
(2007) 05 AHC CK 0160

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 7832 of 1998

Sri Asharfi Singh

APPELLANT

Vs

Regional Manager, U.P.S.R.T.C. Allahabad and others

RESPONDENT

Date of Decision : 25-05-2007

Acts Referred:

Citation : (2007) 05 AHC CK 0160

Hon'ble Judges : Sabhajeet Yadav, J

Final Decision : Allowed

Judgement

Sabhajeet Yadav, J.—By this petition, the petitioner has sought relief of certiorari for quashing the impugned order dated 30.11.1998 passed by respondent No. 2 (Annexure 5 of the writ petition), whereby the petitioner has been removed from service while working on the post of driver in U.P. State Road Transport Corporation. Further relief in the nature of mandamus commanding the respondents to reinstate the petitioner in service with full back wages on the post in question and to pay his regular salary month to month has also been sought for.

2. The relief sought in the writ petition rests on the facts that while posted as driver in the Corporation with the office of respondent No. 3, the petitioner was deputed on Bus No. U.M.V. 9571 on 12.9.1997 at 10.00 A.M. to ply the bus on police duty without any conductor for sending the activist of Samajwadi Party to their houses from the campus of Collectorate, Allahabad. The petitioner was instructed by the police authority to go at K. P. College ground alongwith the activist of Samajwadi Party and further instructed that he will not talk to the activist of Samajwadi Party and they will be left from the bus wherever they will say. On the aforesaid police duty the petitioner was sent on several places and ultimately returned back at K.P. College ground at 12.00 P.M. Where he was again instructed that he has to send 40 activists of Samajwadi Party without conductor at the site of Manauri Gate where the activist were to be step down. The petitioner about 1.00 A.M. in the intervening night of 12/13.9.1997 started

the bus from K.P. College ground to leave the aforesaid activist at their instructed places. After completing the duties of 28 hours the petitioner went at bus Depot at Zero Road at 6.00 A.M. on 13.9.1997 and came to know that some seats of his bus were taken away by the officers of the department and on the assurance of the time keeper who was on duty that aforesaid seats were deposited in the workshop of the Corporation at Allahabad, he returned at his residence.

3. Subsequently, thereafter the petitioner was placed under suspension vide order dated 29.9.1997 and a chargesheet dated 3.11.1997 levelling certain charges was issued against him. On receipt of the aforesaid charge sheet the petitioner submitted his reply by means of letter dated 11.11.1997 denying the allegations levelled in the charge sheet against him. Thereafter the Inquiry Officer appointed by the Disciplinary Authority inquired the matter and submitted his report on 29.1.1998 holding that the charges against the petitioner have been found true and proved against him. Thereafter Assistant Regional Manager, U.P.S.R.T.C. Leader Road Depot Allahabad respondent No. 2 issued a show cause notice on 10.6.1998 alongwith copy of inquiry report to the petitioner asking his explanation thereon. On receipt of the aforesaid show cause notice dated 10.6.1998, the petitioner has submitted his reply on 22.8.1998 but without considering the facts and circumstances of the case and aforesaid reply of the petitioner, the Disciplinary Authority has passed the impugned order dated 30.11.1998 removing the petitioner from service. A copy of impugned order of removal dated 30.11.1998 is already on record as Annexure 5 of the writ petition. The petitioner has challenged the aforesaid order on various grounds mentioned in the writ petition.

4. A detail counteraffidavit has been filed on behalf of U.P. State Road Transport Corporation and officers of the said Corporation sworn by Sri A. K. Srivastava, posted as O.A.G.II working in the office of Regional Manager, U.P. State Road Transport Corporation, Allahabad, wherein various assertions made in the writ petition have been denied and disputed and some more necessary facts have been stated in paragraph 3 of the counteraffidavit as under:

"3. That before giving parawise reply it is necessary to bring the following facts before this Hon"ble Court:

(a) That the petitioner was working on the post of driver in the Zero Road Depot of the Corporation. On 13.9.1997 when the petitioner was deputed on Bus No. UMV 9571, the said bus was given the signal to stop for checking, by the checking authorities at Mandari Mor. However, the petitioner did not stop the bus and sped away with the bus towards Kanpur. Thereafter the checking authorities followed the bus from the staff car and the bus was found parked at Manauri Gate completely empty. There were no driver or conductor or passengers in the bus.

(b) That thereafter a report of the aforesaid misconduct was submitted by the checking authorities and the appointing authority accordingly placed the

petitioner under suspension vide order dated 29.9.1997 and a charge sheet dated 3.11.1997 was issued against him (copy filed as Annexure No. 1 to the writ petition). As the petitioner's reply to the said charge was not found to be satisfactory, a departmental enquiry was initiated against him and the Assistant Regional Manager, Pratapgarh was appointed as the Enquiry Officer.

(c) That thereafter in the departmental enquiry full opportunity had been afforded to the petitioner to cross examine departmental witnesses and to produce his own defence and thereafter the Enquiry Officer submitted a report to the effect that the charges of serious misconduct stood proved against him in the departmental enquiry (copy filed as Annexure3 to the writ petition). In the meantime, it is pertinent to point out that the petitioner had been provisionally reinstated in service.

(d) That thereafter on receipt of the enquiry report a show cause notice dated 10.6.1998 was issued against the petitioner alongwith copy of the enquiry report requiring him to show cause as to why he be not removed from service. The appointing authority thereafter carefully examining the entire material on record including the reply to the show cause notice and was satisfied that it was not in the interest of the Corporation to retrain the petitioner in service and vide order dated 30.11.1998 petitioner was removed from service (copy filed as Annexure5 to the writ petition). The petitioner thereafter filed the present writ petition challenging the order dated 30.11.1998. The petitioner has a right of appeal and thereafter revision under Section 69A and thereafter alternative remedy before the Labour Court/Service Tribunal and the writ petition is liable to be dismissed on this ground alone. Even on merits the petitioner has no case and is not entitled to any relief."

5. Besides this, some pertinent statement of facts have also been made in paras 5,6,7 and 13 of the counteraffidavit as under:

"5. That with regard to the contents of paragraph No. 3 of the writ petition it is submitted that although the petitioner on 13.9.1997 was on police duty, yet on the signal given by the checking authorities, it was his duty to stop the bus for checking and instead he sped away with the bus.

6. That with regard to the contents of paragraph Nos. 4 and 5 of the writ petition, it is submitted that the petitioner failed to stop the bus on the signal given by the checking authorities and instead the bus was found parked at the Manauri Gate and the petitioner had fled away from the scene. The aforesaid circumstances clearly are indicative of the ill intention on part of the petitioner.

7. That with regard to the contents of paragraph No. 6 of the writ petition it is submitted that when the bus was found parked at the Manauri Gate, the petitioner had fled away leaving the bus and the checking authorities as a proof of the checking took some seats of the bus.

13. That the contents of paragraph No. 14 of the writ petition are absolutely false

and hence denied. The checking authorities have given the signal to stop the bus, on staff car No. 7458 and it could not be believed that the driver of the Corporation bus could not see a staff car of the Corporation in front and the signal of the checking authorities at night with the head lights of the bus. In any case the contention of the petitioner is an after thought."

6. Heard Sri Irsad Ali, learned Counsel for the petitioner and learned Counsel for the Corporation. Learned Counsel for the petitioner Sri Irsad Ali Advocate has vehemently contended that the charges contained in charge sheet for holding disciplinary inquiry against the petitioner have neither been grounded on the true and correct facts nor the essential ingredients of the charges are found in the statement of facts, therefore, the charges can be said to be vague and false. Besides this, in given facts and circumstances of the case the findings of the Inquiry Officer and Disciplinary Authority are, also perverse, "thus, charges of misconduct cannot be said to be proved against the petitioner. Alternatively learned Counsel for the petitioner has urged that in any view of the matter, the penalty imposed upon the petitioner is irrational and disproportionate to the gravity of charges levelled against him inasmuch as shocking to the conscience of the Court and does not warrant any major penalty, therefore, the action taken against the petitioner is wholly arbitrary and cannot be sustained.

7. In order to substantiate his argument learned Counsel for the petitioner has drawn any attention on the charge sheet dated 3.11.1997 contained in Annexure1 of the writ petition and the reply to the charge sheet of the petitioner dated 11.11.1997 Annexure2 of the writ petition and submitted that on the basis of statements of facts made in the charge sheet no such inference could be drawn and no such charges could be levelled against the petitioner. In this connection learned Counsel for the petitioner has urged that it is not in dispute that on the date of incident in question the petitioner was deputed on the said bus without any conductor on police duty for sending the activists of the Samajwadi Party. At moment the alleged checking of bus in question was attempted to be done at 2.2. A.M. on 13.9.1997, he had started the bus about 1.00 A.M. on 13.9.1997 from the K.P. Inter College ground to leave the 40 activist of Samajwadi Party at Manauri Gate. There could have been no occasion for him to pick up some passengers without ticket in the way for the aforesaid destination in order to make any illegal money in the wake of fact that at that time in the bus about 40 activists of Samajwadi Party were already sitting. Besides this, it was not normal route of bus at particular time frame and it was not possible at all that passenger could be available for such journey of short distance in the way when the bus was going to Manauri Gate from K.P. College ground at 1.00 A.M. on 13.9.1997 which was very short journey of about 2025 Km. therefore, in given facts and circumstances of the case the charge against the petitioner that he did not stop the bus for checking purposes when the signal by checking squad was given to him at Manauri Mor and sped away with the bus towards Kanpur, thereafter checking authorities followed and chased the bus from staffcar and found the bus parked at Manauri Gate completely empty

without driver, conductor or any passenger in the bus and aforesaid act of the petitioner was to conceal and hide his corruption appears to be not correct as it stands. Learned Counsel for the petitioner has further urged that in given facts and circumstances of the case, the findings of Inquiry Officer and Disciplinary Authority are also perverse as no reasonable man apprised of the circumstance would come to the conclusion as arrived at by the Inquiry Officer and Disciplinary Authority, therefore, the aforesaid findings are not sustainable in the eye of law, thus no punishment could be awarded to the petitioner on that basis. However assuming for the sake of arguments without admitting that even if the charge that petitioner did not stop and bus on signal of checking squad for checking the bus in absence of any ulterior motive for some monetary gain, the same could be on account of oversight of the signal without any illintention or motive, thus at the most could be treated to be recklessness and negligence in due discharge of his duties without any loss to the Corporation, as such serious charges of misconduct such as concealing corruption and concealing indulgence in corruption could not be imputed against the petitioner, therefore, the penalty of removal from service could not be imposed upon him. In any view of the matter, any minor penalty of censure or warning for future could hardly be given to the petitioner. Thus imposing punishment upon the petitioner his removal from service is too harsh and disproportionate to the gravity of charges found proved against him and shocking to the conscience of the Court thus cannot be sustained.

8. Contrary to it, learned Counsel appearing on behalf of the Corporation has urged that the charges levelled and found proved against the petitioner are of serious nature and in given facts and circumstances of the case, the punishment of removal from service awarded to the petitioner is commensurate to the gravity of the charges and cannot be called in question in the writ jurisdiction of this Court. In support of his submission learned Counsel for the Corporation has placed strong reliance upon a decision rendered by Hon'ble Apex Court in *U.P.S.R.T.C. v. Mitthu Singh*, (2006) 7 SCC 180, wherein the sole respondent was working as driver with the appellant Corporation. It was the case of the appellant that the respondent had committed misconduct at several times and was punished. It was alleged that on 25.4.1994 while the respondent was driving Bus No. UP 65/223 on Varanasi Kota route, the checking squad, at about 4.00 p.m. near Dibulgang, gave signal to stop the bus for checking. The respondent, however, did not stop the bus and no checking could be made by the squad. Again on 15.5.1994, the respondent was driving the same bus on Shakti Nagar route and about 2.30 p.m. a signal was given near Chopan to stop the bus for checking. The respondent, however, ignored the signal and went away. Again on 21.9.1994, the respondent was driving Bus No. UP 65/6689 on Shakti Nagar route and in spite of giving signal by checking squad near Rihand Bridge at about 4.00 p.m. he did not stop the bus. In view of the conduct and behaviour of the respondent, on 26.8.1996, the checking squad submitted reports against the respondent in respect of the above three incidents. Enquiry was initiated against

the respondent, charge sheet was issued, the respondent filed reply denying the allegations, the Enquiry Officer gave full opportunity of defence to the respondent and submitted enquiry report holding the charges proved. A show cause notice was thereafter issued to the respondent enclosing therewith a copy of the enquiry report. The respondent filed reply to the show cause notice which was considered by the appointing authority and by an order dated 4.11.1996, the appointing authority, after considering the entire material, passed an order terminating the services of the respondent. The appeal filed by the respondent also came to be dismissed. The respondent approached the Labour Court, Varanasi. The Labour Court, however, allowed the petition holding that in the absence of evidence of the reporting officer, it could not be said that the charges levelled against the workman were proved. No independent witness, according to the Labour Court, had been examined and hence the workman was entitled to reinstatement. The Labour Court also proceeded to observe that even if it was assumed that a signal was given to the workman to stop the bus and he did not stop it, it could have been chased by the staff car, but that course was not adopted. From that, according to the Labour Court, it was clear that the checking squad was not sure whether the driver had intentionally not stopped the bus. Therefore, even if the allegation was correct, there was no illintention on the part of the driver. Regarding the last incident, the Labour Court observed that there were several passengers and it was possible that a signal might have been given by the checking squad but it might not have been noticed by the workman. The Labour Court noted that the members of the checking squad had submitted a report against the workman. It also held that the workman had failed to prove that the checking squad had enmity with him. The Court then stated "Therefore, I am agreeable to the contention of the Enquiry Officer to the extent that the signals must have been given but it is not proved that the driver intentionally did not stop the bus on those signals".

9. The Labour Court proceeded to observe that if certain passengers were allowed to board the bus without tickets, besides the driver, proceedings ought to have been initiated against the conductor also but it was not done. In the circumstances, according to the Labour Court, there was no justification for giving hard punishment of termination from service to the driver. At the most, it would be sufficient to given him warning for the future. In view of the above reasoning by the Labour Court, the workman was reinstated with continuity in service and back wages during the period of unemployment. The Corporation approached the High Court by filing a petition which was dismissed by the Court observing that the Labour Court passed the order on the basis of evidence on record and an findings were findings of fact. According to the High Court, the award did not suffer from any illegality dn the fact of the record and no interference was called for. Accordingly, the petition was dismissed.

10. Having regard to the facts and circumstances of the aforesaid case, although the Hon"ble Apex Court has found that the award made by Labour Court was not correct and view taken by disciplinary authority could be found to be correct but

since limited notice was issued by the Hon''ble Apex Court with regard to the back wage alone, therefore, Hon''ble Apex Court did not interfere in the matter of reinstatement of respondent of aforesaid case and modified the award made by the Labour Court by partly allowing the appeal whereby the back wages granted by the Labour Court to the respondent was set aside. It was found that in given facts and circumstances of the case the respondent of the aforesaid case was not entitled for back wage.

11. I have given thoughtful consideration to the submissions of learned Counsel for the parties and perused the records. From "the perusal of the charge sheet dated 3.11.1997, it appears that on 13.9.1997 while the petitioner was deputed as driver at bus No. UMV7591 which was on police duty, a checking squad at Manauri turn (Mandari Mor) at about 2.2. O'clock gave signal to stop the bus for checking. The petitioner did not stop the bus and sped away towards Kanpur, thereafter by Staff Car No. UTV7458 the checking squad had chased the said bus and ultimately found that bus standing near Manauri Gate Gurudwara. At that time the neither the petitioner nor conductor nor any passenger was found in bus. The checking party after waiting for some time when the petitioner did not come to them has removed some seats from the bus and took in the staff car and thereafter handed over at workshop, Zero Road, Allahabad to ensure that the checking of the bus was done by the said checking squad. The petitioner did neither inform the departmental officer about the missing of seats nor lodged any F.I.R. in Police Station in respect thereof, as such the petitioner was charged with serious charges of misconduct levelled in the charge sheet as under

12. On receipt of the aforesaid charge sheet the petitioner has submitted his reply on 11.11.1997 contained in Annexure2 of the writ petition which reads as under

13. Thus from the bare perusal of charge sheet and reply of the petitioner and pleadings of the parties it is clear that it is not in dispute that on 13.9.1997 the bus in question upon which the petitioner was deputed as driver was on police duty without any bus conductor with him. The petitioner as instructed by the police officials to step down the activists of Samajwadi Party at the places of their destination wherever they shall point out. It is also not in dispute that in the intervening night of 12/13.9.1987 at about 2.00 O'clock when the checking squad has given signal at Manauri More to stop the bus for checking, by that time the petitioner has already worked for a period of 24 hours continuous duty, therefore, it might be possible for him that he could not notice the signal given by the checking squad and went on to carry the bus at Manauri Gate where the passengers of Samajwadi Party" were to be dropped from bus and after dropping them the petitioner has gone to become easy by parking the bus aside the road, in front of a Hotel, meanwhile the checking squad might have reached the place where the bus was parked and after waiting for some time when the petitioner could not return back they would have removed some seats of the bus to ensure that they have checked the bus. According to the petitioner when he returned

back after becoming easy he was told by a hotel man that some departmental persons have removed some seats of the bus, therefore, after taking meal the petitioner returned back at 6.00 a.m. on 13.9.1997 to the Zero Road Workshop where the petitioner has been informed by time keeper that the seats removed from the bus of the petitioner have been handed over in the workshop by departmental officers, therefore, no occasion arose for the petitioner to lodge any F.I.R. regarding the missing of seats or to report to departmental authorities. It is not the case of respondents that at relevant point in time on 13.9.1997 when the checking squad has given signal to stop the bus for checking purposes the bus was plying for carrying out the passengers in the normal course of business of the Corporation instead thereof the ply of bus on police duty without any conductor is not disputed. It can also not be disputed that at the moment when the petitioner was driving the bus wherein 40 activists of Samasjwadi Party were sitting and petitioner was all alone without any police guard and he was driving the bus on their dictates, in such circumstances, it cannot be believed that the petitioner has awarded some passengers without ticket for his illegal benefit and in order to escape from the clutches of checking squad he did not stop the bus on signal given by the checking squad. Besides this, the time at which the bus has started from K.P. Ground at about 1 a.m. on 13.9.1997 for dropping the activists of Samajwadi Party at Manauri Gate could also not be disputed. It was not normal time schedule of the bus in question. Having regard to a short distant journey of bus from the place of starting to the place of destination only about 2025 km. there appears hardly any chance of availability of local passengers in way at that moment, therefore, it is not possible for the petitioner who was driver of the bus to take or board some passengers without ticket for making his personal monetary gain. Thus, the allegation that he did not stop the bus on signal given by the checking squad and sped away towards Kanpur to escape from the clutches of the checking squad to conceal his indulgence in corruption, in my opinion, appears to be based on misstatement of facts, speculations and imaginations and without any supportive evidence.

14. Now coming to the findings of Inquiry Officer given in the inquiry report dated 29.1.1998 (Annexure3 of the writ petition), it appears that before the Inquiry Officer two witnesses namely Sri S. M. A. Siddiqi, Traffic Superintendent who was one of the officer who has given checking report and another Sri Gulab Singh, driver who was driving staff car No. UTV7458 in support of charges levelled in the charge sheet were examined and the petitioner was examined in support of his defence. Sri S. M. A. Siddiqi has proved his report on the basis of which inquiry has been initiated against the petitioner and Sri Gulab Singh, driver of the staff car was examined to prove the fact that signal was given for checking the bus which was being driven by the petitioner at that time but according to the Inquiry Officer Gulab Singh could not stick upon his stand as to whether he has seen the signal given to the bus of petitioner or not, therefore, the Inquiry Officer has disbelieved his statement and recorded his findings that giving of signal stands proved on the basis of other circumstances that when the petitioner

did not stop his bus on receipt of the signal of checking squad, they had followed and chased the bus and when they reached to the bus in question, neither the petitioner nor any conductor nor any passenger was found on the bus and bus was found totally empty standing aside the road near Manauri Gate (Gurudwara) and in front of the Hotel. The finding recorded by Inquiry Officer in his inquiry report is as under

15. Before "dealing with the findings of Inquiry Officer given in the inquiry report dated 29.1.1998, it would be useful to refer a decision of Hon"ble Apex Court in the case of *Sher Bahadur v. Union of India and others*, (2002) 7 SCC 142 JT 2002 (6) SC 152, wherein while explaining the meaning of expression "sufficiency of evidence" Hon"ble Apex Court in para 7 of the decision has held that sufficiency of evidence postulates existence of some evidence which links the charged officer with the misconduct alleged against him. Evidence which is neither relevant in a broad sense nor establishes any nexus between the alleged misconduct and the charged officer, is no evidence in law. The mere fact that the Inquiry Officer has noted in his report "in view of oral, documentary and circumstantial evidence as adduced in the enquiry", would not in principle satisfy the rule of "sufficiency of evidence". Para 7 is quoted as under:

"7. It may be observed that the expression "sufficiency of evidence" postulates existence of some evidence which links the charged officer with the misconduct alleged against him. Evidence, however, voluminous it may be, which is neither relevant in a broad sense nor establishes any nexus between the alleged misconduct and the charged officer, is no evidence in law. The mere fact that the Inquiry Officer has noted in his report, "in view of oral, documentary and circumstantial evidence as adduced in the enquiry", would not in principle satisfy the rule of sufficiency of evidence. Though, the disciplinary authority cited one witness Shri R. A. Vashist, Ex. CVI/Northern Railway, New Delhi, in support of the charges, he was not examined. Regarding documentary evidence, Ext. PI, referred to in the enquiry report and adverted to by the High Court, is the order of appointment of the appellant which is a neutral fact. The Enquiry Officer examined the charged officer but nothing is elicited to connect him with the charged. The statement of the appellant recorded by the Enquiry Officer shows no more than his working earlier to his reengagement during the period between May, 1978 and November, 1979 in different phases. Indeed, his statement was not relied upon by the Enquiry Officer. The finding of the Enquiry Officer that in view of the oral, documentary and circumstantial evidence, the charge against the appellant for securing the fraudulent appointment letter duly signed by the said APO (Const.) was proved is, in the light of the above discussion erroneous. In our view, this is clearly a case of finding the appellant guilty of charge without having any evidence to link the appellant with the alleged misconduct. The High Court did not consider this aspect in its proper perspective as such the judgment and order of the High Court and the order of the disciplinary authority, under challenge, cannot be sustained, they are accordingly set aside."

16. From a bare perusal of findings of Inquiry Officer, it is clear that specific charges levelled against the petitioner in charge sheet have not been found proved on the basis of specific statement of facts either made by the witnesses of department or any other oral or documentary evidence on record, rather in the inquiry report, it has been stated that on the basis of statements made by witnesses and available material "on record, all the charges levelled against the petitioner stood automatically proved. In my opinion, such inquiry report submitted by Inquiry Officer is wholly erroneous and"cannot be held to be valid inquiry report in the eye of law. Therefore, in view of legal position enunciated by the Hon"ble Apex Court in Sher Bahadur's case (supra) such inquiry report could not be acted upon by the disciplinary authority for the reason that such inquiry report was not sustainable accordingly, for the same reason the findings of disciplinary authority are also not sustainable, as the findings of disciplinary authority are merely repetition of facts stated in the inquiry report.

17. Now next question arises for consideration is that what is scope judicial review of disciplinary inquiry. In this connection, it is pointed out that there are catena of decisions of Hon"ble Apex Court on the question in issue but it would be useful to refer only few of them. In *State of Andhra Pradesh v. S. Sree Rama Rao*, (1964) 3 SCR 25 AIR 1963 SC 1723, Hon"ble Apex Court has observed thus

"The High Court is not constituted in a proceeding under Article 226 of the Constitution as a Court of Appeal over the decision of the authorities holding departmental enquiry against a public servant. It is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf and whether the rules of natural justice are not violated. Whether there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge. It is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence."

18. The above position has been reiterated by Hon"ble Apex Court in subsequent decision. One of them is *B.C. Chaturvedi v. Union of India*, (1995) 6 SCC 749 1995 AIR SCW 4374 AIR 1996 SC 484 1996 Lab IC 462.

19. In *The High Court of Judicature at Bombay v. Shashikant S. Patil and another*, AIR 2000 SC 22, in para 16 of the decision Hon"ble Apex Court has again reiterated the same principle as under:

"16..... Interference with the decision of departmental authorities can be permitted, while exercising jurisdiction under Article 226 of the Constitution if such authority had held proceedings in violation of the principles of natural justice or in violation of statutory regulations prescribing the mode of such inquiry or if the decision of the authority is vitiated by considerations extraneous to the evidence and merits of the case, or if the conclusion made by the

authority, on the very fact of it, is wholly arbitrary or capricious that no reasonable person could have arrived at such a conclusion, or grounds very similar to the above. But we cannot overlook that the departmental authority (in this case the Disciplinary Committee of the High Court) is the sole Judge of the facts, if the inquiry has been properly conducted. The settled legal position is that if there is some legal evidence on which the findings can be based, then adequacy or even reliability of that evidence is not a matter for canvassing before the High Court in a writ petition filed under Article 226 of the Constitution."

20. In *Syed Rahimuddin v. Director General, C.S.I.R. and others*, AIR 2001 SC 2418, the principles enunciated in para 5 of the decision is as under:

"5.....It is well settled that a conclusion or a finding of fact arrived at in a disciplinary inquiry can be interfered with by the Court only when there is no materials for the said conclusion; or that on the materials, the conclusion cannot be that of a reasonable man. Having examined the report of the Enquiring Officer, we are unable to accept the contention of the learned Counsel for the appellant that the findings of the Enquiring Officer cannot be held to be findings based on no evidence."

21. In *M. V. Bijlani v. Union of India and others*, JT 2006 (4) SC 469, while dealing with the scope of judicial review of disciplinary inquiry in para 25 of the decision Hon"ble Apex Court has held as under:

"25. It is true that the jurisdiction of the Court in judicial review is limited. Disciplinary proceedings, however, being""quasicriminal in nature, there should be some evidences to, prove the charge. Although the charges in a departmental proceedings are not required to be proved like a criminal trial, i.e. beyond all reasonable doubts, we cannot lose sight of the fact that the Enquiry Officer performs a quasijudicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquiry into the allegations with which the delinquent officer had not been charged with."

22. Now applying the aforesaid settled legal position in given facts and circumstances of the case, it appears that disciplinary authority has repeated the facts stated in the findings of Inquiry Officer and without discussing the reply submitted by the petitioner against the findings of Inquiry Officer he has accepted the findings of Inquiry Officer. From a bare reading of reply submitted by the petitioner against the inquiry report contained in Annexure4 of the writ petition, it appears that the petitioner has specifically pointed out that the checking squad was not sure about the fact as to whether at the moment the checking was sought to be done, the bus was on police duty for leaving the

activists of Samajwadi Party or it was on plight of normal course of business of the Corporation which was very material for initiation of such disciplinary inquiry. Besides this from the perusal of inquiry report, it appears that Inquiry Officer has wrongly shifted the burden of proof upon the petitioner that while checking of the bus, it was not proved by the petitioner, how the bus was plying at Kanpur Road when it was on police duty, particularly by ignoring the facts that it was through out the case of petitioner in the reply of charge sheet, which was affirmed by the petitioner before Inquiry Officer that when the petitioner returned from Handia, after leaving the activists of Samajwadi Party at K.P. College ground about 12.00 P.M. he was again directed by police authority to leave 40 more activists towards Manauri. Therefore, the burden was upon the Corporation/respondent to prove that the petitioner was not instructed by the police authority to leave the aforesaid activists of Samajwadi Party towards Manauri area at Kanpur Road at aforesaid particular moment but instead of summoning any record from the office of district police to prove the aforesaid facts, the Inquiry Officer has wrongly shifted the burden upon the petitioner to establish that at the time of checking of the bus in question how he has carrying the bus at Kanpur Road towards Manauri area and erroneously drawn adverse inference against the petitioner. "Therefore, in my opinion, as held by Hon"ble Apex Court in M.V. Bijlani's case (supra) such shifting of burden of proof upon the petitioner was wholly erroneous and not sustainable in the eye of law.

23. In view of the aforesaid discussion I am of the considered opinion that reliance placed by learned Counsel for Corporation on U.P.S.R.T.C. v. Mitthu Singh's case (supra) is wholly misplaced as the facts of instant case are quite distinct and distinguishable from the aforesaid case, therefore, law enunciated by Hon"ble Apex Court in the aforesaid case can have no application with the case in hand. In that case the driver of the aforesaid bus appears to have been in habit of ignoring the signals of checking squad and bus was driven by him in normal course of business of Corporation along with conductor and he was punished on several occasions for such misconducts committed during the course of service, whereas in the instant case there is nothing to indicate that the petitioner was in habit of ignoring signals of checking squad of the bus and further there appears no material on record to show that during the course of his service he has ever been punished by the authorities for such deliberate or bona fide act or omission. Besides this, the bus in question was not in normal course of business of the Corporation for carrying out the passengers and admittedly it was on police duty without any conductor and Police guard with the bus and at the moment checking squad had attempted to stop the bus for checking, there was no probability at all that the petitioner could board any passenger without ticket for his personal monetary gain while the bus was going to step down the activists of Samajwadi Party while on police duty. Therefore, in give facts and circumstances of the case and discussions made hereinbefore I am of the considered opinion that no reasonable man would come to a conclusion that aforesaid acts or omission on the part of the petitioner in not stopping the bus on

signals of checking squad was for concealing his corruption or was for concealment of his indulgence in corruption. In my opinion, besides the aforesaid perversity in the findings of Inquiry Officer and disciplinary authority, there is no material on record on the basis of which aforesaid charges could be connected and proved against the petitioner. In any view of the matter, such the findings of Inquiry Officer and disciplinary authority are held to be based on mere speculations and imaginations not on legal and reasonably acceptable material on record.

24. It appears that since the checking squad has removed some seats of the bus in question when it was found parked near Manauri Gate Gurudwara, therefore, in order to ensure that a genuine attempt was made for checking of the bus, the checking squad has reported the matter to initiate disciplinary inquiry against the petitioner without ascertaining as to whether the bus was on police duty or it was in the normal course of its business and in order to save their skin disciplinary inquiry appears to have been held against the petitioner. Even if petitioner did not stop the bus on signal given by checking squad as it was possible for him that he could not notice the signal given by checking squad as by that time the petitioner has already worked for more that 24 hours continuously on Police duty and bus was full with the activists of Samajwadi Party, therefore, in my opinion, it might be possible that he might have not noticed the aforesaid signal given by checking squad, as such at the most the petitioner could have been held to be negligent in discharge of his duties while working as driver in the Corporation, but the aforesaid negligent act or omission on the part of the petitioner in not noticing the signal given by checking squad cannot be held to be so serious and intentional act of the petitioner with ulterior motive of monetary gain so as to warrant any major penalty of removal from service. Now next question arises for consideration is that as to whether in given facts and circumstances of the case, any minor or major penalty could be imposed by the disciplinary authority and same can be examined by this Court in the process of judicial review?

25. In this connection, it is to be pointed out that the law with regard to the proportionality of quantum of punishment has been under consideration of Hon"ble Apex Court from time to time and in a recent decision rendered by Hon"ble Apex Court in Management of Coimbatore District Central Cooperative Bank v. Secretary, Coimbatore District Central Cooperative Bank Employees Association and another, JT 2007 (5) SC 628, the Hon"ble Apex Court while noticing English cases and few earlier decision of Apex Court itself has observed as under

"22. In the celebrated decision of Council of Civil Service Union (CCSU) v. Minister for Civil Service, Lord Diplock proclaimed:

"judicial review has I think developed to a stage today when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call

"illegality", the second "irrationality" and the third "procedural impropriety". This is not to say that further development on a case by case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of proportionality....." [Emphasis supplied]

23. CCSU has been reiterated by English Court in several subsequent cases. We do not think it necessary to refer to all those cases.

24. So far as our legal system is concerned, the doctrine is wellsettled. Even prior to CCSU, this Court has held that if punishment imposed on an employee by an employer is grossly excessive, disproportionately high or unduly harsh, it cannot claim immunity from judicial scrutiny, and it is always open to a Court to interfere with such penalty in appropriate cases.

27. In *Ranjit Thakur v. Union of India and others*, JT 1987 (4) SC 93 (1987) 4 SCC 611, an Army Officer did not obey the lawful command of his superior officer by not eating food offered to him. Court Martial proceedings were initiated and a sentence of rigorous imprisonment of one year was imposed. He was also dismissed from service, with added disqualification that he would be unfit for future employment.

28. Applying the doctrine of proportionality and following CCSU, Venkatachaliah, J. (as His Lordship then was) observed

"The question of the choice and quantum of punishment is within the jurisdiction and discretion of the CourtMartial. But the sentence has to suit the offence and the offender. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the CourtMartial, if the decision of the Court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognized grounds of judicial review." [Emphasis supplied]

29. From the above decisions, it is clear that our legal system also has accepted the doctrine of proportionality. The question, however, is whether in the facts and circumstances of the present case, the High Court was justified in invoking and applying the doctrine of proportionality. In our judgment, the answer must be in the negative. Normally, when disciplinary proceedings have been initiated and finding of fact has been recorded in such inquiry, it cannot be interfered with unless such finding is based on "no evidence" or is perverse, or is such that no reasonable man in the circumstances of the case would have reached such finding."

26. Thus, in view of the aforesaid discussion since I have already held that the petitioner could not be held to be guilty of not stopping the bus on signal given by the checking squad, as in given facts and circumstances of the case I have

held that it might be possible that he might have not noticed the aforesaid signal given by the checking squad and I have further held that the aforesaid act of the petitioner could not be held to be his intentional at with some ulterior motive of any personal monetary gain, therefore, the same can be held to be mere oversight on his part, as such he might have been negligent in due discharge of his duties while working as driver in the Corporation but the aforesaid negligent act or omission on the part of petitioner cannot be held to be so serious and intentional act of petitioner so as to warrant any major penalty of removal from service. In my opinion, the punishment imposed upon the petitioner is highly disproportionate to the gravity of the charges found proved against the petitioner, accordingly the same can be held to be irrational, arbitrary and shocking to the conscience of the Court as such liable to be quashed. In given facts and circumstances of the case I am of the considered opinion that a penalty of censure or warning for future would meet the ends of justice but since the disciplinary inquiry has been initiated in the year 1997 and petitioner has been removed from service vide impugned order dated 30.11.1998 and a period of more than 9 years have passed, therefore, instead of remitting the matter back to the disciplinary authority, I would like to decide the case finally.

27. Thus, in view of the foregoing discussions I am of the considered Union that the impugned order dated 30.11.1998 passed by disciplinary authority cannot be sustained. Accordingly the same is hereby quashed.

28. A writ of mandamus is issued directing the respondents to reinstate the petitioner in service forthwith along with back wages and continuity of service by treating the period of unemployment on account of aforesaid removal on duty, the period of suspension shall also be treated on duty but he shall not be paid more than subsistence allowance during the period of suspension. However, as back wage from the date of removal till today he shall be paid only 50% salary, as arrears of such salary which shall also be paid to him within a period of three months from the date of production of certified copy of order passed by this Court before disciplinary authority. The petitioner "shall be paid full salary from the date of the order of this Court till the date of his actual reinstatement in service provided he has not attained the age of superannuation and go on paying his current salary further month to month in future. However, as a punishment, the petitioner shall be awarded penalty of censure and a warning shall be given to him for future.

29. With the aforesaid observations and directions, the writ petition succeeds and is allowed to the extent indicated hereinbefore.

30. There shall be no order as to costs and the parties shall bear their own costs. Petition allowed.