Assistant Regional Manager, U.P.S.R.T.C. and Another Vs State of U.P. and Others

C.M.W.P. No. 23283 of 1987

Court: Allahabad High Court

Date of Decision: April 24, 1996

Acts Referred:
Civil Services (Classification, Control and Appeal) Rules â€" Rule 55, 55A

Citation: (1996) AWC 656 Supp

Hon'ble Judges: D.K. Seth, J

Bench: Single Bench

Advocate: Vijay Mandhar Sahal, for the Appellant; V.K. Singh and S.C., for the Respondent

Final Decision: Dismissed

Judgement

D.K. Seth, J.
The order dated 18.8.1987 passed by U.P. Public Services Tribunal V. Lucknow in Claim No. 382/V/RM/82 has been

challenged by means of this petition. The learned Counsel for the Petitioner contends that the finding of the Tribunal, in regard to the invalidity of

the charge-sheet, because of its not being in compliance of Rules 55 and 55A of the Civil Services (Classification, Control and Appeal) Rules, is

not correct and that it was not necessary to indicate anything about the evidence to be relied upon in the charge-sheet itself. The finding with that

regard by the learned Tribunal is bad in law inasmuch as according to him, the charges were clearly specified and the materials on which the

charges were based were also disclosed. Non-mentioning of the evidence on which the employer intended to rely upon is not an Irregularity

material for setting aside the charge-sheet. The said irregularity can be corrected by subsequent conduct while producing evidence giving notice

ahead of the date fixed for recording evidence. He further contends that non-examination of the passenger on which the judgment of the Tribunal

was anchored cannot be fatal since the checking staff has been examined. He relies upon an unreported judgment in Writ Petition No. 102 of 1980

disposed of on 26.2.1988 by Hon''ble R. M. Sahai and Hon''ble B. L. Yadava, JJ., and contends that non-examination of the passengers does not

render the finding of the domestic enquiry Invalid. Mr. V. K. Singh, learned Counsel for the Respondents on the other hand contends that unless

the charge-sheet conforms to the Rules as prescribed therein, the same cannot be valid, inasmuch as in order to have proper Information about the

charges which the delinquent has to meet, the charge-sheet must disclose the charges specifically and clearly and separately as well as the materials

on which such charges were based. in the absence, delinquent will suffer prejudice on account of absence of sufficient opportunity to meet the

allegations. According to him, non-disclosure of evidence also works counter to the Interest of the delinquent who would suffer prejudice in the

absence of any knowledge about the evidence that will be used against him. This will amount to deprive him of sufficient opportunity. He contends

further that the judgment relied on by the learned Counsel for the Petitioner is not applicable in the present case. Since even the address of the

passengers have not been noted in the report It is very difficult to establish the identity of the persons eroding the credibility of the report itself.

Even if the passengers cannot be produced as witness and are not examined at least their identity should have been disclosed and established.

Therefore, according to him the finding of the learned Tribunal cannot be said to be infirm, therefore, the writ petition should be dismissed.

2. The Rule prescribes the form of the charge-sheet and a proforma is also appended to the Rules. Such Rules have beep framed so as to afford

adequate opportunity to a delinquent to meet the charges and the material on which such charges are based. The proforma contains a note at the

foot that the evidence to be relied upon is to be disclosed. in the absence whereof, it can be said that the delinquent has been kept in dark as to the

materials that may be used against him for the purpose of bringing home the charges levelled against him. When the Rules prescribe a particular

form and provide certain formalities, the same cannot be overlooked and are meant to be followed. The learned Tribunal and rightly relied on the

decision in the case of U.P. Gautam v. State of U.P. 1968 ALJ 103, wherein It was observed:

Natural Justice requires that charged person ought to be informed of the charges levelled against him, and also the grounds upon which they are

based. Since the charges would have to be proved by oral or documentary evidence, the charged persons must be told what the evidence which

will be used against him is.

3. There cannot be any second opinion with regard to the above observation and it cannot be said that Tribunal had acted illegally or with material

Irregularity in applying the said ratio in the present case. Admittedly, the Tribunal has come to a finding that the charge-sheet is not valid on the

materials produced before It. After comparing the same, it does not appear to me unreasonable.

4. The Tribunal has also come to a finding that non-examination of the passenger in the facts and circumstances of the present case is fatal. The

learned Counsel for the Petitioner fairly submits that he has not been able to find out any other evidence except the report and evidence of the

checking staff or otherwise which has been produced or used in the present case. Nothing has been mentioned in the award that there was

existence of any other material so as to bring home the charges against the workman. This is not the case of the Petitioner that the relevant

materials, though were produced, have not been considered. The absence of address of the passengers clearly indicates that their Identity cannot

be established. It would be very dangerous to rely on such a report which even does not attempt to establish the identity of the passengers which

goes to the root of credibility of the allegations made. It is definite that the workman has to meet the charges but before that, it is for the employer

to discharge the burden by giving adequate proof regarding the charges, only then the workman is called upon to meet his evidence. in the facts

and circumstances of the case, it cannot be said that the employer had been able to discharge his burden adequately so as to shift the onus on the

workman in the absence of any other evidence excepting the evidence of the checking staff and the report. The case of Shri Kishan Sharma v. The

Assistant Regional Manager, U.P.S.R.T.C. and Ors. (supra) cited by the learned Counsel for the Petitioner is distinguishable from the facts of the

present case. There were some other materials to support the allegation of the checking staff on which reliance was placed for proving the charges

but in the present case, there are no other materials excepting the report or oral evidence of the checking staff. Therefore, it would be wholly

unsafe to rely on the same when even the employer did not attempt to establish the identity of the passengers by disclosing their address. At the

same time, in the absence of the address of the passengers, it cannot be said that any attempt could be made to produce them. If the very material

witnesses are not produced and no attempt for their production is made, in that event, that will amount to withholding of best evidence due to

which adverse presumption is liable to be drawn.

5. In that view of the matter, I do not find any reason to interfere with the finding of the fact arrived at by the learned Tribunal on the merits of the

case, in view of the principle that writ court is slow in intervening with the finding of fact even though it has a different view, unless the same is

perverse or based on no materials. Therefore, this writ petition fails and as such is dismissed.

6. After the above order is passed, Mr. V. K. Singh submits that by this time the workman has retired. Therefore, some directions may be given to

the Petitioner to give benefit of the award to the workman because of the reason that the workman could not execute the award because of the

interim order passed in the writ petition. The Petitioner is directed to implement the award if not already implanted after adjusting all the payment as

early as possible preferably within a period of six months.

7. There will be, however, no order as to costs.