
(2012) 08 AHC CK 0262

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 32673 of 2011

Om Prakash Gupta

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 01-08-2012

Acts Referred:

Citation : (2013) 1 ADJ 514

Hon'ble Judges : P.K.S. Baghel, J

Bench : Single Bench

Advocate : Rajesh Kumar Dubey, for the Appellant; N.P. Singh and C.S.C., for the Respondent

Final Decision : Allowed

Judgement

P.K.S. Baghel, J.—The petitioner was a Bus Conductor in U.P. State Road Transport Corporation, (hereinafter referred to as UPSRTC). He has made this writ petition for quashing the order dated 29.4.2011 passed by the Regional Manager, UPSRTC, Gorakhpur, and order of Assistant Regional Manager, UPSRTC, Mahrajganj, whereby it was ordered to recover a sum of Rs. 1,93,355/- and rejection of his appeal respectively. The brief facts as contended by the petitioner are:

The petitioner was initially appointed as a Bus Conductor in U.P. State Road Transport Corporation, his service conditions are governed by the U.P. Road Transport Corporation Employees (other than officers) Service Regulation, 1981.

The petitioner in the year 2004 was working at Deoria Depot. He was assigned a duty during the Magh Mela at Allahabad. On 19.1.2004 he was on duty on Bus No. U.P. 53-8599 from Deoria to Allahabad alongwith Driver Satya Deo and Prem Narayan and he was issued Bag No. 62. It is stated that while returning from Allahabad on 22.1.2004 due to some mechanical snag the Bus broke down near Busgaon, district Gorakhpur. The petitioner informed the concerned authorities regarding the said fault. It is, further stated that the Bus could not be repaired

on 23.1.2004 due to heavy rains and ultimately the Bus was repaired/mended on 24.1.2002 thereafter, the petitioner proceeded with the Bus from Gorakhpur Station to Deoria after passengers boarded the Bus. However, when the Bus reached at Kumsi Jungle two or three passengers of the Bus sprang up and at the gun point snatched his official bag which was issued to the petitioner and fled away with bag and cash. The petitioner got the First Information Report lodge in the nearest Police Station Kharabar and also informed the Junior Central Incharge (Account) Deoria as well as to the Assistant Regional Manager, Deoria Depot on telephone. On reaching Deoria he submitted a copy of the First Information Report to the Senior Central Incharge, Deoria Depot alongwith with a letter dated 26.1.2004 wherein he detailed the incident.

On 30.1.2004, a charge-sheet was issued by the Assistant Regional Manager, Deoria wherein the petitioner was charged that from 22.1.2004 to 24.1.2002 petitioner kept the cash with him which he ought to have deposited at Gorakhpur Depot and as such on account of his negligence there was a loss of Rs. 12,000/-. The petitioner was called upon to submit a reply within two weeks to the charge-sheet.

2. The petitioner preferred not to file reply to the charge-sheet. However, the Enquiry Officer fixed 23rd May, 2006 for the petitioner's evidence. On the said date the petitioner appeared before the Enquiry Officer and he gave his evidence. The petitioner was given opportunity to call any witness in support of his case. However he did not avail the said opportunity. The Enquiry Officer submitted his report wherein he found petitioner guilty. The Enquiry Officer further recorded a finding that the petitioner was guilty of negligence for the reasons that he did not deposit the cash of Rs. 12,000/- at Gorakhpur Depot, when the Bus was under repair at Gorakhpur Workshop.

The Disciplinary Authority issued a show-cause notice on 10.2.2011 and a copy of the enquiry report was also enclosed with the show-cause notice. The petitioner had submitted his reply to the said show-cause notice on 17.2.2011.

The Disciplinary Authority by impugned order dated 19.2.2011 accepted the enquiry report and the charges were found to be proved. Petitioner was directed to deposit Rs. 1,93,355/-, the pecuniary loss caused to the UPSRTC. It has been further directed that the said amount shall be recovered by way of deduction of Rs. 3,000/- per month from the salary of the petitioner. Except the recovery of the said amount no other punishment was awarded to the petitioner.

Dissatisfied by the order of the Disciplinary Authority the petitioner preferred an appeal in terms of the U.P. Road Transport Corporation Employees (other than Officers) Service Regulation, 1981. Ground of appeal is brought on record by the petitioner as Annexure-9 to the writ petition. The Regional Manager, UPSRTC, Gorakhpur, the respondent No. 2 herein, has rejected the appeal of the petitioner vide order dated 29.4.2011. The order of the Regional Manager, UPSRTC, Gorakhpur is annexed as Annexure-8 to the writ petition.

3. I have heard learned counsel for the petitioner and Sri. Narendra Pratap Singh, learned counsel for the UPSRTC.

Learned counsel for the petitioner has submitted that the impugned orders are illegal, highly arbitrary. The Disciplinary Authority as well as the Appellate Authority has passed the impugned orders ignoring the explanation against the show-cause notice. The Appellate Authority has also not consider the grounds of appeal. He has further stated that the Disciplinary Authority has failed to consider that though the petitioner was supposed to deposit the cash of Rs. 12,000/- kept in the bag but he could not deposit the bag in which cash, unsold tickets and margpatra were kept because of the robbery on the way.

4. I have considered the respective submissions made by learned counsels for the parties. It is a common ground that the petitioner's bag was snatched by the miscreants. The said bag contained Rs. 12,000/- cash, unsold tickets and some papers. It is not disputed that First Information Report was promptly lodged by the petitioner and he had also immediately informed his concerned superior officer on the telephone. The Enquiry Officer was appointed who issued the charge-sheet to the petitioner but for the unexplainable reasons he preferred not to submit the reply to the charge-sheet. No reasons are available on the record for not filing the reply to the charge-sheet. In the writ petition also no grounds have been taken that there was any violation of principles of natural justice or the enquiry proceedings were unfair. The petitioner had appeared before the Enquiry Officer and in his defence he had made his statement.

5. Learned counsel for the petitioner has relied on the judgment of this Court in Hardwari Lal Vs. State of U.P. and Others, . In that case it was found that there was no proper enquiry as two material witnesses were not examined. Learned counsel for the petitioner submitted that important witness in this case has not been examined namely the Junior Central Incharge (Account), as such the enquiry is vitiated. He has further relied on the decision of this Court in Mohd. Shahid Vs. Aligarh Muslim University and Another, , in this case, this Court held that where the delinquent employee refuses to participate in the enquiry he cannot turn around and complain that the dismissal was against the principle of natural justice.

6. I fail to understand as to how the aforesaid case help the contention of the learned counsel for the petitioner. Both the cases relied by him are not relevant in the facts and circumstances of this case. The petitioner has not taken any ground in the writ petition that the disciplinary proceeding was illegal or unfair. He had preferred not to file the reply to the charge-sheet nor he produced any witness although he participated in the enquiry and had given his statement. In the facts and circumstances of this case the judgments relied by the petitioner's counsel are of no assistance to his submissions.

7. From the perusal of the enquiry report it is evident that the Corporation has also not produced any witness to prove the petitioner's charges mentioned in the

charge-sheet and in most cursory manner had recorded the finding that the petitioner was guilty of the negligence. It is noteworthy that the loss of cash was only to the tune of Rs. 12,000/-, however, the finding had been recorded that the loss to the Corporation was caused to the tune of Rs. 1,93,355/-. There is no detail as to how the authorities have arrived at the conclusion the loss of about Rs. 1,93,355/-. From the record it appears that the total value of the unsold tickets which were also lost in the alleged robbery had been calculated by the Disciplinary Authority.

8. In the ground of appeal one of the ground taken by the petitioner was that the lost ticket in the said incident were cancelled by the order dated 20.12.2010 and office order of the said date have been issued from the office of the Senior Depot Incharge, Deoria. In the writ petition the petitioner has made a statement in paragraph 17 of the petition that the Senior Central Incharge UPSRTC, Deoria had declared the unsold tickets, children tickets, luggage tickets, blank tickets and Margpatra invalid. For the sake of convenience paragraph 17 of the writ petition is extracted herein below:

17. That it is relevant to submit that by the order of the Senior Central Incharge U.P.S.R.T.C. Deoria the unsold tickets, children tickets, luggage tickets, blank tickets and Margpaptra which were issued to the petitioner have been declared invalid. In this respect a true copy of the order dated 20.12.2010 has been annexed as Annexure-11 to this writ petition.

In the counter-affidavit the said fact has not been denied. In reply to paragraph 17 of the writ petition, paragraph 13 of the counter-affidavit is extracted herein below:

13. That the contents of paragraph No. 17 of the writ petition are matters of record hence need no reply.

In the ground of appeal this issue was raised, however, the said relevant document escaped the notice of the Disciplinary Authority as well as the Appellate Authority. The Appellate Authority ought to have considered the said fact when this issue was specifically mentioned in the ground of appeal. The above mentioned office order declaring all the unsold tickets and the documents mentioned herein above as cancelled/invalid, the recovery for the same appears to be not justified. However, the Appellate Authority has not considered this aspect of the matter. The order of the Appellate Authority is a cryptic and suffers from non application of mind. A perusal of the order of the Appellate Authority appears that the order of the Disciplinary Authority has been reiterated by the Appellate Authority without application of mind. The Supreme Court in the case of Union of India (UOI) and Others Vs. R. Reddappa and Another, , has held that if the Appellate Authority does not apply its mind and simply repeat the reasons and finding of the Disciplinary Authority the order becomes further weak.

Having considered the aforesaid facts and circumstances of the case, the end of justice would be met in case the order of the Appellate Authority is set aside and

the matter is remitted back to it to reconsider the matter afresh.

Accordingly, the matter is remitted back to the Appellate Authority, who will hear the appeal afresh after giving the opportunity of hearing to the petitioner as expeditiously as possible preferably within a period of three months from the date of communication of this order.

In these background, impugned order dated 29.4.2011 passed by Regional Manager, U.P. State Road Transport Corporation, Gorakhpur i.e. respondent No. 2 to the writ petition is set aside. The writ petition is allowed.

However, no order is passed as to cost.