
(2008) 03 AHC CK 0108
In the Allahabad High Court
Case No : Writ Petition No.356 (S/B) of 1996

Qazi Jamil Ahemad

APPELLANT

Vs

U.P.S.R.T.C., Lucknow and Others

RESPONDENT

Date of Decision : 28-03-2008

Acts Referred:

Citation : (2008) 03 AHC CK 0108

Hon'ble Judges : U.K.Dhaon, J and Devi Prasad Singh, J

Final Decision : Disposed Of

Judgement

1. Heard Shri Mohammad Ali, the learned counsel for the petitioner and Shri Prabhakar Tiwari, learned counsel for the opposite parties.

2. In the instant writ petition, the petitioner has challenged the judgment and order dated 22.9.1995, passed by the State Public Services Tribunal, Lucknow, the order of removal dated 3.11.1989 and the order dated 15.10.1990, passed by the appellate authority.

3. The petitioner has alleged that he was appointed on the post of conductor on 20.10.1970 in the U.P. Government Roadways. The petitioner's services were thereafter transferred to the U.P. State Road Transport Corporation. The petitioner while serving on the post of Conductor under Regional Manager, Faizabad was placed under suspension by the order dated 3.3.1989. A chargesheet dated 3.4.1989 was served upon the petitioner. In the said chargesheet, there was a charge to the effect that in the vehicle of the petitioner, 19 passengers were traveling without ticket on 23.1.1989. The petitioner submitted a reply to the chargesheet before the enquiry officer. The enquiry officer thereafter submitted his enquiry report on 2.6.1989, on the basis of which, a show cause notice was served upon the petitioner on 2.8.1989 and on 3.11.1989, the order of removal was passed by the competent authority. The petitioner being aggrieved with the removal order preferred a statutory appeal before the Deputy General Manager, U.P. Road Transport Corporation, Lucknow which was dismissed by the order dated 15.10.1990. Being aggrieved by the

removal order dated 3.11.1989 and the order dated 15.10.1990, passed on appeal, the petitioner filed a claim petition before the State Public Services Tribunal which was dismissed by the judgment and order dated 22.9.1995.

4. The learned counsel for the petitioner submits that after submission of the reply to the chargesheet by the petitioner, no oral enquiry was conducted by the enquiry officer and on the basis of the chargesheet and the reply, the enquiry report was submitted before the disciplinary authority. He further submits that no date, time and place of holding enquiry was disclosed by the enquiry officer and no witnesses were examined by the department to prove the charge levelled in the chargesheet. The learned counsel for the petitioner has relied upon the decisions of Hon"ble Supreme Court, reported in (2002) 7 SCC 142, *Sher Bahadur v. Union of India and others*; 2003 (21) LCD 610, *Radhey Kant Khare v. U.P. Cooperative Sugar Factories Federation Limited* and 2004 (22) LCD 1551, *Rajendra Prasad Tripathi v. State of U.P. and others*.

5. On the strength of the aforementioned judgments, the learned counsel for the petitioner submits that the impugned removal order as well as the order passed by the appellate authority deserve to be quashed. He further submits that in a most arbitrary and illegal manner, the tribunal has dismissed the claim petition preferred by the petitioner.

6. Shri Prabhakar Tiwari, the learned counsel appearing on behalf of the opposite parties submits that sufficient opportunity was afforded to the petitioner by the enquiry officer and the petitioner in writing has also given that he does not want to adduce any evidence in support of his defence. He further submits that there is no illegality in the impugned removal order as the Conductor holds a post of trust. The learned counsel for the opposite parties has relied upon the decisions of Hon"ble Supreme Court, reported in (1998) 2 SCC 400, *Nagar Palika, Natar v. U.P. Public Services Tribunal, Lucknow and others*; (2005) 7 SCC 338, *V. Ramana v. A.P. SRTC and others* and (2006) 6 SCC 187, *Divisional Controller, N.E.K.R.T.C. v. H. Amaresh*. He also submits that there is no illegality in the judgment and order passed by the State Public Services Tribunal and the writ petition deserves to be dismissed.

7. We have considered the submissions, made by the learned counsel for the parties and gone through the record.

8. It is admitted case of the parties that while the petitioner was posted as Conductor under Regional Manager, Faizabad, he was placed under suspension by the order dated 3.3.1989. Thereafter a chargesheet, a charge for carrying 19 passengers without ticket on 23.1.1989 was levelled against the petitioner. The petitioner submitted reply to the chargesheet.

9. The learned counsel for the opposite parties has placed before us the record pertaining to the enquiry proceedings. The record reveals that after submission of the chargesheet, a reply was submitted by the petitioner and no witnesses were examined by the department to prove the charges mentioned in the

chargesheet. In the absence of any evidence being led by the department, the charges cannot be said to be proved or established. It also cannot be said that the delinquent officer associated in the enquiry proceedings. The enquiry was conducted by the enquiry officer in violation of the principle of natural justice. It is settled law that after a chargesheet is given to a delinquent employee, an oral enquiry is a must whether the employee requests for it or not.

10. In the instant case, no witnesses were examined by the department to prove the charges mentioned in the chargesheet. We are of the view that it is no enquiry in the eyes of law as no date, time and place of enquiry was fixed by the enquiry officer. The impugned removal order and the order passed by the appellate authority are legally not sustainable.

11. In the result, the writ petition succeeds and is hereby allowed. The impugned judgment and order dated 22.9.1995, passed by the State Public Services Tribunal, Lucknow is hereby set aside and the impugned removal order dated 3.11.1989 and the order passed by the appellate authority dated 15.10.1990 are hereby quashed with all consequential benefits. A liberty is granted to the opposite parties to hold a fresh enquiry in accordance with law from the stage the reply was submitted by the petitioner to the chargesheet. The consequential benefits will be subject to the outcome of fresh enquiry. Since the petitioner has already attained the age of superannuation, the opposite parties shall conclude the disciplinary proceedings expeditiously.