(2006) 05 UK CK 0020

In the Uttarakhand High Court

Case No : Writ Petition No. 604 of 2006 (S/S)

Ramesh Kumar APPELLANT

Vs

Regional Manager, Uttaranchal Transport Corporation Ltd., Dehradun and Others RESPONDENT

Date of Decision : 24-05-2006

Acts Referred:
Constitution of India, 1950 — Article 309, 311(2)

Citation : (2006) 3 UC 1770

Hon'ble Judges : M.M.Ghildiyal, J

Bench : Single Bench

Advocate : Sri Gopal Narain, for the Appellant; Sri Ashish Joshi, for the Respondent

Final Decision : Allowed

Judgement

Hon''ble M.M. Ghildiyal, J.—Heard Sri Gopal Narain, Learned Counsel for the Petitioner and Sri Ashish Joshi, Learned Counsel for the Respondents.

2. By means of this writ petition, the Petitioners have prayed for the following reliefs:

i. To issue writ, order or direction in the nature of Certiorari quashing the order dated 12-10-2004 and order dated 20-06-2005 (annexure 3&5 respectively) passed by Respondent Nos. 1 and 3,

ii. To pass such order which this Hon''ble Court deem fit in the facts and circumstances of the case,

iii. To award the cost against the Respondents in favour of the Petitioner.

3. The facts of the case, in brief, are that the Petitioner was appointed as Conductor in U.P. State Road Transport Corporation in the year 1980 and since then he was working on the said post. On 24th April 1995, the Traffic Superintendent made a complaint against the Petitioner to the Assistant Regional

Manager, Dehradun complaining that the Petitioner was carrying Bus No. UGY 877 and at the time when the bus was checked by the Traffic Superintendent, 23 passengers were found without tickets and the Checking Authority issued the tickets to the passengers after charging penalty. On 27-04-1995, the Petitioner was suspended. The charge-sheet was issued to the Petitioner, to which the Petitioner replied. The Enquiry Officer having heard to the Petitioner as also to the Respondent and after going through the documents recorded a finding that the charges levelled against the Petitioner on the basis of complaint of the Traffic Superintendent are not proved. This finding was recorded by the Enquiry Officer on 19-07-1996 and the same was submitted to the Disciplinary Authority on the same day.

4. The Disciplinary Authority, disagreeing with the findings recorded by the Enquiry Officer, found the delinquent official guilty of the charges and issued show cause notice on 04-03-2002 directing the Petitioner why the balance amount for the period of suspension be not forfeited and also why he be not removed from the services. The Petitioner replied to the show cause notice and vide order dated 12-10-2004, the Regional Manager, Uttaranchal Transport Corporation Ltd. Dehradun/respondent No. 1 dismissed the Petitioner from services and also forfeited the salary for the period during which the Petitioner was under suspension.

5. Aggrieved with the order dated 12-10-2004 of the Regional Manager, Uttaranchal Transport Corporation, the Petitioner preferred writ petition No. 336 (ss) 2005 which was disposed of on 06-04-2005 on the ground of alternative remedy that the Petitioner has remedy by way of filing appeal before the Managing Director. Consequently, the Petitioner preferred appeal against the aforesaid order of Regional Manager, Uttaranchal Transport Corporation, Dehradun dated 12-10-2004 before the Respondent No. 3 which has also been dismissed by the Respondent No. 3 vide its order dated 20-06-2005. Aggrieved with these orders passed by the Regional Manager as well as the Managing Director, the Petitioner filed this writ petition.

6. During the course of argument, the Petitioner has pressed only one ground that the order dated 12-10-2004 passed by the Regional Manager, Uttaranchal Transport Corporation is illegal, because, though the findings were recorded by the Enquiry officer in favour of the Petitioner but the Regional Manager, while disagreeing with the findings recorded by the Enquiry Officer, has not afforded any opportunity of hearing to the ''petitioner before passing the impugned order.

7. The Respondents have filed counter affidavit. In para-5 of the counter affidavit it is stated by the Respondents that the Petitioner was given an opportunity of hearing by way of issuing show cause notice dated 04-03-2002.

8. I have gone through the show cause notice dated 04-03-2002 issued by the Regional Manager, Uttaranchal Transport Corporation, Dehradun. It will be significant here to quote the relevant portion of the show cause notice, which

reads as under:

9. Learned Counsel for the Petitioner has relied upon the judgment of Hon''ble the Apex Court in the case of Yoginath D. Bagde v. State of Maharashtra and Anr. reported in 1999 (83) FLR 534. Relying upon the para 32 and 33 of the aforesaid citation, counsel for the Petitioner has contended that the Enquiry Officer recorded a positive findings to the effect that the charges were not established against the Petitioner and he was recommended to be exonerated, but the Disciplinary Authority disagreed with those findings has recorded its own findings that the charges were established and the delinquent official was liable to be punished. This order has been passed without giving any opportunity of hearing to the Petitioner. In para-32 and 33, the Apex Court has held as under:

32. In view of the above, a delinquent employee has the right of hearing not only during the enquiry proceedings conducted by the Enquiry Officer into the charges levelled against him but also at the stage at which those findings are considered by the Disciplinary Authority and the latter, namely the Disciplinary Authority forms a tentative opinion that it does not agree with the findings recorded by the Enquiry Officer. If the findings recorded by the Enquiry Officer are in favour of the delinquent and it has been held that the charges are not proved, it is all the more necessary to give an opportunity of hearing to the delinquent employee before reversing those findings. The formation of opinion should be tentative and not final. It is at this stage that the delinquent employee should be given an opportunity of hearing after he is informed of the reasons on the basis of which the Disciplinary Authority has proposed to disagree with the findings of the Enquiry Officer. This is in consonance with the requirement of Article 311(2) of the Constitution as it provides that a person shall not be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. So long as a final decision is not taken in the matter, the enquiry shall be deemed to be pending. Mere submission of findings to the Disciplinary Authority does not bring about the closure of the enquiry proceedings. The enquiry proceedings would come to an end only when the findings have been considered by the Disciplinary Authority and the charges are either held to be not proved or found to be proved and in that event punishment inflicted upon the delinquent. That being so, the "right to be heard" would be available to the delinquent up to the final stage. This right being a constitutional right of the employee cannot be taken away by any legislative enactment or Service Rule including Rules made under Article 309 of the Constitution.

33. Applying the above principles to the facts of this case, it would be noticed that in the instant case, the District Judge (Enquiry Officer) had recorded the findings that the charges were not proved. These findings were submitted to the Disciplinary Committee which disagreed with those findings and issued a notice to the Appellant requiring him to show-cause why he should not be dismissed from service. It is true that along with the show-cause notice, the reasons on the

basis of which the Disciplinary Committee had disagreed with the findings of the District Judge were communicated to the Appellant but the Disciplinary Committee instead of forming a tentative opinion had come to the final conclusion that the charges against the Appellant were established....

10. The Apex Court in the aforesaid case has laid down a Principle that the Disciplinary Authority, when disagreed with the findings recorded by the Enquiry Officer, must provide opportunity of hearing to the Petitioner, before he forms final opinion. In fact, the Disciplinary Authority must form tentative opinion, offer opportunity of hearing to the delinquent official as to why the tentative opinion should not be confirmed. It is only after he receives reply from the delinquent official, the Disciplinary Authority can form final opinion and thereafter may pass punishment order.

11. In the case of Yoginath D. Bagde, disagreeing with the findings of the Enquiry Officer the Disciplinary Authority formed final opinion that the charges are proved against the Petitioner and thereafter issued show cause notice why the punishment should not be awarded to him. The show cause notice is, in fact, in respect of the punishment order and not against the opinion, which has been formed by the Disciplinary Authority disagreeing with the findings of the Enquiry Officer.

12. After considering all these facts, the Apex Court in para 53 has held that the Disciplinary Committee had taken its final decision without giving an opportunity of hearing to the Appellant at the stage at which it proposed to differ with the findings of the Enquiry Officer and consequently allowed the appeal.

13. Similar is the position in the present case. The Disciplinary Authority, after recording findings that

issued show cause notice why the punishment should not be awarded to the Petitioner, which is absolutely illegal, keeping in the Principles Laid down by Hon''ble Apex Court in the case of Yoginath D. Badge. The order impugned is not sustainable in the eyes of law.

14. For the reasons recorded above the writ petition is allowed. The order dated 12-10-2004 passed by the Regional Manager Uttaranchal Transport Corporation Ltd. Dehradun and the order dated 20-06-2005 passed by the Managing Director, Uttaranchal Road Transport Corporation, are hereby quashed. No order as to costs.