
(1997) 07 AHC CK 0068
In the Allahabad High Court
Case No : C.M.W.P. No. 38440 of 1992

Ram Janam Dwivedi

APPELLANT

Vs

General Manager II, U.P.S.R.T.C. and Others

RESPONDENT

Date of Decision : 22-07-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1999) 3 LLJ 839

Hon'ble Judges : D.K. Seth, J

Bench : Single Bench

Advocate : M.D. Singh, for the Appellant; S.K. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

D.K. Seth, J.—The order dated April 4, 1990 (Annexure- 4 to the petition) dismissing the petitioner from service, pursuant to the disciplinary proceeding, after holding domestic inquiry and the order dated August 5, 1992 (Annexure 9 to the petition) passed on appeal therefrom have been challenged by the petitioner on various grounds. His first challenge was that the appellate order did not discuss evidence despite specific orders passed by this Court earlier. His second contention is that there is no proof that the petitioner had misappropriated any amount or that the Corporation had suffered loss and, therefore, the charges cannot be said to have been proved. His third contention was that the fare which was in dispute was only about Rs. 9/- and, as such, is too insignificant, even assuming if the charges are proved, to attract the penalty of dismissal, though, however, the guilt may warrant infliction of minor penalty. His fourth contention was that no adequate opportunity was given to the delinquent. His fifth contention is that the Circular dated March 30, 1987 by which general amnesty was proposed in respect of all persons who were dismissed from service after 1985, was not applied, though applicable in the case of the petitioner. His last contention is that the punishment inflicted is disproportionate.

2. Sri Samir Sharma learned counsel appearing on behalf of respondents, opposing him, contended that the Circular dated March 30, 1987 has no manner of application in the case of the petitioner. Relying on various pages of the record, he points out that sufficient opportunity was given to the petitioner and that the charges were duly proved. He also contends that since it was established that the petitioner had failed to perform his duties, which is all grave in nature, the order of dismissal was warranted. In support of his contention he relied on an unreported judgment, to which he shall be referring shortly hereinafter. He next contends that the appellate order does not suffer from any infirmity since the same depicts application of mind of the appellate authority and it is not necessary that he should write elaborate judgment, as is required in the judicial pronouncement. He contends next that the findings are pure finding of fact, which assumes the character of concurrent finding by reason of the appellate order and no perversity having been pointed out by the learned counsel for the petitioner, this Court cannot interfere with the finding of fact.

3. Mr. M. D. Singh, learned counsel for the petitioner in support of his respective contentions as summarised above, has relied on various, decisions to which we shall refer to at the appropriate stage. Mr. Singh led me through various documents and record and pointed out that there are sufficient material on record to come altogether to a different conclusion.

4. Admittedly, the findings are finding of fact and has assumed the character of concurrent finding, by reason of the appellate order, therefore, this Court would be very slow to interfere with the same. Unless it is shown that those findings are perverse this Court cannot interfere with such findings even if on the material on record this Court is of different view. This Court cannot substitute its own view to that of trying the authority and the appellate authority, particularly, when the same has assumed the character of concurrent finding, even if it defers in its opinion on the material on record, unless it is shown that certain materials have not been considered or that the finding is based on no material or that no reasonable man would arrive at such a conclusion on the basis of such material.

5. In the present case Mr. Singh has not been able to point out any material which was not taken into consideration or that the finding was based on no material or that no reasonable man would arrive at such a conclusion on the basis of material on record. On the other hand he vehemently tried to show that on the basis of material on record an opinion different from that of the disciplinary authority and the appellate authority is very much possible and that on the basis of material the disciplinary authority and the appellate authority could have arrived at a different conclusion. But even if for arguments sake the contention of the learned counsel is accepted, then this Court cannot substitute its view to that of the disciplinary authority. From the record it appears, as pointed by the learned counsel for the respondent that the materials were taken into consideration and were also discussed in the report and the order culminated in the order of dismissal.

6. It is not necessary for the appellate authority to write elaborate judgment while affirming the order of the disciplinary authority. If it can be gathered from the order itself that the appellate authority had applied its mind and had perused the record, absence of discussion of evidence would not render the order of the appellate authority bad. Therefore, non-discussion of the evidence, as alleged by the learned counsel for the petitioner is not fatal in view of the orders passed by the appellate authority that shows application of mind by it. In the case of *State Bank of India, Bhopal v. S.S. Koshal* 1994 AIR SCW 2901 it was held that it is not obligatory on the part of the appellate authority to say more than this as the order as itself, shows application of mind, in view of the fact that it was the order, of affirmance when it was apparent that the appellate authority had considered the facts and circumstances and came to a definite conclusion.

7. From the inquiry report through which Sri Sharma has led me, it clearly appears that sufficient opportunity was given to the petitioner and that there were material on the basis of which it can be reasonably concluded that the charges were proved. While sitting in revisional jurisdiction, which this Court exercises under Art. 226 of the Constitution, it does not permit the Court to sit on appeal. While revising, the Court scrutinises not the decision, but the decision making process. Therefore, it cannot enter into the question as to whether finding of fact could be otherwise. Though, however, it can interfere when it is shown that the finding is perverse or based on no material or that the relevant material has not been taken into account.

8. So far as the Circular dated March 30, 1987 is concerned it appears that the persons against whom the order of dismissal were issued after a particular date in 1985, were given option of reinstatement, provided they forego their past salary. Sri Sharma contends that the same was issued in view of a particular situation where jurisdiction to terminate the services were under challenge and which authority was subsequently corrected, by reason of subsequent promulgation by appropriate Statute during transitional period. The very text of the said circular indicates that it was issued on March 30, 1987 in respect of persons whose services were terminated after the particular date in 1985 meaning thereby that only those persons whose services were terminated during that period till 1987 were within the zone of consideration. The very expression used and by no stretch of imagination permit any interpretation to mean that in all cases of termination of service in future after March 30, 1987 the same proposal would be made available. In the present case the order of termination was issued on April 4, 1990. The said circular, therefore, could not have any manner of application in such case which is not covered within the ambit of the said Circular, as it appears from the expression used therein. In order to appreciate the scope of the said Circular it is necessary to trace out as to in which circumstances such circular was issued and for what purpose and with what object. It is not disputed by the learned counsel for the petitioner that the said circular was issued at a point of time when by Ordinance the jurisdiction to terminate the service was conferred on the Regional Director in transitional

period when U. P. State Government Roadways was formed into a Corporation and the dispute with regard to the status of the employees of the erstwhile employers serving in the Corporation were under consideration and this Court has held that they were Government servants and series of cases were pending before this Court, challenging the jurisdiction and authority to terminate such services by such an officer. If the background is noted in that event it can very reasonably be said that the said Circular is confined only in those cases and not in respect of cases, that might arise afterwards, after the promulgation of Ordinance. Therefore, in my view the said circular has no manner of application in the case of the petitioner.

9. There is no proof of misappropriation, as contended by the learned counsel for the petitioner appears to be of some substance. There is no finding that the petitioner had misappropriated any amount. On the other hand it was pointed out that the company had realised penalty and therefore it could not be said to have suffered any loss. Sri Sharma also does not dispute the contention of learned counsel for the petitioner that very insignificant amount was involved in the dispute. But, however the learned counsel for the respondents vehemently opposes that offence would warrant minor penalty and not the order of dismissal and that the punishment inflicted is not disproportionate.

10. He relied on the decision in the case of Imtiyaz Ahmad v. U.P. State Road Transport Corporation, being Writ Petition No. 30698 of 1995. In the said case it was held by learned single Judge that if there was any difficulty in realising fare from the passengers because of their refusal to pay fare, the Conductor could have very well stopped the bus instead of proceeding further. That the petitioner was employed as bus conductor and his duty was only to conduct the bus and realise fare. If a conductor is found guilty of not realising fare and permitting the passengers to travel without ticket there is no justification to retain him in service.

11. The contention of learned counsel for the petitioner that there was no sufficient material to establish the guilt of the petitioner does not appear to be sound since the record shows that there was sufficient material. In the case of State of Haryana and Another Vs. Rattan Singh, , it was held (at page 47) :

"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 prevented under the Indian Evidence Act. For the proposition it is not necessary to cite decisions nor text books although we have been taken through, case law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of Rules of natural justice. Of course fair play is the basis and if

perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good. However the Courts below misdirected themselves perhaps in insisting that passengers who had come in and gone out should be chased and brought before the tribunal before a valid finding could be recorded. The "residuum" rule to which counsel for the; respondent referred based upon certain passages from American Jurisprudence does not go to that extent nor does the passage from HALSBURY insist on such rigid requirement. 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 commonsense 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. Absence of any evidence in support of a finding is certainly available for the Court to look into because it amounts to an error of law apparent on the record. We find in this case, that the evidence of Chamanlal, Inspector of the flying squad is some evidence which has relevance to the charge levelled against the respondent. Therefore, we are unable to hold that the order is invalid on that ground.

Reliance was placed as earlier stated on non-compliance with the departmental Instruction that statement of passengers should be recorded by Inspectors. These are instructions of prudence, not rules that bind or vitiate in the violation. In this case the Inspector tried to get the statements but the passengers declined, the psychology of the latter in such circumstances belong understandable although may not be approved. We cannot hold that merely because statements of passengers were not recorded the order that followed was invalid. Likewise the re-evaluation of the evidence on the strength of co-conductor's testimony is a matter not for the Court but for the administrative tribunal. In conclusion we do not think the Courts below were right in overturning the making of the domestic tribunal."

12. The present case does not fall within the exception as contemplated in the said decision. Then again in the case of *State of Haryana v. Mohan Singh* 1985 (2) SLR 116, Punjab and Haryana High Court has held that termination of service of a conductor subjected to disciplinary proceeding on the solitary statement of Chief Inspector, who neither recorded the statement of passenger alleged to have paid fare nor checked the cash in hand, though hearsay evidence was permissible in the domestic inquiry.

13. Learned counsel for the petitioner relied on the decision in the case of *Gangadin v. U. P. State Road Transport Corporation*. But the fact of the said case being completely different, cannot be attracted in the present case. In as much as in the said case the petitioner-conductor had lodged first information report at the Police Station immediately on the incidence in respect of loss of bus tickets and, therefore, at the best he could be held guilty of negligence only. But here the facts are different. The decision in the case of *Girja Shanker Singh v. General*

Manager-II, UPSRTC, Varanasi is the general proposition that High Court has power to reduce punishment and direct the authority concerned to award lesser punishment. There is no dispute with regard to the proposition. But the pre-requisite for exercise of such power is that the Court has to come to the conclusion that punishment is disproportionate. Unless it is so found that the punishment is disproportionate, such power need not be exercised. In the present case it is a question of confidence which is reposed on the Conductor by the employer. The allegation is that on four occasions he failed in his duty and he was caught permitting passengers to travel without ticket. It is the business of the employer which he understands better than the Court, if the employer loses confidence upon an employee, this Court cannot force the employer to retain him in service. In the present case he has failed to perform his duties which is the primary duty entrusted on him. It cannot be said that the order of termination is unwarranted, as has been held in the case of *Imtiyaz Ahmad (supra)*. The decision in the case of *State Bank of India Vs. S. Vijaya Kumar*, does not help the learned counsel for the petitioner on account of its being rendered altogether on different facts and different proposition. Though, however, there cannot be any dispute with regard to the proposition laid down therein that the penalty imposed must be incommensurate with the gravity of misconduct. In the present case "misconduct" as alleged, appears to be grave, particularly when it was repeated successively.

14. The ratio decided in the case of *Shanker Das v. Union of India (1995 II LLJ 184) (SC)* cited by the learned counsel for the petitioner, has no manner of application, in the facts and circumstances of the case. Similarly, the ratio decided in the case of *Laxmi Shankar Pandey Vs. Union of India and others*, as cited by the learned counsel for the petitioner has also no manner of application, in the facts and circumstances of the present case.

15. In view of the above discussion it does not appear that the penalty imposed was disproportionate. For all these reasons I am not inclined to interfere with the impugned order. The writ petition therefore, fails and is accordingly dismissed. There will be, however, no order as to costs.