

(2007) 08 AHC CK 0211

Allahabad High Court

Case No: None

Sachida Nand Pathak

APPELLANT

Vs

Regional Manager, U.P. State
Road Transport Corporation and
Deputy General Manager,
Eastern Zone, U.P. State Road
Transport Corporation

RESPONDENT

Date of Decision: Aug. 2, 2007

Citation: (2008) 2 AWC 1792 : (2007) 115 FLR 203

Hon'ble Judges: Vineet Saran, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Vineet Saran, J.

The petitioner was appointed as a Conductor in the U.P. State Road Transport Corporation sometimes in the year 1979. On certain charges of carrying passengers without ticket the petitioner was placed under suspension by order dated 3.6.1988. removed from service. The petitioner challenged the said order in appeal, which was decided on 7.6.1990. The appellate authority held that the charges of the petitioner carrying 5 passengers without ticket on one occasion and 10 passengers without ticket on another occasion were proved against the petitioner. However, considering the fact that the third charge of carrying 23 passengers without ticket was also taken for his removal from service (on which ground he had been placed under suspension) and finding that no adequate opportunity of hearing was given to the petitioner with regard to the said charge, the appellate authority set aside the order passed by the disciplinary authority by which the petitioner was removed from service and reinstated the petitioner in service on token pay of Rs. 1 for the period during which he remained under suspension. The appellate authority further remanded the matter back to the disciplinary authority to decide the issue relating to the petitioner carrying 23 passengers without ticket on the third occasion, afresh

after giving opportunity of hearing to the petitioner. Pursuant thereto, the disciplinary authority passed an order dated 30.4.1991, in which also the petitioner was found guilty of carrying 23 passengers without ticket and thus a fresh order was passed removing him from service. Challenging the said order, the petitioner filed an appeal before the appellate authority, respondent No. 1. By the impugned order dated 12.5.1992, the appellate authority, respondent No. 1 allowed the appeal partly, holding that adequate opportunity was not given to the petitioner with regard to the third charge and finding that the punishment of removal from service on the basis of two charges proved against the petitioner was excessive, directed reinstatement of the petitioner without any salary for the period during which he remained out of service and that the petitioner be treated as newly appointed Conductor. Aggrieved by the said order dated 12.5.1992, this writ petitioner has been filed.

2. I have heard Sri R.N. Ojha, learned Counsel appearing for the petitioner as well as Sri Sameer Sharma, learned Counsel appearing for the respondents and have perused the record.

3. The submission of the learned Counsel for the petitioner is that once on the basis of the two charges proved against the petitioner, the appellate authority had remanded the matter back to the disciplinary authority after reinstating the petitioner on payment of token amount of Rs. 1 as salary for the period during which the petitioner remained out of service, the direction of the appellate authority by the impugned order appointing the petitioner afresh with direction for non-payment of salary for the period during which he remained out of service, was unjustified as the appellate authority in the second innings had again found that adequate opportunity was not given to the petitioner with regard to the third charge. He has further submitted that an order against an employee providing for break in service entails civil consequences and hence adequate opportunity of hearing should be given to the employee before such order is passed. In support of his submission he has relied upon a Division Bench decision of this Court rendered in the case of *All India Loco Running Staff Association v. Union of India* 1984 UPLBEC 986.

4. Sri Sharma has, on the other hand, submitted that the order of removal from service on the basis of first two charges having been proved against the petitioner was fully justified. It was on more than one occasion that the petitioner had been found guilty of carrying passengers without ticket, which finding has become final and even the petitioner does not dispute the finality of the same. It is thus submitted that in such cases of misconduct the employees should be treated with iron hand and no laxity should be shown in such matters involve breach of trust by the employer. In support of his submission he has placed reliance on two decisions of the Apex Court rendered in the case of [Divisional Controller, KSRTC \(NWKRTC\) Vs. A.T. Mane](#), and Regional Manager. [Regional Manager, U.P.S.R.T.C., Etawah and](#)

[Others Vs. Hoti Lal and Another,](#) It has also been submitted by Sri Sharma that the principle of "Pay and Board" is provided for in the Regulations, which has been upheld by the Division Bench of this Court in the judgment dated 26.2.1988 rendered in Writ Petition No. 9102 of 1980, Shri Kishan Sharma v. UPSRTC. According to this principle it is the duty and responsibility of the Conductor of the Bus to permit passengers on board only after issuing them valid tickets. There can be exception to the aforesaid rule but only for valid reasons. The circumstances of this case do not suggest any exceptional circumstances because of which the petitioner permitted boarding of passengers without ticket at least on two occasions, even if third occasion it is not taken against the petitioner.

5. It is well settled law that where an employee is given job of trust, as in the present case the Conductor is given on behalf of the Corporation, and there are financial irregularities found, no lenient view is required to be taken against such employee who is found guilty of having breached such trust. The petitioner having been found guilty of such charges of carrying passengers without [ticket not on one occasion but at least two occasions (even if the third occasion is taken as doubtful) the punishment of treating the petitioner as a fresh entrant in service and not granting him the benefit of continuing of service is fully justified and as such does not call for interference.

6. This writ petition is, accordingly, dismissed. No order as to costs.