
Awadesh Rai Vs Regional Manager, U.P.S.R.T. Corporation and Another**C.M.W.P. No. 15471 of 1990**

Court: Allahabad High Court**Date of Decision:** Feb. 5, 1993**Acts Referred:**

Uttar Pradesh State Road Transport Corporation Employees (Other than Officers) Service Regulations, 1981 & Regulation 64(3), 64(4), 64(5)

Citation: (1993) 2 LLJ 460**Hon'ble Judges:** R.B. Mehrotra, J**Bench:** Single Bench**Advocate:** Pankaj Kumar Srivastava and B.P. Yadav, for the Appellant; V.M. Sahai, for the Respondent**Final Decision:** Allowed

Judgement

R.B. Mehrotra, J.

Awadesh Rai, the petitioner, was appointed on the post of conductor on August 12, 1980 in U.P. State Road

Transport Corporation of Azamgarh Depot. It is alleged that on September 10, 1987, when the petitioner was taking the Bus No. U.H.S. 357 on

Renukoot-Kota Route, at 10.10 P.M. in the night, a checking was conducted by Traffic Supdt., Sri Mohammad Jamil Khan and two Traffic

Inspectors, namely, Sri K.B. Lal and Sri Iqbal Narain. The bus was signalled to stop by the checking staff. The bus was not totally stopped and

only Sri Iqbal Narain, the Traffic Inspector managed to enter the bus. The bus was not stopped even on his asking. Consequently the remaining

persons of the checking staff followed the bus by the Staff Car and thereafter the bus was made to stop forcibly and after checking it was found

that all fifty passengers travelling in the bus were with-out tickets whereas the amount of the fare was received by the petitioner. On the basis of the

aforesaid report, the petitioner was suspended and given a chargesheet on September 18, 1987. Sri S.S. Srivastava, the retired District Judge of

Azamgarh, was appointed as Inquiry Officer. The petitioner submitted his reply to the charge-sheet on September 9(19,29?), 1987. The Inquiry

Officer was appointed by the Appointing Authority the Regional Manager, U.P. State Road Transport Corporation, Azamgarh, Vide Order, dated

November 1, 1987.

2. On February 9, 1988, Sri S.S. Srivastava the Inquiry Officer submitted a detailed report wherein it was held that the charges against the

petitioner are not proved beyond doubt, therefore, the petitioner deserves to be exonerated from the charges levelled against him. In the said

enquiry report, the Inquiry Officer considered the statements of Sri Iqbal Narain, Sri K.B. Lal the Traffic Inspectors, Sri Imam Uddin the driver of

the bus and the petitioner the conductor of the bus. Sri Mohd. Jamil Khan, the Traffic Supdt., did not appear before the Inquiry officer and the

Inquiry Officer was told that he is on leave and his report, dated September 14, 1987 is already on the file. Sri S.S. Srivastava, the Inquiry Officer

considered all the statements of the prosecution witnesses as well as the statements of the driver of the bus and the petitioner and came to the

conclusion that the charges levelled against the driver and the conductor are not made out. After submission of the aforesaid enquiry report, the

petitioner was permitted to join his duties as conductor on May 27, 1988.

3. Again on March 2, 1989, the petitioner was suspended and charge-sheet was given to him in respect of some other incident for which a

separate enquiry is being conducted against the petitioner and the same is not the subject matter of controversy in the present writ petition though in

the writ petition, the petitioner has alleged that the petitioner was again suspended for the same charge, but the said statement has been effectively

controverted in the counter affidavit and on the basis of the record it is established that the second suspension of the petitioner and the second

enquiry was in respect of different charge and not in respect of the incident, dated September 10, 1987.

4. However, subsequent to the submission of the first enquiry report, the Regional Manager came to the conclusion that the two Traffic Inspectors

examined on behalf of the prosecution have turned hostile and Sri Mohd. Jamil Kahn, Traffic Supdt.. has not been examined whose examination

was necessary. Disagreeing with the enquiry report submitted by Sri S.S. Srivastava, the Regional Manager himself decided to hold fresh enquiry.

5. In the fresh enquiry, the Regional Manager examined Sri Mohd. Jamil Khan, the Traffic Supdt., and afforded full opportunity to the petitioner

and the driver to cross-examine Sri Mohd. Jamil Khan and also examined the driver and the conductor. On the basis of this fresh enquiry, the

Regional Manager came to the conclusion that the charges against the petitioner and the driver are made out. Accordingly a fresh show cause

notice, dated July 3, 1989 was served on the petitioner to show cause as to why the petitioner should not be punished for the charges leveled

against him and a copy of the second enquiry report was also annexed with the aforesaid show cause notice.

6. The petitioner submitted his explanation to the show cause notice, dated July 3, 1989. After considering the explanation to the show cause

notice, relying upon the second enquiry report the Regional Manager passed a detailed order, dated May 22, 1990 removing the petitioner from

service.

7. By means of the present writ petition under Article 226 of the Constitution of India, the petitioner has challenged the order dated May 22, 1990

removing him from service with immediate effect, forfeiting the balance of salary of the petitioner for the suspension period.

8. I have heard Sri. A.N. Srivastava, learned counsel appearing for the petitioner and Sri V.M. Sahai, learned counsel appearing for the

respondents.

9. The only point urged on behalf of the petitioner is that the petitioner could not have been punished on the basis of second enquiry report as the

Rules did not permit the holding of second enquiry and the order of removal against the petitioner on the basis of the second enquiry is per se

illegal. It was contended on behalf of the petitioner that it was not open to the Appointing authority to have disagreed with the report of the Inquiry

Officer and on the basis of material on record in the first enquiry report he should have come to the conclusion that the charges against the

petitioner are made out, but it was not open for the Appointing Authority, either to order, or conduct a fresh enquiry for filling up the lacuna noted

in the first enquiry report unless the Rules specifically permitted holding a fresh enquiry again. In support of his contention, Sri. A.N. Srivastava

relied upon a Division Bench decision of Bombay High Court in the case of Suryabhan Baburao Patil v. State of Maharashtra and Ors. 1989 (58)

FLR 727. The Division Bench of the Bombay High Court held:

It is well settled that the report of an enquiry officer is merely recommendatory and is not binding on the Disciplinary Authority. Instead of

recording a contrary conclusion, the Disciplinary Authority found out a novel method and cancelled the appointment of the enquiry officer and

appointed a fresh enquiry officer and directed a de novo enquiry. This was clearly impermissible. It is not open to order fresh enquiry only to fill up

the lacuna noticed in the first enquiry. In case the Disciplinary Authority felt that the report of Bhonsale was not correct because inferences drawn

were not accurate, then nothing prevented the Disciplinary Authority from recording a finding contrary to the enquiry officer, but it is obvious that

the Disciplinary Authority realised that the material on record was not enough to hold that the charges against the delinquent were proved and

therefore a fresh enquiry was ordered. The fresh enquiry was not permitted by the Maharashtra Zila Parishad District Services (Discipline and

Appeal) Rules, 1964. By ordering a fresh enquiry very valuable rights of the delinquent were taken away by the Disciplinary Authority and

therefore such fresh enquiry cannot be treated as valid.

10. In reply to the aforesaid contention Sri Sahai has not cited any decision to the contrary. On the other hand Sri Sahai has contended that it is

open to the Disciplinary Authority to disagree with the Inquiry Officer's report and hold fresh enquiry. The Disciplinary Authority himself held the

second enquiry to afford a fair opportunity to the charged employees and after affording full opportunity to the charged employees came to a

different conclusion on examining the relevant evidence, as such it cannot be said that the Disciplinary Authority has committed any illegality in

holding the second enquiry after affording full opportunity to the petitioner. Sri Sahai has also contended that the order passed by the Regional

Manager removing the petitioner from service is appealable under Regulation 69 of the U.P. State Road Transport Corporation Employees (Other

than Officers) Service Regulations, 1981 (hereinafter referred to as the Regulations), as such present writ petition should be dismissed on the

ground that the petitioner has an alternative remedy of filing the appeal.

11. Regulation 64 (3), (4) and (5) of the Regulations, relevant for the purposes of the present controversy, are reproduced below:

64(1).....

(2).....

(3) If the employee desires or the enquiry officer considers it necessary, an oral inquiry shall be held in respect of such allegations as are not

admitted. At the enquiry such oral evidence shall be heard as the Enquiry Officer considers necessary. The person charged shall be entitled to

cross examine the witnesses, to give evidence in person and to have such witnesses called as he may wish, provided that the officer conducting the

enquiry may for sufficient reasons to be recorded in writing refuse to call or examine any witnesses.

(4) The proceedings shall contain sufficient record of evidences and the statement of findings and grounds thereof. The Enquiry officer may also,

separately form the proceedings, make his own recommendations regarding the penalty to be imposed. The proceedings and the record shall be

forwarded to the appointing authority.

(5) The appointing authority shall pass such orders as he considers proper on the basis of record and report.

12. A bare perusal of the aforesaid Regulation shows that there is no provision in the Regulations for holding fresh enquiry if the Appointing

Authority disagrees with the report of the Inquiry Officer. The Appointing Authority could have disagreed with the Inquiry Officer's report and on

the basis of the evidence examined by the Inquiry Officer, could have taken a different view, but in the present case, the Appointing Authority

himself held the second enquiry and filled up the lacuna by examining Sri Mohd. Jamil Khan, Traffic-Supt., who did not appear before the first

Inquiry Officer, as such in the second enquiry, fresh evidence was taken by the Appointing Authority which was not permissible under the

Regulations.

13. I am in agreement with the decision of the Bombay High Court in the case of Suryabhan Baburao Patil (supra) and I am of the opinion that it

was not open for the Appointing Authority to hold fresh enquiry only to fill up the lacuna in the first enquiry. The holding of second enquiry and

punishing the petitioner on the basis of said enquiry report is illegal and contrary to the Regulations governing the service conditions of the

employees of the U.P. State Road Transport Corporation. Since the submission made by the petitioner goes to the very root of the matter, the

very enquiry on the basis of which petitioner has been punished has been held to be illegal, it is not appropriate to refuse to exercise jurisdiction

under Article 226 of the Constitution of India on the ground that petitioner has an alternative remedy of filing representation under Regulation 69 of

the Regulations. Besides the order of removal was passed against the petitioner on May 22, 1990. The writ petition challenging the same was also

filed in the year 1990, thereafter counter and rejoinder affidavits have been exchanged, the time for making the representation has expired long

back, for this reason also the petitioner cannot be relegated now to pursue alternative remedy of making representation.

14. The writ petition accordingly is allowed. The order, dated May 22, 1990 passed by the Regional Manager U.P. State Road Transport

Corporation, Azamgarh filed as Annexure 5 to the writ petition removing the petitioner from service is hereby quashed. However, it is being made

clear that if any other proceeding or enquiry is pending against the petitioner for some other charge, the said enquiry will not be affected by this

judgment and petitioner will be dealt with in accordance with law in any other enquiry which is being conducted against the petitioner. Parties will

bear their own costs.