

(2016) 11 AHC CK 0012

In the Allahabad High Court

Case No : Constitution of India, 1950 - Article 226

U.P.S.R.T.C.

APPELLANT

Vs

Kehar Singh

RESPONDENT

Date of Decision : 11-11-2016

Acts Referred:

Civil Misc. Writ Petition No. 10654 of 2012

Citation : (2017) 5 ADJ 201

Hon'ble Judges : Suneet Kumar, J.

Bench : Single Bench

Advocate : Samir Sharma, Advocate, for the Petitioner; C.S.C. and P.K. Srivastava, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Suneet Kumar, J.— Heard learned counsel for the petitioner, learned Standing Counsel and learned counsel appearing for the respondent-workman.

2. Petitioner, a State Corporation, is assailing the award dated 28 July 2011 passed in Adjudication Case No. 3 of 2003 (Published on 4 November 2011), whereby, the respondent-workman was directed to be reinstated with continuity in service and back wages.

The respondent-workman was working as conductor, on 12 December 1985, he was deputed on Bus No. UHC-056 which was plying on Bijnore-Hyderabad route. On en-route checking, it was found that 12 passengers were travelling without ticket, though the workman had realised the fare from the passengers. He was also found to be under influence of alcohol, and refused to sign the entries made by the checking authority on the way-bill. Consequently, disciplinary proceedings was initiated vide charge sheet dated 16 January 1986, to which the first respondent replied. On conclusion of the enquiry, charges came to be proved, consequently, first respondent was terminated on 11 March 1986. The termination order was assailed in a petition before this Court which was allowed

vide judgment and order dated 21 October 1996, pursuant thereof, the workman was re-instated on 13 February 1987. The first respondent, thereafter, preferred a departmental appeal which was rejected on 4 February 2002, revision also met the same fate which came to be rejected on 21 June 2002. Industrial dispute was caused to be referred by the State Government under Section 4-K of the U.P. Industrial Disputes Act, 1947, which was answered by the impugned award.

3. The first respondent, as well as, the petitioner entered appearance and filed their written statement, documents, and oral evidence was led on behalf of the Corporation. The Labour Court was of the opinion that the enquiry was not fair for the reason that principles of natural justice was violated as the appointing authority himself conducted the departmental enquiry, secondly, the charges were held not proved for the reason that no evidence was led by the Corporation to prove the accident which had taken place at the spot of checking; no other member of the checking party, other than Sri Indra Lal (EW-1), was produced; the checking team had not counted the cash in the cash bag of the first respondent; and no evidence was led to show that pecuniary loss was caused to the Corporation, accordingly, the termination order dated 11 March 1996 was set aside and the first respondent was directed to be reinstated with back wages.

4. Learned counsel appearing for the petitioner would submit: (1) that the finding recorded by the labour court regarding fairness of departmental enquiry is absolutely perverse and against the material on record; (2) despite service of charge sheet and notice, the respondent did not participate in the enquiry; (3) the spot report recording admission of the first respondent of the incident, along with charge sheet was served upon him; (4) labour court proceeded on a wrong presumption that appointing authority cannot conduct the departmental enquiry and in doing so would tantamount to denial of principles of natural justice.

5. In rebuttal, learned counsel for the first respondent would submit: (1) that though at the time of inspection, 12 passengers were without ticket, it was incumbent upon the Corporation to have proved as to whether the passengers boarded the bus on the spot where the accident had taken place; (2) cash received towards the fare was not counted, therefore, it cannot be said that passengers were without ticket; (3) enquiry report was not supplied to the first respondent; (4) quantum of punishment is harsh and not commensurate to the guilt.

Rival contentions fall for consideration.

The question to be determined, on rival submission, is as to whether: (1) the disciplinary authority can conduct the disciplinary proceeding/enquiry himself and in doing so whether he violates the principles of natural justice; (2) whether the quantum of punishment imposed upon the petitioner is commensurate to the guilty.

6. The facts, inter se, parties is not disputed, it is admitted that on spot inspection 12 passengers were found travelling without ticket, first respondent

had collected the fares but failed to issue the tickets. Factum of not issuing the tickets was admitted by the first respondent. The labour court held the enquiry to be bad, being in violation of the principles of natural justice, merely for the reason, that the disciplinary authority had conducted the disciplinary enquiry himself.

7. A perusal of the order of dismissal would clearly reflect that disciplinary authority had taken into consideration the material and evidence brought against the first respondent and recorded reasons arriving at a conclusion that the charges against the first respondent was proved. The order itself contains the reasoning and the material relied upon. In the event of the disciplinary authority himself conducting the enquiry, separate enquiry report is not required to be drawn, nor is it the requirement of law, the entire proceedings is contained in the order itself which is followed by the punishment.

8. Constitution Bench in *Managing Director, ECIL, Hyderabad v. B. Karunakar-1* (1994) Supp. (2) SCC 391, held that disciplinary authority can himself conduct the enquiry, however, in the event of the enquiry being conducted by an enquiry officer, it would be requirement of principle of natural justice to provide copy of the enquiry report to the delinquent employee to show cause, before penalty is imposed. The rule is not a thumb rule, the employee has to show the prejudice caused by the non supply of enquiry report. *Suresh Kumar Tiwari v. D.I.G., P.A.C., Kanpur Anubhag, Kanpur and another* (2001) 4 AWC 2630 held that an enquiry officer is appointed by the punishing authority for purposes of holding enquiry so that evidence could be collected and the delinquent may get opportunity to lead his evidence, if the punishing authority himself conducts the enquiry no principles of rules of natural justice are violated.

9. Learned counsel appearing for the first respondent has not been able to cite any precedent or statutory provision which prohibits the disciplinary authority from conducting the enquiry himself, therefore, the presumption on which the labour court proceeded in holding the enquiry being in violation of principles of natural justice merely for the reason that it was conducted by the disciplinary authority was erroneous and illegal, therefore, cannot be sustained.

10. Learned counsel for the respondent lastly submitted that the punishment awarded is disproportionate to the charge. It is not being disputed that 12 passengers upon inspection were found to be travelling without tickets. The report, as well as, in support of the report oral evidence was led which has established that 12 passengers were without ticket.

11. Learned counsel for the petitioner Corporation has referred to and relied upon a recent judgment of the Supreme Court in *U.P.S.R.T.C. and others v. Gopal Shukla and others* (2016) 128 CC 0248 : 2016 Tax Pub (CL) 0051 (SC), wherein, it was contended that considering the fact that a petty amount was shown to have been misappropriated, as such, punishment of dismissal was bad. Reliance was placed upon an earlier judgment rendered in Municipal Committee,

Bahadurgarh v. Krishnan Bihari and Ors. [AIR 1996 SC 1249] to contend that in cases involving corruption, there cannot be any punishment other than dismissal, and the fact whether amount misappropriated is small or large, is not material. It was observed that degree of corruption is immaterial and substitution of punishment of dismissal with a lesser punishment was not approved.

12. Reliance has also been placed on the judgment rendered in State of Haryana and another v. Rattan Singh [AIR 1977 SC 1512], wherein, the Supreme Court was dealing with a case of termination and the plea that statement of passengers were not recorded by the Inspector of Flying Squad, was rejected. The decision of termination, based solely upon the evidence of Inspector, was approved. Paragraphs 3 to 5 of the report is reproduced :-

"3. The principal ground on which the courts below have declared the termination bad is that none of the 11 passengers have been examined at the domestic enquiry. Secondly, it has been mentioned that there is a departmental instruction that checking inspectors should record the statements of passengers, which was not done in this case. The explanation of the State, as done out by the record, is that the inspector of the flying squad who had said that they had paid the fares but they declined to give such written statement. The third ground which weighted with the courts was, perhaps, that the co-conductor in the bus had supported with this evidence, the guilt-lessness of the respondent.

4. 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. However, the courts below mis-directed 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 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 common-sense 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.

5. The Inspector tried to get the statements but the passengers declined, the psychology of the latter in such circumstances being understandable, although may not be approved. We cannot hold that merely because statements of passengers were not recorded the order that followed was invalid".

13. Learned counsel for the petitioner Corporation has also relied upon the judgments of the Apex Court rendered in Divisional Controller, KSRTC (NWKRTC) v. A.T. Mane [2005 (3) SCC 254], Devendra Swamy v. Karnataka State Road

Transport Corporation [2002 (9) SCC 644], North West Karnataka Road Transport Corporation v. H.H. Pujar [AIR 2008 SC 3060] and Divisional Manager, Rajasthan S.R.T.C. v. Kamruddin [AIR 2009 SC 2528], as well as, judgments of this Court in the case of Uttar Pradesh State Road Transport Corporation, Jhansi v. Presiding Officer, Labour Court (4), Kanpur [2011 (3) UPLBEC 1979] and U.P.S.R.T.C and Others v. K.K. Gupta and others, in order to contend that once conductor has misconducted by carrying passengers without proper tickets, then no interference is warranted with the punishment imposed.

14. For the law and reasons stated herein above, the impugned award is unsustainable in law, accordingly, set aside and quashed.

15. The writ petition stands allowed.

16. No cost.