
(2005) 03 RAJ CK 0001

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 832 of 1997

Rajasthan State Road Transport Corporation

APPELLANT

Vs

Manohar Lal Deora

RESPONDENT

Date of Decision : 02-03-2005

Acts Referred:

Citation : (2005) 3 RLW 2109 : (2005) 3 WLC 331

Hon'ble Judges : Rajesh Balia, J;Dinesh Maheshwari, J

Bench : Division Bench

Advocate : Sangeet Lodha, for the Appellant; Girish Joshi for M.R. Singhvi, for the Respondent

Judgement

Rajesh Balia, J.—We heard learned counsel for the parties.

2. The respondent was appointed as a Conductor on probation w.e.f. 4.7.1977 by the appellant Rajasthan State Road Transport Corporation (hereinafter referred to as "the Corporation") and was posted at Jodhpur Depot. While, he was discharging his duties as Conductor on Jodhpur-Kota route, by order 1.12.1982 he was put under suspension in contemplation of an inquiry. The memorandum of charges dated 6.1.1983 was issued. The memorandum of charges consisted as many as 9 charges, out of which 7 charges related to making interpolation in tickets issued by him in duplicate and a copy of which was retained for submitting his accounts of collections by converting the name of the terminal Kota to terminal Kekri. On the basis of this conversion, it was alleged that the delinquent officer ought to have deposited with the Corporation full fare chargeable between the two terminals namely from Jodhpur to Kota at Rs. 42/- per ticket but the delinquent officer has deposited only that amount which was chargeable from the commencement of journey to the terminal point of the journey shown in the tickets as altered and, therefore, he has deposited less amount with the Corporation. One of the charges related that he has issued such tickets which were to be issued for journey for which ticket value was more than Rs. 15/-for lesser amount and then by adding sums to add up to 15 rupees, were

deposited by him, whereas in respect of such ticket also, the delinquent officer ought to have deposited the full charges of the ticket for the entire route on which he was discharging his duties. Another charge was about depositing less amount because of issuing the child tickets for adults which has resulted in less deposit of amount by Rs. 106/-.

3. So far as the last charge, referred to above, the delinquent officer had admitted that he has mistakenly issued child tickets and deposited the amount of Rs. 106/- with the Corporation. However, rest of the charges were denied by him. He has specifically stated that he has not made any interpolation and cutting in the tickets issued on route, nor there has been any interpolation in the amount of fair stated in the tickets issued to the respective passengers and the delinquent officer has not deposited amount less than what has been received by him in respect of any of the tickets. There were no interpolation in way bills also. The delinquent officer also took the stand that when he submitted ticket book and accounts, there was no over-writing. The witnesses who have been examined during the course of inquiry have also supported the case of delinquent officer with regard to submission of way bill and ticket book with the Corporation. They also stated that they had not seen any over-writing on the same. However, the Inquiry Officer found in his report that all charges levelled against the delinquent officer stand proved and considering the inquiry report and the representation submitted by the delinquent officer, by order dated 7.5.1983, the delinquent officer was removed from the service and his balance remuneration for the suspension period has been forfeited.

4. The appeal against the order passed by the Regional Manager, Jodhpur was rejected by the Appellate Authority by order dated 5.10.1983.

5. This led to filing of S.B. Civil Writ Petition No. 2814/1993 which has been allowed by the learned Single Judge by his order dated 13.5.1997.

6. The learned Single Judge has found firstly that the conduct of inquiry was not just and fair. The delinquent officer has demanded summoning of defence witness Mohd. Ali the Checking Clerk, but his prayer has been rejected without recording any reason which vitiates the inquiry. The contention of the Corporation that the delinquent officer has not disclosed the relevance of the witness on the issue on which he wants to examine him, therefore, the inquiry officer did not think it proper and had not issued summons to Mohd. Ali would not vitiate the inquiry nor will it affect the fairness of the inquiry otherwise, was not sustained.

7. The learned Single Judge has also examined the record and the proceedings and has reached conclusions that there has been no interpolation nor any such deficiency has been noticed in the amount of tickets entered into the ticket sheet and the amount charged from the passengers has been in accordance with the amount chargeable for the destination for which the ticket has been issued. After examining the tickets the learned Single Judge found that in any amount of the

incriminating tickets, no over- writing or cutting is visible and in some of the tickets, there appears to be some interpolation about which one can have suspicion but the suspicion cannot take the place for proof of the misconduct of such a grave nature, therefore, the finding reached by the Inquiry Officer and agreed by the Disciplinary Authority without assigning any reason is founded on no legal evidence, and the same cannot be sustained. As a result of the aforesaid conclusion, the impugned order of punishment imposed by the Disciplinary Authority and affirmed by the Appellant Authority was quashed. The petitioner was directed to be reinstated with consequential benefits of continuity of service but his entitlement to back wages was restricted to 50% as agreed to by the counsel for the petitioner.

8. This has led to filing of this special appeal.

9. Learned counsel for the appellant has also made available to us the record of inquiry proceedings which was required to be looked into as both the issues decided by the learned Single Judge largely proceed on the record of inquiry itself.

10. After considering the submissions made before us and examining the record, the first issue about the fair opportunity to the delinquent officer to defend himself, we find that the undisputed facts which emerge from the inquiry proceedings are that after the Inquiry Officer was appointed, the first proceedings took place on 26.3.1983. The delinquent officer has stated that he may be given opportunity to file reply to the charge sheet. The case was adjourned for four days to 30.3.1983 for submitting the reply and for producing the evidence of the Corporation. On that day the delinquent officer stated that the reply already submitted by him to the charge sheet before the initiation of the inquiry may be treated as reply to the charge sheet and the inquiry was adjourned again for four days only to 4.4.1983 and summons were issued to prosecution witnesses. On 4.4.1984, no witness of the Corporation was present, for which, summons were again issued to the Corporation's witness and the application of the delinquent officer for appointing defence nominee was allowed. The case was adjourned by three days to 7.4.1983. On 7.4.1983, the statement of Shri Satya Narayan Moondra, witness of the Department was recorded and the case was listed for next day i.e. 8.4.1983 for recording the statement of delinquent officer by closing the evidence of the Corporation. The delinquent officers' statement was recorded on 8.4.1983. The delinquent officer has given an application disclosing the list of witnesses he wanted to examine and requested the Inquiry Officer to summon the witnesses which included the name of one Shri Mohd. Ali, an employee of the Corporation. The summons were ordered to be issued to the witnesses and on 22.4.1983 witnesses of defence namely, Brij Mohan, LDC, Narayan Lal, LDC and Ram Chandra were present and their statements were recorded. Mohd. Ali, an employee of the Corporation, was not present despite service of summon and it was stated that he cannot be summoned again and the delinquent officer was directed to produce the said

witness himself on the next date, otherwise, the evidence shall be closed. The matter was again fixed after four days on 26.4.1983. On 25.4.1983, the delinquent officer submitted an application in writing stating that the defence witness Mohd. Ali, LDC, who was a checking clerk, is suspended for a while and he has not been served with the charge-sheet and, therefore, he is at HQ Jaipur. It was stated in the application that Mohd. Ali, has defence witness is in the employment of the Corporation and his statement is very essential for his defence, he may be summoned and if the inquiry is completed without giving this opportunity, it will seriously prejudice the inquiry proceedings. On this application, there is a note appended by the inquiry officer on 26.4.1983 to the effect that place it in the file of Shri Manohar Lal where the order is to be passed.

11. The proceeding of 26.4.1983 would reveal that while taking notice of the application submitted by the delinquent officer, the previous order sheet was referred, in which, the delinquent officer was directed to produce his evidence himself (aj khud) but he has not brought his witness and it was also made clear that no further opportunity will be given, therefore, he cannot be granted his prayer. It was also observed by the Inquiry Officer that this application to summon the witness has been filed by the delinquent officer to corroborate his defence in future.

12. The tenor of order dated 26.4.1983 clearly shows that the Inquiry Officer has refused to exercise his power in gross arbitrary and unfair manner to summon the defence witness namely Mohd. Ali, an employee of the Corporation who has earlier been summoned but could not be present despite service, for which, the plausible reason was given on that date but the Inquiry Officer held the delinquent officer responsible for not bringing the witness by himself. It is strange when it was made out clearly that the witness namely Mohd. Ali is an employee of the Corporation and was under suspension and was at Headquarters at Jaipur, it needed the official to seek permission to leave head quarter to present himself before Inquiry Officer. Still, the Inquiry Officer refused to look into the matter because he has made up his mind not to call the witness on last date. Further, the witness was an employee of the Corporation and was not a person controlled by the delinquent officer and it depended on the Corporation to grant permission to leave Headquarters to present himself as a defence witness of delinquent officer, a reasonable stand was taken by the delinquent officer to grant an opportunity to summon the witness which the delinquent officer required to produce in his defence who was an employee of the Corporation itself, it does show that a fair opportunity to defend the delinquent officer has not been given merely on the basis of capricious exercise of the power and the entire proceedings show that the proceedings were taken with jet set speed.

13. The calendar of dates fixed for proceeding further show that Inquiry officer was proceedings in hot haste as a chasticed person. Fixing 4 days time to file reply to charge-sheet and making a calendar of 4 days stopover as if he was proceeding from day to day. When the Corporation's witness was not present,

the Enquiry Officer suo motto summoned the departmental witness, yet the same opportunity was for inexplicable reason denied to the delinquent. If the power to summon witness who was not present could be used in favour of prosecuting inquiry suo motto, the denial of such opportunity on demand with very cogent reason was denied with obtrusive reason because on last date he has made an order to that effect, only betrays a close mind of the Inquiry Officer. Forgetting all the time that the Corporation was at a vintage position in producing its own employees as witnesses even without summoning. The haste and manner in which the enquiry was conducted by the Enquiry Officer appointed at Jodhpur was put under threat of removal if they return their verdict against the delinquent officer. In support of this allegation, the petitioner has placed on record minutes of proceedings of meeting of Regional Officers of Corporation dated 3.3.1983 (as Ex.11) in which specific resolution about officer entrusted with enquiries at Jodhpur was made in the following term:-

^^foHkkxh; tkap izdj.k ds fu"iknu esas futh /;ku fn;k tkosA tks/kiqj essa inLFkkfir tkap vf/kdkjh dks crk fn;k tkos fd os viuk fuxe fojks/kh O;ogkj u j[ksaA vU;Fkk mudh lsok vof/k ugha c<+kbZ tk;sxA**

14. Above resolution was made specifically about enquiry officer at Jodhpur to beware that his tenure may be not extended if he goes against Corporation and is nothing but a coercion of the free and fair mind of enquiry officer in conduct of enquiry and an open direction to return verdict in favour of the Corporation, else lose the opportunity to be employed as Enquiry Officer.

15. Therefore, we are in agreement with the finding of the learned Single Judge that the inquiry was vitiated by not affording any adequate and fair opportunity to the delinquent officer to produce his defence witness before the Inquiry Officer.

16. The contention of the learned counsel for the appellant that because the petitioner has not disclosed the area on which Mohd. Ali was to be examined and what is the relevancy of his statement, therefore, the Inquiry Officer has rightly not called the witness and it has not prejudiced his case, also cannot be sustained. Firstly, that is not the reason which prevailed with the Inquiry Officer to deny the production of Mohd. Ali as witness. No reason can be supplemented by the Corporation who was presenting the case before Enquiry officer by way of reply to writ petition. Secondly, it may be noticed that resolution was made on 3.3.1983. Making of resolution has not been denied. What has been stated in reply to para 11 of the writ petition is that:-

"That the averments made in this para of the writ petition are wholly irrelevant and there is no material on record that the decision taken on 3.3.1983 was ever communicated or brought to the notice of the Enquiry Officer."

17. Suffice it to say, the resolution was made on 3.3.1983 to this effect only that Enquiry Officer at Jodhpur be conveyed the fate of anti-corporation stance. There is nothing to suggest that such a decision even after it was made with specific purpose was not communicated to the officer concerned. Presumption if any is

that such a decision was properly communicated to the officer concerned. Otherwise what was the necessity of making such a resolution as part of minutes, if it was to be kept at that? Chain of events also suggest that chastised by the above threat, Enquiry Officer was acting in such a haste and attitude as if he has to return a verdict of guilt against the delinquent officer as early as possible, even without caring whether he offers a fair and adequate opportunity to the delinquent officer in the enquiry. That unfolds the reason for mini short fixation of dates, calling for departmental witness without prayer even when he failed to appear after summons, when such witness was wholly in the control of the Corporation, but depriving the very same opportunity to the delinquent officer and not allowing to produce his witness who was also an employee of Corporation under suspension at Jaipur Head Quarters. The remark that such application be used in further for corroborating defence also betrays the obsession of Enquiry Officer to close the evidence then and there. He was alive to the fact that such denial of opportunity is likely to vitiate the enquiry and may be an accusation against fairness of enquiry, yet he chose to deny such opportunity lest he may lose the assignment as an Enquiry Officer. The enquiry of the petitioner has come close on the heels of resolution dated 3.3.1983 in the month of April, 1983 itself, tells its own story.

18. This alone in our opinion is enough to vitiate the enquiry.

19. The relevancy of the defence witness namely, Mohd. Ali was not doubted when the summons were issued by the Inquiry Officer when the list of four defence witnesses had been submitted, which included the name of Mohd. Ali, by the delinquent officer.

20. Nor the orders shows that in the opinion of Enquiry Officer he was not the relevant witness in an inquiry against the delinquent officer, therefore, he is not required to be called. On the contrary it shows that wholly unfounded inference has been drawn that the even after service of summons, the defence witness was not present and he cannot be completed to give statement.

21. That apart, we find from the charges levelled against the delinquent officer and the record which have been produced before us, that there is no discrepancy in the amounts stated to have been collected by the delinquent officer by issuing the tickets and the amount deposited by him except one regarding which he candidly accepted that the amount has wrongly been charged less because of issuance of ticket for the child passenger when the same was related to the adult passenger. There is no allegation that the delinquent officer has in fact charged more fare than what has been stated in the tickets or what has been chargeable for difference destinations. The question of the delinquent officer collecting more fare and depositing less fare is not the ingredient of the charge itself to make it a case of criminal breach of trust by retaining the money, which lawfully was due to the Corporation, for his own use. In each case the place of commencement of destination of journey, ignoring the cuttings were not in doubt. The demand in each case was that he ought to have deposited full fare between the two terminals

of the Jodhpur - Kota route and the other route in question.

22. During the course of hearing, it was stated by the learned counsel for the appellant after seeking information from the Officer-in-charge who was present in Court that the rules governing the conduct of the conductors require that once a destination is entered into a ticket for the route at the relevant time which was undertaken by the conductor, he will not make any interpolation or over-writing and in case he is required to make any correction, he should deposit the full fare as per the full destination between the two terminals of the route, notwithstanding the fact the journey taken by the passenger is only for the part of the route and from him only journey fare has been collected.

23. The aforesaid clarification makes it relevant that, in all the charges, the interpolated tickets, common feature is that the delinquent officer was found to have deposited only the journey fare charged by him as shown on the tickets whereas because of cuttings in destination name he ought to have deposited full amount chargeable for the entire route. That is why, the learned Single Judge, after considering the record, was of the opinion that mere suspicion cannot take place of proof when the full amount so charged from the passengers have been deposited by the delinquent officer which rules out the graveness of the charge against the delinquent officer of having misappropriated the funds of the Corporation. Undoubtedly, it was recorded at the end that by not depositing the amount of fare for the tickets issued, the delinquent officer has been guilty of misappropriation of the funds, it was submitted by the learned counsel for the appellant that it is apparent that at best the delinquent officer has not deposited the fare for entire route in respect of which tickets have been issued by him, therefore, he has been held liable to deposit the full fare of the entire route in stead of less amount actually charged from the passengers boarded on route. If that is so, the basic ingredient of the dishonest conduct in misconduct described in the standing order does not exist. In the absence of dishonest intention missing even from the memorandum of charges and not at all proved, the punishment of removal could not be sustained as it is contrary to law and facts proved.

24. We are also in agreement with the finding of the learned Single Judge that alleged misconduct has not been proved there being no evidence to the effect on record.

25. Consequently, the learned Single Judge was right in quashing the impugned order of punishment imposed by the disciplinary authority and affirmed by the appellant authority and to direct the reinstatement of the delinquent officer with all consequential benefits.

26. At this juncture, the learned counsel for the appellant submitted that the delinquent officer is not entitled for back wages as he has not worked. Learned counsel for the respondent has also not seriously objected to this submission.

27. We are of the opinion that the respondent has not worked as all during this

entire period and remained out of employment and his conduct as such cannot be said to be not wanting in all respects when there has been consistent amendments in the tickets issued by him. There is good reason to deny him full back wages on the principle of "no work no wages".

28. In view thereof while reinstating the delinquent officer- respondents with all consequential benefits, the delinquent officer-respondent shall not be entitled to back wages.

29. Accordingly, this appeal is partly allowed as stated above.