

(1974) 05 OHC CK 0003

In the Orissa High Court

Raghunath Samanta Singhar

APPELLANT

Vs

General Manager, Orissa Road Transport Co. Ltd. and Another

RESPONDENT

Date of Decision : 09-05-1974

Acts Referred:

Industrial Disputes Act, 1947 — Section 33

Citation : (1975) 1 LLJ 79

Hon'ble Judges : R.N. Misra, J;B.K. Ray, J

Bench : Division Bench

Judgement

B.K. Ray, J.—This application is directed against the order of the General Manager, Orissa Road Transport Co. Ltd., dated 22-3-72 (Annexure 12) directing that the petitioner be discharged from service of the company on payment of one month's wages in lieu of notice and the order of the Presiding Officer, Labour Court, Orissa, Bhubaneswar dated 28-3-73 (Annexure 13) approving the action taken by the management as per Annexure 12.

2. The short facts giving rise to this application may briefly be stated thus—The petitioner was working as a conductor of the O.R.T. Co. Ltd. of which opposite party No. 1 is the General Manager. On 11-5-69 there was a surprise check of the vehicle ORG 1520 in which at the relevant time the petitioner was working as conductor. On check, it was found that 50 passengers were travelling in the said bus without ticket. Consequently, a penalty of Rs. 73.50 was levied against the petitioner and a penalty ticket (Annexure 1) was issued against him. The petitioner was then charged on an allegation that he was attempting to misappropriate the revenue of the company by not issuing tickets to the passengers. The petitioner submitted his explanation whereafter a charge-sheet (Annexure 2) was filed against him. In the explanation the petitioner admitted that only 5 passengers were travelling in the vehicle for whom tickets had not been issued. During the surprise check this was detected and a penalty levy of Rs. 7.35 was made against him. Subsequently, the penalty ticket had been manipulated to read as for Rs. 73.50. Thereafter, a final report was submitted by

the enforcement officer on 25-6-69 and on the said report Sri A. Ali Khan, Deputy General Manager (Stores) was appointed as the enquiring officer to enquire into the charge levelled against the petitioner. The said officer, after recording evidence, both for the company as well as for the petitioner, submitted a report with a finding that the charge against the petitioner had been proved. Opposite party No. 1 thereafter called upon the petitioner to show cause as to why he should not be discharged from service. The petitioner in response to the notice filed his show cause in which he reiterated his earlier stand. On this show cause, opposite party No. 1 passed orders directing that the petitioner should be discharged from service, but this order was not communicated to the petitioner. On 24-8-70 the petitioner again received a notice containing similar allegations and was called upon to explain as to why appropriate disciplinary action should not be taken against him for his misconduct. Sri A. Ali Khan was again appointed as the enquiring officer. The reason for issue of this fresh notice was that the earlier proceeding against the petitioner having been initiated on the charge-sheet submitted by a person who was not the appointing authority, the petitioner could not be discharged as a result of the said proceeding. When the petitioner was asked to produce evidence in the proceeding started afresh, he said that he did not want a fresh enquiry. Thereafter, the enquiring officer submitted a report to opposite party No. 1 wherein the petitioner was found guilty of the charges. Opposite party No. 1 thereafter on this report made an endorsement sticking to his previous decision. On 27-3-71 the petitioner was served with an order (Annexure 12) of opposite party No. 1 discharging him from service. As per the order of the opposite party No. 1 contained in Annexure 12, the order of discharge was to take effect from the date of application u/s 33(2)(b) of the Industrial Disputes Act. Therefore, the matter was referred by opposite party No. 1 to the Presiding Officer, Labour Court, Bhubaneswar (opposite party No. 2) for his approval. Opposite party No. 2 accorded approval to the proposed action of opposite party No. 1 by his order dated 28-3-72 (Annexure 13). According to the petitioner, he should have been told that on account of a legal defect in the first proceeding the second proceeding was initiated against him. Due to non-disclosure of this fact the petitioner as indicated above made a submission before the enquiring officer that as an enquiry had already taken place there was no necessity for a second enquiry. It is, therefore, contended that the petitioner has been seriously prejudiced. So far as the order of approval of opposite party No. 2 is concerned, it is said that the said order has been passed without keeping in mind the principles of law. On these allegations the petitioner pray for a writ to quash the said two orders, viz., Annexures 12 and 13.

3. The case of opposite party No. 1 as made out in his counter is that the petitioner having an alternative remedy under the Industrial Disputes Act, he is not entitled to invoke the writ jurisdiction of this Court for the reliefs claimed by him. It is further urged that there being no error apparent on the face of the impugned orders sought to be quashed, the said orders cannot be interfered with. According to opposite party No. 1, the petitioner after being charge sheeted

took part in the first disciplinary proceeding by cross-examining witnesses for the prosecution and by examining witnesses in support of his defence. After conclusion of the enquiry when he was found guilty by the enquiring officer, the appointing authority, after accepting the enquiry report, called upon the petitioner to show cause as to why he shall not be discharged from service. The petitioner submitted his explanation and was heard. The appointing authority, after careful consideration of all the facts and circumstances, passed an order on 6-5-70 discharging the petitioner from service. Before this order was communicated to the petitioner, it was detected by opposite party No. 1 that the disciplinary proceeding had been initiated against the petitioner by a person other than the appointing authority. In view of this opposite party No. 1 thought that the entire proceeding against the petitioner had been vitiated on account of the initial defect as pointed out above. Therefore, the original proceeding was dropped against the petitioner at this stage and he was served with a fresh charge-sheet in substantially the similar terms as on the previous occasion by the appointing authority (opposite party No. 1). The petitioner thereafter submitted his explanation. But at the time of enquiry he stated that he did not want to have any fresh enquiry and insisted upon final orders being passed against him on the basis of the materials found in the course of the earlier enquiry. In view of this, the enquiry report of the earlier enquiry was again taken into consideration by the enquiring officer who submitted a fresh report finding the petitioner guilty of the charges framed against him. Thereafter, opposite party No. 1 passed the impugned order (A/12) on 22-3-72 after consideration of the petitioners' second show cause and the evidence recorded in the domestic enquiry. As per the observation of opposite party No. 1 in Annexure 12 that the order of discharge will take effect from the date of the application u/s 33(2)(b) of the Industrial Disputes Act, the matter was referred to the Labour Court. The presiding officer (opposite party No. 2) after having heard the parties approved the action sought to be taken against the petitioner by opposite party No. 1 by order (Annexure 13). In these circumstances, according to opposite party No. 1, the impugned orders do not call for any interference.

4. Mr. P.K. Misra, learned Counsel for petitioner first of all urges that as a matter of fact there were only 5 passengers without any ticket in the bus in question and not 50 as alleged. According to him, the penalty ticket issued to the petitioner was only in respect of 5 passengers but subsequently the management changed the penalty ticket to 50 passengers to travel in the bus without any ticket. This factual aspect is not admitted by opposite party No. 1 who asserts that as a matter of fact the petitioner was carrying 50 passengers at the relevant time without any ticket. In view of this controversy between the parties, we are unable to accept Mr. Misra's contention that as a matter of fact only 5 passengers were being carried without any ticket at the relevant time and not 50 as alleged by opposite party No. 1. Whether as a matter of fact 50 or 5 passengers were being carried without any ticket is of no consequence, so far as the merit of this application is concerned, because in either case it would amount

to a misconduct on the part of the petitioner. It is not disputed that in course of the first enquiry the petitioner took part by cross examining the prosecution witnesses and also by examining his own witnesses and that there was a finding against him in the enquiry. Opposite party No. 1 accepted this finding and actually passed an order of discharge against the petitioner. It was at this stage the authority concerned thought that the proceeding against the petitioner was vitiated on account of the fact that the proper authority did not initiate the proceeding by framing charge against him. Consequently, the order of discharge passed against the petitioner by opposite party No. 1 was not communicated to him and the company initiated a proceeding afresh on the very same allegations. The petitioner was called upon to submit his explanation in respect of the charge framed against him once again. He submitted his explanation and when a fresh enquiry commenced, he intimated that he would rely on the materials found in the earlier enquiry and insisted that final orders be passed on the very same materials found in the earlier enquiry. Mr. Misra, however, contends that the petitioner without knowing that the original proceeding had become invalid due to the fact that a charge was framed against the petitioner by an unauthorised person intimated that he would accept the evidence already led in the first enquiry. The non-disclosure of the fact that the petitioner was to face a fresh proceeding has prejudiced him. Had he known that the earlier proceeding had become invalid he would have taken part in the subsequent enquiry not only by cross-examining the prosecution witnesses who were to be examined, but also by adducing defence evidence. The evidence recorded in the first enquiry according to Mr. Misra, cannot be taken as evidence for the purpose of the subsequent disciplinary proceeding. In our view, there is no force in this contention of Mr. Misra. The petitioner when he was charge sheeted for the second time was asked to submit his explanation which he did. Thereafter when the enquiry commenced once again, he with his eyes open intimated that he would rely upon the evidence already recorded in the earlier enquiry. He knew what was the evidence adduced in the said enquiry. Therefore, it was open to him when he was given another opportunity to adduce evidence to come forward to take part in the subsequent enquiry by adducing any further evidence if he so liked. With his eyes open he did not choose to adduce any evidence in the subsequent enquiry and clearly intimated to the authority concerned that he would rely upon the evidence already on record in the earlier enquiry. That being the position, we are unable to accept Mr. Misra's contention that the petitioner has been prejudiced in any manner and that principles of natural justice have been violated. In our view the disciplinary authority in view of the representation made by the petitioner was quite competent to rely upon the evidence and findings already recorded in the earlier enquiry and to take action accordingly. There can be no dispute over the fact that the petitioner was found guilty by the enquiring officer, and, therefore, opposite party No. 1 was fully competent to take disciplinary action against him on such finding. This is what has been done substantially . The impugned order of opposite party No. 2 reveals that he has taken into consideration all the aforesaid facts and circumstances and has

concurred with the view of opposite party No. 1, so far as the proposed action against the petitioner is concerned. We do not find any error of law or of fact in the said order.

5. In the result, therefore, the writ application fails and is accordingly dismissed but without costs.

R.N. Misra, J.

6. I agree.