

(2006) 08 AHC CK 0222

Allahabad High Court (Lucknow Bench)

Case No: Writ Petition No. 8065 (SS) of 1992

Bhim Shanker Trivedi

APPELLANT

Vs

U.P. State Road Transport
Corporation and Others

RESPONDENT

Date of Decision: Aug. 29, 2006

Citation: (2008) 6 AWC 5921

Hon'ble Judges: Rakesh Sharma, J

Bench: Single Bench

Advocate: Anil Kumar and H.S. Jain, for the Appellant; Vina Singh and G.S. Chauhan, for the Respondent

Final Decision: Allowed

Judgement

Rakesh Sharma, J.

This writ petition has been heard and disposed of today in open court for reasons to be recorded later. My reasons for allowing the writ petition are as under.

2. Heard Sri Anil Kumar, learned Counsel for the Petitioner and Sri G. S. Chauhan, learned Counsel appearing for the opposite parties.

3. The Petitioner, who was working as a conductor in U. P. State Road Transport Corporation, hereinafter referred to as the Corporation, has assailed the order of dismissal passed against him on 31.3.1992 and the subsequent order passed by the appellate authority on 8.10.1992 dismissing the statutory appeal submitted by him. The Petitioner was initially appointed as conductor of City Bus Service, Lucknow, managed by the Corporation. He was regularized in services on 27.5.1982. At the relevant time, the Petitioner was working as conductor in Raebareli Depot of the Corporation. On 12.2.1989, he was deputed to conduct Bus No. UNW-26 operating on Raebareli-Kanpur route. The traffic Inspector of the Corporation gave signal to stop the bus. It was alleged by the authorities of the Corporation that the Petitioner did not show him the way-bill. He was also carrying some passengers without ticket.

A departmental enquiry was initiated against the Petitioner and a charge-sheet was issued against him on 29.4.1989. The Petitioner denied the charges by filing his reply to the charge-sheet on 23.5.1989. He had submitted in his reply that he had produced the way-bill before the traffic inspector, checking staff. Sri P. C. Sharma, Traffic Inspector was drunk. Another bus which was plying on the same route had broken down on the road and several passengers of that bus were accommodated in the bus of the Petitioner. The Petitioner indicated this fact to the Traffic Inspector, who was satisfied with the explanation given by the Petitioner. The Petitioner had given details of the passengers. According to him, Bus No. UNW-26 was carrying 72 passengers. Out of them, 26 passengers had boarded the bus at Raebareli. There were 18 roadways employees in the bus, who were holding valid passes for free travelling in the buses of Corporation. In addition to these, 28 passengers of the broken down bus No. 9931 belonging to Raebareli Depot were transferred from that bus to the Petitioner's bus. As per Petitioner, he had demonstrated before the enquiry officer that he was innocent of the charges and was not carrying the passengers without ticket. The enquiry report was submitted on 25.2.1991 and a show cause notice was issued against him. A departmental enquiry was conducted and an order of dismissal was passed against the Petitioner on 31.3.1992 by the Manager, Personnel of the office of General Manager, UPSRTC, Lucknow. Feeling aggrieved, the Petitioner preferred an appeal before the Divisional General Manager, who also rejected the same vide order dated 8.10.1992.

4. Learned Counsel for the Petitioner has assailed the departmental enquiry on several grounds. He has laid much stress on the submission that the Petitioner was not carrying passengers without ticket. There were 18 employees of the Corporation, free pass-holders who were travelling in the Petitioner's bus. In addition to these, 28 passengers, who were travelling in broken down Bus No. 9931 of Raebareli Depot, and were stranded on the road, were accommodated in the Petitioner's bus. The enquiry officer and the punishing authority have failed to appreciate these facts. Moreover, several witnesses including the driver had submitted that Sri P. C. Sharma, Traffic Inspector was under the influence of intoxication at the time of checking of the bus. He did not in fact inspect the bus and had indicated to the Petitioner that since the bus was carrying stranded passengers of Bus No. 9931, there was no necessity to count the passengers and make a thorough inspection. The Petitioner had submitted his report to the Traffic Superintendent, Raebareli. The foundation of the Corporation's case is the report of Sri P. C. Sharma, Traffic Inspector, who himself was not in a healthy state of mind at the relevant time. Interestingly, the enquiry officer has concluded in his report dated 25.2.1991 that Sri P. C. Sharma was making inspections of buses while in intoxication. He had made several mistakes while checking the way-bills; he was making wrong notes on the way-bills of the conductors. Sri Anil Kumar has drawn the attention of the Court to the following findings recorded by the enquiry officer in his report:

5. On the basis of these conclusions, it was not just and proper for the enquiry officer and the punishing authority to arrive at the conclusion that the Petitioner was carrying passengers without ticket or he had misconducted in any manner.

6. Learned Counsel for the Petitioner has further submitted that the documents were not supplied to the Petitioner. The witnesses cited in the charge-sheet were not examined in his presence. He was not allowed opportunity to cross-examine them. The Petitioner requested the enquiry officer for cross-examining 18 staff members or at least some of them to enable him to prove that the Corporation's employees entitled for free travelling in the Corporation's buses were in fact travelling in the Petitioner's bus. The Petitioner produced the way-bill before Sri P. C. Sharma, Traffic Inspector and he was satisfied with the situation and returned the way-bill to the Petitioner saying that several members of the staff were sitting in the bus and as such there was no need to make a thorough inspection of the bus. Sri Anil Kumar, learned Counsel for the Petitioner has further submitted that when the Petitioner failed to get justice from the enquiry officer and the punishing authority, he filed the affidavits of Sri Nalini Kant Misra, Abdul Sattar, K. K. Tripathi and Ram Karan Singh, all four U.P.S.R.T.C. employees who were free-pass holders and were travelling in the bus of the Petitioner on 12.2.1989, before the appellate authority. The said persons have supported the version of the Petitioner. The appellate authority has failed to consider and take into account these four affidavits which supported the case of the Petitioner that in fact he had produced the way bill before the traffic inspector and that he was not carrying any passenger without ticket. The appellate authority has passed a non-reasoned and non-speaking order, without even considering the submissions made in the memo of appeal.

7. Learned Counsel for the Petitioner has placed reliance on two judgments of this Court in Writ Petition No. 3514 of 1986, Ashwani Kumar Suman v. U. P. State Agro Industrial Corporation Ltd. and another Writ Petition No. 3514 of 1986 and Writ Petition No. 914 of 1989, Vaquar Agha v. U. P. State Road Transport Corporation and others Writ Petition No. 914 of 1989, in support of his submissions that the punishing authority and the appellate authority must indicate reasons in their orders.

8. Learned Counsel for the Corporation has opposed the writ petition. He has submitted that the enquiry was conducted in accordance with the relevant service rules. The Petitioner had committed serious misconduct and as such a formal regular departmental enquiry was initiated against him. A charge-sheet was issued against him on 29.4.1989 and after receiving the reply of the Petitioner; the enquiry officer on 25.2.1991 submitted a detailed enquiry report. After carefully considering the report of enquiry officer and appreciating the version of the delinquent employee, the order of removal has been passed on 31.3.1992. The appellate authority on 8.10.1992 dismissed the Petitioner's appeal. There is no infirmity in the departmental trial. The principles of natural justice have been followed. The

Petitioner was carrying passengers without ticket in the Corporation's bus causing pecuniary loss to the Corporation. The Petitioner did not provide way-bill (Marg-Patra) to the Inspecting staff, traffic inspector. It was indicated in the inspection report that a large number of passengers were travelling in the bus without having valid tickets. The Petitioner was afforded reasonable opportunity at every stage of the departmental enquiry and he deserved the punishment of removal.

9. I have heard learned Counsel for the parties and perused the material on record.

10. It is borne out from the record that the Petitioner was not supplied with the material documents, like way-bill which was demanded by the Petitioner. The way-bill was an important document through which the Petitioner could have demonstrated before the enquiry officer the number of passengers travelling in the bus and details of issuance of tickets by him. The Petitioner had categorically submitted before the enquiry officer that 18 persons, who were employees of the Corporation, were travelling in the bus. The staff of Corporation is permitted to travel free on the buses of the Corporation. He had requested the enquiry officer to call some of the eighteen persons, namely, Nalini Kant Mishra, Office Assistant I, K. K. Tripathi, Assistant Traffic Inspector, Abdul Sattar, Conductor and Ram Karan Singh, Driver in his defence. The Petitioner could have proved his innocence before the enquiry officer as these employees of the Corporation were to support the version of the Petitioner. Interestingly, the Petitioner had submitted the affidavits of these employees for consideration of the appellate authority. The appellate authority had excluded from consideration and failed to take into account the contents of these affidavits. The order dated 8.10.1992 passed by the appellate authority is a non-speaking and non-reasoned order. Sri K. D. Singh, Divisional General Manager (Central Zone) has not dealt with the submissions made in the memo of appeal. He has recorded his conclusions in two sentences:

After perusing the order passed by the appellate authority, this Court is of the opinion that this is a non-reasoned and non-speaking order, hence the same cannot be sustained. The appellate authority has not applied its mind to the defence of the delinquent employee. Just in two sentences, as indicated above, the appellate authority had drawn its conclusions and dismissed the appeal in a casual and cursory manner.

11. The punishing authority has also not appreciated and dealt with the version of the Petitioner. In his replies to the charge-sheet and the show-cause notice dated 26.1.1992, the Petitioner had categorically submitted that he had in fact got the bus stopped in response to the signal given by the traffic inspector. He had submitted his way-bill before the traffic inspector, who being drunk was not in a fit state of mind. It was the version of the Petitioner that several passengers of the broken down vehicle of the Corporation were also accommodated and they were travelling in his bus. The Traffic Inspector did not enter the bus and inspect the same. He was

satisfied with the version of the conductor. It is interesting to note that the enquiry officer, in the last para of his report, has reported that Sri P. C. Sharma was not in a fit state of mind. He was drunk and there were several instances of this Inspector's checking of Corporation's buses and making incorrect notes on way-bills while in intoxication. The enquiry officer has himself indicated in the report that an incorrect note was put by this traffic inspector regarding number of passengers on the way-bill submitted by the Petitioner. The enquiry officer's report itself proves that in fact the Petitioner had produced the way-bill before the traffic inspector and a note thereon was put by Sri P. C. Sharma, traffic inspector. The whole accusation against the conductor falls to ground in view of the enquiry officer's finding. The enquiry officer has found the allegations against the traffic inspector correct. The conductor having long services cannot be removed from services on the basis of a report submitted by the traffic inspector who was drunk while checking the bus and was making incorrect notes on the way-bills submitted by the conductors. The punishing authority and the appellate authority have failed to consider and appreciate this fact. The principles of natural justice have not been followed as the enquiry officer and the punishing authority had failed to call the Corporation's employees who were travelling in the same bus. They were ready to come and depose before the enquiry officer; rather they had filed their personal affidavits before the appellate authority in support of the version of the conductor. The Court has taken note of the fact that during the course of enquiry, the statement of Sri Rajesh Pathak, driver of the bus was recorded at the back of the Petitioner and no opportunity was given to him to cross-examine in order to prove his innocence. The order of removal appears to be unreasonable unwarranted and suffers from legal infirmity. The punishing authority has not considered and appreciated the defence of the Petitioner and no findings have been given dealing with the defence of the employee.

12. In view of above, this Court is of the opinion that the order of removal passed on 31.3.1992 and the appellate order passed on 8.10.1992 cannot be sustained and deserve to be quashed.

13. Accordingly, the writ petition is allowed and the impugned order of removal dated 31.3.1992, contained in Annexure-8 and the order passed by appellate authority dated 8.10.1992, contained in Annexure-14 to the writ petition are quashed. The opposite parties are directed to treat the Petitioner in service on the post of conductor with all consequential benefits. It would be open for the opposite parties to hold a de novo enquiry against the Petitioner if they so desire. The Petitioner shall be reinstated in services forthwith.

14. As far as his back wages are concerned, this Court is of the opinion that since the Petitioner has not worked for the last about fourteen years, he is not entitled for full back wages. However, in the interest of justice, applying the principles laid down by Hon. the Supreme Court of India in the judgments as in [Allahabad Jal Sansthan Vs. Daya Shankar Rai and Another](#), [Hissar Central Co-operative Bank Ltd. Vs. Kali Ram](#),

and [M.P. State Electricity Board Vs. Smt. Jarina Bee](#), the opposite parties are directed to pay the Petitioner a sum of Rs. one lac as compensation which includes expenses borne out by him on litigation while pursuing his case in this Court for the last about fourteen years. The aforesaid period, during which the Petitioner remained out of employment, shall be treated as period spent on duty.