a statement, not being a substantive evidence, was not of any help to the Corporation and referred to the decisions of the Supreme Court in Bareilly Electricity Supply Co. Ltd. Vs. The Workmen and Others, , Central Bank of India Ltd. Vs. Prakash Chand Jain, and extracted the observations made in paragraphs 9 and 10 of that judgment and also referred to earlier judgments in The Lord Krishna Textile Mills Vs. Its Workmen, , State of Mysore Vs. K. Manche Gowda, and Kesoram Cotton Mills Ltd. Vs. Gangadhar and Others, .

7. However, in none of the said decisions, it has been held that statement of passengers recorded in printed pro forma cannot be looked into or, that it is not relevant to consider or, that it is not a substantive piece of evidence, What has been held in the said decisions is that in such enquiries, principles of natural justice are to be followed and statements of witnesses are to be recorded in the presence of a delinquent employee and to examine the witnesses from the beginning to the end and not proper to read a prepared statement of the same length.

8. That apart, the decision in the case of Rattan Singh, supra, is a later decision of three Judges" Bench whereas the decisions referred to by the learned Single Judge were rendered by 2 Judges" Bench, except the one in K. Manche Gowda's case, supra, in which the point involved was issuing second show-cause notice, etc. Not only that, in the case of Rattan Singh, supra, the Supreme Court was dealing with the case of a conductor of public transport only, which was not so in the cases referred to by the learned Single Judge. Further, in the case on hand, the record of domestic enquiry, which was held as fair and proper, were under consideration by the learned Single Judge, which also could not have been ignored besides the fact that the respondent did not contend that statement of passengers was recorded not in his presence i.e., in his absence. So, the decisions referred to by the learned Single Judge could not have been of any such assistance to hold that the statement of passengers recorded in a printed pro forma cannot be looked into/considered, So, we are unable to agree with the view taken by the Tribunal and affirmed by the learned Single Judge that a printed pro forma statement cannot be looked into even though domestic enquiry was held as fair and proper.

9. Even otherwise if assumed that the statement of passengers was not of any such help to the Corporation and ignored, there was other evidence available on record, but that evidence has not been appreciated either by the Tribunal or by the learned Single Judge except noting the other grounds that passengers were

not examined and cash bag with the respondent was not checked.

10. In fact, the Tribunal has made self-contradictory observations. At one place, it noted that.-

"... Except the statement of one checking official namely, Sri V. Srinivasa, Traffic Inspector before Enquiry Officer in support of the case of the respondent, there is no other material to prove misconduct on the part of the claimant".

Thereafter, at another place, it observed as under.-

".... such pro forma statement could not have been used as a substantive piece of evidence against the conductor unless the Corporation has produced the passenger who signed the alleged statement and examined him. If said statement is excluded from the consideration, then there is no other material except the statement of the checking official to prove the misconduct of the claimant..."

11. However, the fact is otherwise in that, enquiry record/evidence consisted not only the statement of ticketless passengers, there were unpunched tickets, offence memo, checking report, statement of defence, evidence of defence witnesses, proceedings of the confronted enquiry held by the Enquiry Officer besides report given by the Enquiry Officer recording his findings regarding charge, which have been referred to by the Disciplinary Authority in the order of dismissal of the respondent. In spite of that, without appreciating other material available, the Tribunal proceeded to base its finding only on non-examination of ticketless passengers, statement of such passengers recorded in printed pro forma and not checking the cash bag by the checking squad.

12. In the case of The North West Karnataka Road Transport Corporation, Hubli and Another Vs. S.S. Poleshi, a Division Bench of this Court has held as under:

"13. In our opinion, keeping in view the law laid down by the Supreme Court and the standard or extent of evidence which is required to be led in by the disciplinary proceedings in relation to the charge of non-issuance of tickets despite collection of fares from the passengers for proved misconduct of pilferage and past history records of the respondent and non-examination of passengers during the domestic enquiry or before the Labour Court in case the enquiry is found to be defective cannot be taken to be a ground for disproving the charge. Similarly, non-counting of cash available with the conductor as well cannot be held to be of any relevance in relation to the said charge....".

(emphasis supplied)

However, it appears that the said decision was not brought to the notice of the learned Single Judge. So, merely because cash or cash bag of the respondent was not checked by the checking officials or, that statement of passengers was not recorded by the Corporation, that could not have been taken to hold that the charge against the respondent was not proved.

13. Neither the checking of bus was disputed nor issuing offence memo to respondent nor collecting unpunched tickets (after issuing the same to the ticketless passengers) nor the proceedings of the confronted enquiry held on 26-2-1989 and 5-3-1989. So, merely because the cash bag was not checked by checking official, statement of checking official could not have been taken as uncorroborated statement, not to consider it and act upon. So, according to us, the reasons assigned by the Tribunal in holding charge as not proved were not tenable and as such, we are unable to agree with the view of the learned Single Judge also.

14. That apart, what is pertinent to note is that, according to respondent himself, there were 6 ticketless passengers in the bus when the checking squad checked the bus though, according to him, he was asking the passengers to get down from the bus and it was at that time, bus came to be checked. It is not the case or evidence of the respondent that 6 ticketless passengers had boarded the bus at the point/stage where the bus was checked. Admittedly, said passengers had boarded earlier to the place, where checking of bus had taken place. Not only that, according to the respondent, after he was offered Rs. 10/-, he was demanding balance amount for the requisite tickets, but the passengers were not ready to give and they engaged in argument and it was at that stage, checking had taken place when he was asking those passengers to get down. It is also not his case that he had refunded/returned that Rs. 10/-. So, he had Rs. 10/- paid by those ticketless passengers, to whom admittedly he had not issued tickets.

15. Even otherwise, there were 6 ticketless passengers in the bus admittedly when the bus conducted by the respondent was checked and thus, the respondent admittedly violated the rule "issue and start". So, in any event, it could be said that he committed a serious act of misconduct. However, neither the Tribunal nor the learned Single Judge appreciated the said aspect of the matter, which was not at all in dispute. So, the question of punishment comes for consideration.

16. At this juncture, reference can be had to the fact that the respondent-conductor had 3 earlier misconducts to his credit when he was subjected to domestic enquiry for the charge in question. Whether or not he was informed about his past history is immaterial, as held by this Court in the case of Karnataka State Road Transport Corporation Vs. A. Ramanna, and also in the case of E. Gurumurthy Vs. Karnataka State Road Transport Corporation, Bangalore, . So, past history of the respondent also could be taken into consideration while considering the question of punishment.

17. Now it may be noted that in the case of Regional Manager, RSRTC v. Ghanshyam v. Sharma, (2002) 1 LLJ 234 SC , the Supreme Court has observed as under:

"4. This Court in Karnataka State Road Transport Corporation Vs. B.S. Hullikatti, has held that in such cases where the bus conductors carry passengers without

ticket or issue tickets at a less rate than the proper rate, the said acts would inter alia amount to either being a case of dishonesty or of gross negligence and such conductors were not fit to be retained in service because such inaction or action on the part of the conductors results in financial loss to the Road Transport Corporation. This Court was firmly of the opinion that in cases like the present, orders of dismissal should not be set aside.

5. Furthermore, we agree with the observations of the Single Judge in the present case that the Labour Court was not justified in interfering with the punishment of dismissal. Though u/s 11A, the Labour Court has jurisdiction and powers to interfere with the quantum of punishment, however, the discretion has to be used judiciously. When the main duty or function of the conductor is to issue tickets and collect fare and then deposit the same with the Road Transport Corporation and when a conductor fails to do so, then it will be misplaced sympathy to order his reinstatement instead of dismissal".

(emphasis supplied)

18. In fact, in the case of Janatha Bazar (South Kanara Central Co-operative Wholesale Stores Limited) and Ors. v. Secretary, Sahakari Nourakara Sangha and Ors., the Supreme Court has held that "Once an act of misappropriation is proved, may be for a small or large amount, there is no question of showing uncalled for sympathy and reinstating the employee in service".

19. Not only that, there is a catena of decisions of the Supreme Court that when serious charge of misconduct is held proved, the only appropriate punishment is dismissal of workman from service and nothing less than that. If need be, reference can be had to the decisions in Apparel Export Promotion Council Vs. A.K. Chopra, , U.P. State Road Transport Corporation Vs. Subhash Chandra Sharma and Others, , Uttar Pradesh State Road Transport Corporation v. Mohanlal Gupta AIR 2001 SCW 2330, B.S. Hullikatti's case, supra, Union of India (UOI) and Others Vs. Narain Singh, , Devendra Swamy Vs. Karnataka State Road Transport Corpn., and latest one in Regional Manager, Uttar Pradesh State Road Transport Corporation, Etawah v. Hotilal and Anr. AIR 2003 SCW 801. So also, this Court, in the cases of North-West Karnataka Road Transport Corporation, A. Ramanna and E. Gurumurthy, supra, has held that in such cases, punishment of dismissal of workman from service is the appropriate punishment. Thus, it is well-settled that in such a case of serious misconduct, the only appropriate punishment is dismissal of workman from service.

20. In the above view of the matter, the award passed by the Tribunal in directing the Corporation to reinstate the respondent into service cannot be maintained and as such, we are even unable to agree with the order passed by the learned Single Judge and as such, both the award and order require to be interfered with.

In the result, the appeal is allowed. The impugned award passed by the Labour Court and the order of the learned Single Judge are set aside and restored the

order passed by the Disciplinary Authority in dismissing the respondent from service. However, parties are directed to bear their respective costs.