

(1993) 05 AHC CK 0012

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 24259 of 1988

Udai Narain Tiwari

APPELLANT

Vs

Deputy General Manager (Eastern Zone) Uttar Pradesh State
Road Transport Corporation and Others

RESPONDENT

Date of Decision : 14-05-1993

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226
Uttar Pradesh State Road Transport Corporation Employees (Other than Officers)
Service Regulations, 1981 — Regulation 62

Citation : (1993) 3 AWC 1386

Hon'ble Judges : M.L. Bhat, J

Bench : Single Bench

Advocate : Someshwari Prasad and J.K. Srivastava, for the Appellant; V.M. Sahai, for the Respondent

Judgement

M.L. Bhat, J.—Petitioner has been removed from service on 6-2-1988. His appeal against the order of removal from service has also been dismissed on 17-10-1988 by the appellate authority. Petitioner prays that writ of certiorari be issued to quash the order of the appellate authority and not to give effect to the said order.

2. Brief facts of the case are as under.

3. Petitioner is said to have joined services in the Government Road Ways in 1964 as a Junior clerk. He was, subsequently confirmed on the said post on 1-4-1972. On 13-7-1978 Petitioner was suspended on the basis of a report dated 15-4-1978. Petitioner is alleged to have connived with the conductor of a bus whose way-bills were not found in order. Petitioner was charge-sheeted on 22-9-1978. However, he was reinstated on 30-10-1979 and he joined his post on 18-11-1979 and enquiry against him was continued.

4. After the initiation of the enquiry Petitioner is said to have filed a representation for changing the enquiry officer on the ground of bias harbored by

the enquiry officer against him. inspite of that enquiry was continued by the enquiry officer.

5. Substance of the charge against the Petitioner was that he was negligent in duty and had not properly checked the way-bills of the conductors and has failed to made the report against three conductors namely, Dev Nath Sharma, Radhey Shyam and Sarvadeo Tewari. Petitioner filed his reply to the charge-sheet before the enquiry officer. On 9-12-1987 Petitioner was served with a show-cause notice proposing the punishment of forfeiture of unpaid suspension allowance for the entire period of suspension and removal from service. Petitioner submitted his explanation on 11-1-1988 denying the charges levelled against him. On 6-2-1988 order of removal from service was passed against the Petitioner. Thereafter, Petitioner pursued the departmental remedy and filed the appeal which also was dismissed.

6. It is stated by the Petitioner in his writ petition that the Impugned order of removal from service was a reproduction of the contents of the enquiry report and the report submitted by one Sri T. N. Singh was not valid on the ground that he was never appointed an enquiry officer to conduct the enquiry in respect of the charges levelled against the Petitioner. The appellate authority has also committed an error of law by not applying his mind to the submissions made in the appeal and has dismissed the appeal without affording opportunity of hearing to the Petitioner. In respect of Dev Nath Sharma, to whom the Petitioner issued the way-bill on 12-3-1978 and who did not deposit the same on the next day, punishment of forfeiture of subsistence allowance has been awarded. Punishment of forfeiture of subsistence allowance was awarded also to Ramesh Chand Tewari who had also issued the way-bill on 12-3-1978, 11-3-1978 and 10-3-1978. One Shyam Narain Misra, a booking/checking clerk was found to be the main culprit of the charge of non-deposit of way-bill was also award punishment of forfeiture of remaining subsistence allowance. It is submitted that the disciplinary authority has adopted the double standard in awarding the punishment to the Petitioners. In his case punishment of removal from service is ordered and in the case of main accused, lenient punishment has been awarded which is said to be discriminatory and violative of Article 14 and 16 of the Constitution. Petitioner submits that he had accepted the tickets in question from the conductors as the same had been duly verified by the station Incharge, therefore, he could not raise any objection. This, he has said in reply to the charge No. 2. In reply to charge No. 3, he has stated that blank ticket book is not deposited as per rules. The conductors deposit the counter foils of the issued ticket alongwith the way-bill. In reply to charge No. 4, he has stated that during course of enquiry ledger was not found to be incomplete and in reply to charge No. 5, he has submitted that way-bill register pertains to the entire staff. The register is complete in all respects so far as the way-bill Issued by him is concerned.

7. The order of removal of the Petitioner from service is a reproduction of enquiry report and the same is as a result of non-application of mind. There is no

evidence on record to substantiate the charge against the Petitioner. The person who submits the enquiry report against the Petitioner was Incompetent to do so because the enquiry was conducted by another officer. The enquiry is said to have been conducted against 64 persons, i.e. entire staff, most of them have been exonerated and against few minor punishment has been awarded- Petitioner alone has been treated harshly by removing him from service. Against the other checking clerks minor punishment was awarded. Punishment awarded to the Petitioner is violative of principles of natural justice. On the aforesaid grounds reliefs in the writ petition have been claimed by the Petitioner.

8 Counter affidavit has been filed on behalf of the Respondent No 2. It is stated that Petitioner failed to perform his duty honestly and sincerely. He tried to conceal the offence of forgery and non deposit of cash by the conductor. It is stated (hat officers have no bias against the Petitioner. It is alleged that the Petitioner was suspended on serious charges of corruption. No representation was received by him for change of enquiry officer. Enquiry officer is said to have granted full opportunity to the Petitioner and enquiry was completed to the satisfaction of the Petitioner. Charge against the Petitioner were proved, therefore, he was issued show cause notice for awarding him proposed punishment. His explanation to the show cause notice was not found satisfactory, therefore, he was removed it out service. Petitioner never raised any objection to the appointment of Sri T N Singh as enquiry officer. He is said to have appeared before him, therefore, he can't now challenge the status of Sri T. N. Singh as enquiry officer. It is admitted that Dev Nath Sharma was awarded lenient punishment and It is said Petitioner cannot take a ay benefit from this. About other employees also it is submitted that lenient punishment was given. However, punishment awarded to the Petitioner is said to be right and reasonable. The grounds stated by the Petitioner is said to be devoid of merit. The grounds taken in the amendment also is said to be without any merit.

9. In the amended plea Petitioner has submitted that the appellate authority has dismissed the appeal of the Petitioner without summoning and without perusing the original record of the case. This fact is borne out from the letter-dated 21-7-1988 addressed to the appellate authority by the Respondent No. 2. In which It is stated that original record is not available, therefore, in absence of the record, appellate authority could not have applied his mind to the appeal. The Petitioner wants to submit that appellate authority's order was without application of mind and without consideration of relevant material. Rejoinder affidavit is also filed by the Petitioner. It is stated that the Roadways department was converted into UPSRTC. Option was given to the employees of the Roadways to opt for the services of newly formed corporation. Petitioner has also opted for service of the corporation. Petitioner was not employee of the State Government, therefore, he could not file the petition before U. P Public Service Tribunal which has jurisdiction over the employees of the State alone. Petitioner has stated that he did not conceal any forgery committed by the conductors nor has he failed to discharge his duty. Petitioner has stated that representation filed

by him was received by the office of Respondent No. 1 on 27-8-1978. He has placed copy of the representation on record. It is submitted that enquiry was conducted by Sri H N Agrawal but the report was submitted by Sri T N. Singh. This fact will vitiate the enquiry. Contentions raised by the Respondents against the Petitioner are denied and assertion of the Petitioner in the writ petition are reiterated.

10. From the perusal of the charge-sheet it appears that charge No 1 pertains to Dev Nath Sharma and other charges pertain to Petitioner and by reading the charge cumulatively it transpires that Petitioner has been charged with conniving with the other employees in forging the record and in not submitting the way-bills as required under rules and for making fictitious entries in the way-bills. None of the charges is directly levelled against the Petitioner that he has forged the record or suppressed the waybill. This exercise was done by the other employees but the Petitioner is said to have been helping them in indulging in corrupt practices and did not point out forgery committed by them in the way-bill and concealed the fact of offences committed by the other employees. The enquiry is said to have been initiated on a report of the Accountant dated 5-4-1978. In his report, the Accountant has stated that one Radhey Shyam, conductor had committed irregularities and made fraudulent entry in the way-bill No 788/75 dated 19-3-1978. The manner in which the forgery is committed by the said conductor is explained in the report. The verifying authority is said to have acted on the version of the conductor. Petitioner has not checked these way-bills in which there are contradictory entries of passengers from Lucknow to Sikandarpur. In another way-bill which pertains to Kanpur to Sahganj, there are also some false entry. It is concluded in the report that the Petitioner who was a checking clerk has marked the entry of the waybill and could not detect the clean defalcation and fictitious entries of the way-bill and appears to have connived with the conductor. From the perusal of the enquiry report of the enquiry officer and the impugned order whereby, the Petitioner has been removed from the service, it appears that the impugned order is reproduction of the enquiry report. The disciplinary authority has not said anything about the charges but has relied on the report of the enquiry officer verbatim as prepared by enquiry officer.

11. I have heard the learned Counsel for the parties and gone through the record carefully. On the scrutiny of the record it is found that the Petitioner has been found guilty of conniving with conductor and other officers in not properly checking the way-bill and Petitioner is said to have failed to detect the forgery committed by other employees in the waybill and the record of the department. Petitioner is not found guilty of having committed any forgery or having embezzled any amount of the department. He is said to have connived in the commission of Irregularities by the other employees who also have been punished by the department. These employees were suspended alongwith the Petitioner. In their case admittedly forfeiture of balance amount of subsistence allowance for the period is ordered. These employees who are directly responsible for committing the irregularity have not been removed from service.

Petitioner who is indirectly held responsible in the commission of irregularities by the other employees is ordered to be removed from service. Therefore, it is to be seen whether the punishment given to the Petitioner is commensurate with the gravity of the Irregularity and is not arbitrary or discriminatory in as much as if others who were grouped with the Petitioner are found guilty of commission of irregularity and having been awarded lesser punishment whether the Petitioner can be given severe punishment.

12. Apart from this Mr. Srivastava appearing for the Petitioner has submitted that enquiry was not conducted in a fair manner and the Petitioner was not treated fairly. It is also submitted that appellate authority has absolutely failed to discharge his duty in as much as it has passed the order without the perusal of the relevant material because the record was not available before him. It is also submitted that disciplinary authority has also not applied his mind because it has not given a finding as to whether charges against the Petitioner were really proved or not. It has relied upon the enquiry report and reproduced that in the impugned order of removal of service. He has, therefore, submitted that disciplinary authority has failed to apply his mind and without application of mind has awarded punishment to the Petitioner. The disciplinary authority has stated that Petitioner has in league with the conductors, committed the irregularity whereby, the department has suffered a financial loss. This is in fact the finding of enquiry officer which is adopted by the disciplinary authority and on this finding he has been removed from service.

13. The factual finding recorded against the Petitioner by the enquiry officer cannot be disturbed in this writ petition. This Court has a limited jurisdiction of correcting the record. It cannot reappreciate evidence which has been appreciated by the lower tribunal and, thereafter, come to its own conclusions. Even if other conclusions are possible to be drawn still it will not interfere with the appreciation of evidence unless it is proved that the appreciation of evidence was perverse or facts were held proved on the basis of "no evidence" or on the basis of evidence which was totally inadmissible. In this case it is held by the enquiry officer that forgery was committed by the other officers and Petitioner had not acted with due care and caution in pointing out the forgery in time which has caused financial loss to the department. It is stated that the Petitioner has connived with the real offenders and the real offenders are also identified in the enquiry report. The real offenders have been given a lenient punishment, therefore, the first question that would engage the attention of the Court is whether Petitioner could be given harsher punishment when persons grouped with him in the transaction, which is held to be irregular, were given lesser punishment. Learned Counsel for the Petitioner has relied on an authority of Lucknow Bench of this Court. Syed Jamil Ahmad v. The State of U.P. 1990 (2) AWC 952. It was held that if recommendation is made by the enquiry officer for awarding severe and major punishment to a person who had only connived in the offence but the main person who has committed the offence was awarded a lesser punishment the major punishment was held to be arbitrary and

unconstitutional In the circumstances. Major punishment was held to be not commensurate with the gravity of the misconduct alleged to have been committed by the Petitioner in that case because main person who was found guilty of committing the offence was let off with minor punishment. On, the basis of the principle laid down in Bhagat Ram v. State of Himachal Pradesh. 1983 (SCC) 342 The major punishment imposed on the Petitioner was quashed as being violative of Article 14 of the Constitution of India. It was canvassed by Mr. Srivastava that enquiry report so far as it recommended major punishment for the Petitioner is not reasonable. The enquiry officer has found some other employees of the Respondent directly involved in the commission of irregularities which were enquired by the enquiry officer. These persons have been given lesser punishment and in case of the Petitioner harsher punishment is imposed. To the extent of recommending harsher punishment for the Petitioner this Court can interfere under Article 226 of the Constitution of India because if on the same report others are let off with a minor punishment there is no rationale of awarding higher punishment to the Petitioner who has been found guilty of only to have connived In the commission of Irregularity. The unreasoned recommendation and unreasoned order of the appellate authority in this regard is said to be violative of principles of natural justice. If others who had committed the offence were let of with minor punishment no reason hat been given by the enquiry officer or by the disciplinary authority as to why major punishment is required to be Imposed on the Petitioner for his convenience. Mr. Srivastava has relied on Jai Shanker Vs. State of Rajasthan, . The observation of the Supreme Court from this judgment which reads as under:

So It is essential that some restrictions shall be imposed on tribunals In the matter of passing orders affecting the rights of parties and the least they should do is to give reasons for their orders, is relied upon. The order of awarding major punishment is said to be unreasoned, therefore, likely to be quashed.

14. The submission of Mr. Srivastava that Petitioner has been given major punishment for only conniving in the commission of the offence and those who have committed the offence have been given lesser punishment has force. The punishment awarded to the Petitioner does not appear to be commensurate with the gravity of the offence which he is alleged to have committed. He is said to have concealed the detection of irregularity committed by other employees whereby, it is inferred that he has connived In the commission of offence and has been given major punishment for that, The main offenders are let of with minor punishment. This appears to be arbitrary and discriminatory. The enquiry officer or the disciplinary authority also has not given any reason why they proposed and Imposed harsh punishment for the Petitioner and why they let of the real culprits with a very lenient punishment. There are no reasons in the appellate authority's order also If a group of persons were subjected to enquiry in respect of the commission of irregularity in. which they are said to have played different roles they are required to be treated similarly in the matter of awarding punishment also.

15. Where a police constable has overstayed his leave for 57 days, his removal from service was held to be harsh, matter was remanded to the authority for awarding lesser punishment See *Samsher Bahadur Singh v. State of U.P.* 1993 (1) UP LB EC 488.

16. The appellate authority also seems to have decided the appeal without considering the relevant material. This fact is brought on record by the Petitioner by referring to letter dated 21-7-1988 written by the Respondent No. 2 to the appellate authority, The appellate authority, therefore, seems to have failed to give reasons as to why Petitioner, similarly circumstanced with others who are involved in the misconduct, has been given major punishment and real offenders have been let of with minor punishment. This was necessarily to be considered by the appellate authority if disciplinary authority or enquiry officer had failed to give reasons in their order while making recommendation against the Petitioner. The appellate authority had to consider the fairness of the said recommendation- On the face of it the recommendation made against the Petitioner and others involved In the misconduct was discriminatory and the Petitioner had not committed any offence of embezzlement. Those who committed embezzlement were given lesser punishment and Petitioner was given a harsh punishment, therefore, it was necessary for the appellate authority to find out whether order of the -disciplinary authority is reasoned or not. The appellate authority was also bound by the principles of Article 14 of the Constitution of India. It should not have allowed discriminatory treatment given to the Petitioner to remain in force if such treat meat was unreasoned and was not commensurate with the gravity of misconduct alleged against the Petitioner.

17. It was contended by Mr. Srivastava that the Petitioner was found guilty of negligence in the performance of duty, which of course is a misconduct but not so serious as a misconduct of the type of embezzlement or forgery. If for misconduct or forgery and embezzlement lesser punishment is awarded, major punishment could not be awarded for negligence in the performance of duties. My attention was drawn to UPSRTC employees (other than officers) Service Regulation of 1981. Regulation 62 contains acts of commission and omission which are to be treated as misconduct. The other employees whose conduct was also enquired Into have also committed various types of misconduct as defined in regulation 62. The punishment awarded to them could also be granted to the Petitioner which would have satisfied the test of fairness and other guarantees enshrined under Article 14 of the Constitution of India. The discriminatory treatment given to the Petitioner by the enquiry officer, by the disciplinary authority and by the appellate authority is not supported by any reason. Scales of justice have to be even. In the whole transaction in which allegations of irregularity and misconduct are levelled against various officers everybody was entitled to be given the same treatment In the matter of awarding the punishment also. The enquiry report does not suffer from any vice in so far as the factual finding about the misconduct of the Petitioner and others is concerned. However, it does suffer from the vice of discrimination because it

proposed different punishments for the persons who are directly involved in the misconduct and for the person who has only connived in the commission of misconduct. The recommendations are unreasonable and without there being any intelligible nexus with the object which was sought to be achieved by the enquiry report. The treatment meted out to the Petitioner seems to be irrational.

18. Mr. V.M. Sahai appearing for the Respondents while arguing his case has tried to justify the enquiry report and the order of the disciplinary authority. His argument, however, with regard to the awarding of harsher punishment to the Petitioner was not convincing. He could not point out reasons from the impugned enquiry report and the impugned order for removal from service from the record. In fact, no reason is discernible from the record about the purpose of imposing major punishment against the Petitioner only. The appellate authority's order of dismissal of appeal could be justified if it had been passed on perusal of the record. Without perusal of the record, the appellate authority cannot be said to have applied its mind objectively and in accordance with law. An order which is passed without consideration of relevant record is rendered arbitrary. If an order is passed on consideration of irrelevant material, said order is also rendered arbitrary. However, any order which is passed by the Administrative authority must be supported by reasons when it has the effect of visiting the citizen with civil consequences. In the present case, the order of awarding major punishment against the Petitioner is not only discriminatory, violative of Article 14 of the Constitution of India, but arbitrary also. However, on the basis of the enquiry report, the disciplinary authority is free to impose the similar lenient punishment to the Petitioner which was awarded to Radhey Shyam and others against whom enquiry was instituted along with the Petitioner.

19. For the reasons stated above, the punishment of removal from service of the Petitioner is to be quashed. Accordingly, the order of removal from service of the Petitioner dated 6-2-1988 and the order of dismissal of appeal dated 17-10-1988 is quashed. The appellate authority is directed to reconsider the appeal of the Petitioner afresh and give him the same treatment which was meted out to Radhey Shyam and others whose conduct was also enquired into by the enquiry report which is the basis for awarding major punishment to the Petitioner. Major punishment against the Petitioner is quashed; they would not prevent the appellate authority from giving similar punishment to the Petitioner which was given to others similarly circumstanced with the Petitioner. The appellate authority shall have due regard to their regulations and decide the appeal in accordance with law, in the light of the observations made hereinabove, within a period of four months from the date of supply of certified copy of this judgment to the appellate authority. There will be no order as to costs.