

(2012) 04 AHC CK 0164**Allahabad High Court****Case No:** Civil Miscellaneous Writ Petition No. 32668 of 1993

Abkar Ahmad

APPELLANT

Vs

Regional Manager, U.P.S.R.T.C.
and Another

RESPONDENT

Date of Decision: April 16, 2012**Citation:** (2012) 5 ADJ 710**Hon'ble Judges:** Sabhajeet Yadav, J**Bench:** Single Bench**Advocate:** Jafar and Ateeq Ahmad Khan, for the Appellant; Samir Sharma, for the Respondent**Final Decision:** Allowed**Judgement**

Hon"ble Sabhajeet Yadav, J.

Heard learned counsel for the petitioner and the learned counsel for the respondents. By this petition, the petitioner has challenged the order dated 6.4.1993 passed by the respondent No. 1 and the order dated 23.6.1993 passed by the respondent No. 2, contained in Annexures 6 and 8 to the writ petition respectively, to the extent of directing for fresh appointment of the petitioner while forfeiting benefits of past services of 14 years rendered by the petitioner.

2. It is stated that the petitioner was appointed on the post of conductor in the year 1979 in U.P. State Road Transport Corporation. While working on the said post, on 20.6.1991, the vehicle which was plying and in which the petitioner was discharging his duties as conductor, was checked by the checking squad. It was alleged by the checking authority that out of 53 passengers, 9 passengers were found travelling without ticket in the vehicle (Bus). On 27.6.1991, while the petitioner was conducting the Bus No. UHI 490 on Allahabad-Mahcawhat route, his vehicle was checked by the checking squad and it was alleged by the checking authority that out of 54 passengers, 33 passengers were found travelling without ticket in the bus. On the basis of the report submitted by the checking squad, the petitioner was placed

under suspension vide order dated 27.7.1991, thereafter a charge-sheet dated 3.8.1991 containing charges in respect of the aforesaid incidents, has been served upon the petitioner. The petitioner submitted his explanation and denied the charges levelled against him. Despite thereof disciplinary proceeding was held against him and enquiry officer held the petitioner guilty of the charges levelled against him, thereupon a show-cause notice was served upon him and after receipt of reply of the show-cause notice, the disciplinary authority-respondent No. 1 passed the impugned order dated 6.4.1993, contained in Annexure 6 to the writ petition, whereby the petitioner was removed from the service. The appeal preferred against aforesaid order has been partly allowed by the respondent No. 2 vide order dated 23.6.1993, whereby, the appellate authority has given one more chance to the petitioner to serve the department by treating him a fresh appointee on the post of conductor, putting break in service and forfeiting his 14 years service already rendered on the post in question, hence this petition.

3. Learned counsel for the petitioner has submitted that in the impugned order dated 23.6.1993, the appellate authority has noticed that in both the incidents, checking squad did not record any statement of the passengers who were found to be travelling without ticket and reporting officer did not receive the way bill from the conductor in both the incidents. Not only this, but also the checking squad did not prepare the ticket of the passengers who were travelling without ticket, instead thereof the tickets were prepared by the conductor-petitioner himself. It has also been mentioned that the conductor has already distributed the tickets of 33 passengers but could not make entry in the way-bill. Thus, after making over-all assessment of the facts and circumstances of the case, the appellate authority has given one more chance to the petitioner to serve the department by discontinuing the service of the petitioner and forfeiting the past 14 years of services of the petitioner and other consequential benefits of service by treating his appointment afresh at the initial pay scale on the post of conductor.

4. In my opinion, once the appellate authority has found the irregularities committed by the checking squad in not preparing the tickets of unauthorised passengers and in not receiving the way-bill from the conductor and further in not recording any statement of the unauthorised travelling passengers, and tickets were prepared by the conductor himself, further in another incident 33 tickets were also distributed by the petitioner, but merely in absence of entry of the tickets in the way bill at the relevant time, the finding recorded by the enquiry officer, disciplinary authority and the appellate authority regarding the guilt of the petitioner appears to be perverse and cannot be sustained. A prudent person cannot record such finding about the guilt of the petitioner in the facts and circumstances of the instant case, therefore, in my opinion, the finding of guilt of the petitioner recorded by the authorities concerned, is erroneous and cannot be sustained. Accordingly, the order passed by the disciplinary authority is hereby quashed. However, the impugned order passed by the appellate authority is maintained to the extent of permitting the

petitioner to continue in service, but the aforesaid order, in my considered opinion, requires modification to the extent that the petitioner shall be treated to be reinstated without break and with continuity in service from the date of his removal to the date of his reappointment/reinstatement in service. Accordingly, the impugned appellate order is modified to the above extent and it is directed that the petitioner shall be treated to be continuous in service. The petitioner shall also be entitled to all other consequential benefits like seniority, increments emoluments etc. while counting entire past services rendered by him right from the date of his joining till his attaining the age of superannuation. He shall be paid arrears of salary within a period of two months from the date of production of a certified copy of this order before the authority concerned. It is pointed out that the petitioner has attained the age of superannuation in the year 2010, therefore, authorities concerned are directed to clear post retiral dues of the petitioner by treating him to be continuous in service on the post in question.

5. With the aforesaid directions/observations, this writ petition stands allowed. There shall no order as to costs.