

(2003) 04 AHC CK 0252

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 32183 of 2001

Rishi Muni Giri

APPELLANT

Vs

Regional Manager, U.P. State
Road Transport Corporation and
Others

RESPONDENT

Date of Decision: April 22, 2003

Citation: (2003) 3 UPLBEC 2335

Hon'ble Judges: S.K. Singh, J

Bench: Single Bench

Advocate: S.N. Singh and P. Dwivedi, for the Appellant; Sameer Sharma, for the Respondent

Final Decision: Dismissed

Judgement

S.K. Singh, J.

Challenge in this petition are the orders dated 31.7.1998 (Annexure No. 5 to the writ petition), 11.10.2000 (Annexure No. 6 to the writ petition) and 30.5.2001 (Annexure No. 7 to the writ petition), passed by the respondents No. 1, 2 and 3 respectively. By the order dated 31.7.1998, referred above, the Disciplinary Authority removed the petitioner from service, which has been confirmed in appeal and revision by the other two orders, referred above.

2. For the purpose of decision brief facts can be summarised thus. The petitioner had been working as Conductor in the U.P. State Road Transport Corporation, herein after referred to as the Corporation. Petitioner claims that he was allotted duty on 22.9.1996 for running with the bus from Lalganj to Delhi and Delhi to Lalganj and thereafter from Bahraich to Lalganj to Allahabad and thus after completing three days continuous duty petitioner was to take rest at his quarter as he was not feeling well and was suffering with serious headache. It is said that although the petitioner was to be allowed double duty rest but on account of non-availability of any Conductor to proceed with the bus from

Lalganj-Allahabad-Faizabad-Bahraich, on 25.9.1996 at about 4.30 p.m, he was forced to go to Allahabad. Petitioner showed his inability to do the duty but he was assured that some other Conductor will be provided from Pratapgarh but as no body was available petitioner has to continue in the bus. It is stated that there were 59 passengers in the bus when it started from Prataptgarh to Allahabad but as there was severe headache and physical ailment petitioner committed mistake in issuing tickets to the passengers. The bus appears to have been checked near Mauaima at 6.15 p.m., by the checking staff of the Corporation and on finding certain irregularities checking report was prepared and was submitted to the Assistant Regional Manager, Pratapgarh Depot. Thereafter petitioner was placed under suspension. Charge-sheet was issued to him. Enquiry proceeded. On submission of the Enquiry Report the Disciplinary Authority proceeded to pass the order of petitioner"s removal from service which stood confirmed in appeal and revision in the higher forum. It is these orders which are under challenge before this Court.

3. Learned Counsel for the petitioner submits that petitioner has not committed any financial irregularity as it is a case of certain incorrect entry in the way bill and not issuing proper tickets and thus the impugned order of removal from service cannot be sustained. It is further submitted that the explanation given by the petitioner has not been properly considered and examined either by the Enquiry Officer or by the Disciplinary Authority and even by the Appellate/Revisional Authority and therefore, on the facts, the finding of misconduct on the part of the petitioner is totally perverse. It is argued that petitioner has established that he discharged continuous duty for about three days and thus on the date of incident he was entitled for double duty rest but he was compelled to join the bus from Lalganj in the express bus service i.e., Lalganj-Pratapgarh-Bahraich on the pretext that in Pratapgarh some other conductor will be provided. Although the petitioner was suffering from severe mental headache which he informed to the staff who came to the petitioner to compel him to join the bus but even then petitioner was compelled to proceed for duty and therefore, on account of his mental disbalance and physical ailment, irregularity in the way bill and issuing the ticket happened. It is submitted that all these aspects have not been taken into account and all the authorities without assigning reason to disagree with the explanation given by the petitioner in an arbitrary manner agreed to the findings of the Enquiry Officer and has passed the impugned order. In support of the submission that if the decision by the Disciplinary Authority and its confirmation by the Higher Authority is without assigning any reason to disagree with the explanation of the petitioner, it amounts to non-speaking order, which is to be termed to be in violation of principles of natural justice, reliance has been placed on decisions given in the case of Prem Prakash Misra v. U.P. State Road Transport Corporation and Ors. (1994) 2 UPLBEC 1047 and [Smt. Kamlesh Saxena Vs. U.P. Secondary Education Service Commission, Allahabad and others](#), In support of the submission that for technical omission of not entering some of the tickets in the way bill punishment of removal from service is not

justified, reliance has been placed on the case of Ram Babu Guptav. U.P.S.R.T.C. and Ors., reported in (1999) 3 UPLBEC 2175.

4. In response to the aforesaid submission learned Counsel for the respondents submits that the petitioner has been charged for the serious misconduct leading to financial irregularity. It is argued that he has committed the irregularity as he has taken money from all the passengers who were travelling from Pratapgarh to Allahabad, but neither tickets have been issued in that respect nor there is proper entry in the way bill. It is argued that on the clear finding as has been recorded by the Enquiry Officer in which the charges against the petitioner have been proved the Disciplinary Authority has rightly passed the order of removal agreeing with the findings given by the Enquiry Officer which has been rightly confirmed by the Higher Authorities. It is submitted that if the Disciplinary Authority and the further higher forum after noticing the substance of the Enquiry Report and the reply of the petitioner, have chosen to record a finding that explanation of the petitioner is not sufficient as there is no satisfactory material/fact to disagree with the report of the Enquiry Officer, no further reasons are required to be given and it cannot be said to be a case of passing a non-speaking order as has been submitted by the learned Counsel for the petitioner. In support of the aforesaid submission learned Counsel for the respondents has placed reliance on the decision given in the case of [Ram Kumar Vs. State of Haryana](#), and Dr. J.N. Banavalikar v. Municipal Corporation of Delhi and Anr., reported in AIR 1996 SC 326 . It is further argued that petitioner has not discharged the burden of establishing his stand of his ailment and the mental condition so that to accept the plea of lapses having been occasioned on account of his mental disbalance. It is argued that in view of the nature of the defence of the petitioner burden to prove his stand heavily lay on him for which no evidence whatsoever was given for which reliance has been placed on a decision given in the case of [Orissa Mining Corporation and another Vs. Ananda Chandra Prusty](#), . It is pointed out that this Court as well as the Apex Court has not interfered in respect to the quantum of punishment which is claimed by the petitioner to be disproportionate in the matter where charges of corruption have been found to be proved, reliance has been placed on a decision given by the Apex Court in the case of [Municipal Committee, Bahadurgarh Vs. Krishan Behari and others](#), and also on the decision given by this Court in the case of Sri Kishan Sharma v. Assistant Regional Manager, U.P. S.R.T.C. and Ors., in Writ Petition No. 9102 of 1980 and in the case of Ashok Kumar v. U.P. State Road Transport Corporation and Ors., in Writ Petition No. 27968 of 1992.

5. In view of the aforesaid submission as has come from both sides pleadings as existed have been examined.

6. There appears to be no dispute about the fact that the petitioner himself admits that some irregularity and lapses has occasioned in relation to the facts as has been reported by checking staff. The charge against the petitioner is that 59 passengers

were travelling from Pratapgarh to Allahabad and none of them were issued tickets and there was no proper entry in the way bill. Petitioner has taken a stand that on account of continuous duty for three days, on the date of incident he was not in a position to undertake further duty as he was suffering from severe mental headache and he was not in a fit mental state but he was compelled by the staff to proceed with the bus from Lalganj to Pratapgarh where other Conductor was to be provided but on account of non-availability of other Conductor he has to continue up to Allahabad. It is in the light of the aforesaid assurance he initially proceeded. Thus so far the charge of the irregularity is concerned it was not required to be proved as most of the facts relating to irregularity in respect to non-issuance of the tickets, incomplete way bill and issuance of some tickets of wrong destination etc. have been admitted by the petitioner himself.

7. In view of the aforesaid, the only question which is to be examined, on which attention of this Court is to be focused is, in respect to correctness of the findings rejecting the defence taken by the petitioner i.e., he being not in fit mental condition, suffering from physical ailment i.e., severe mental headache etc. Although the question on which if the finding comes in favour of the petitioner he can be said to be entitled to get relief, is a pure question of fact but in the light of the submission made by the learned Counsel for the petitioner this aspect is also examined. On a perusal of the Enquiry Officer's Report it is clear that the Traffic Inspector, who has checked the bus has clearly stated that petitioner was in a fit mental condition and was totally balanced at the time of checking. The statement in this respect can be referred at this stage :

^iz-&&D;k izkFkhZ psfdax ds le; larqfyr Fkk\\

m-&&gekjs fglkc ls larqfyr Fks A**

8. Further examination of the Enquiry Officer's Report indicates that the petitioner has given his statement in which he has only reiterated his stand that he was not in a fit mental condition but he has not adduced any supporting and corroborative evidence in respect to his theory of physical ailment leading to such a situation which resulted in such a major lapse. It has been admitted by the petitioner that when he was lying in his quarter he was compelled by the Corporation staff namely Vishwanath, a Driver; Ramnat, Checking Clerk and another Driver Mohd. Rashid who came to the petitioner to whom the petitioner informed that he is not well as he took the medicine for his severe mental headache. Although any one out of the aforesaid staff or any other person to whom the petitioner informed about his ailment, on their examination could have been able to substantiate the factum of, ailment of the petitioner, but in spite of the query having been made by the Enquiry Officer that whether he intends to lead any evidence the petitioner latly stated that he is not ready to lead any evidence. The relevant facts as are contained in the Enquiry Report which are relevant in this context will be useful to be quoted here :

^^iz-&&vkidks bl lEcU/k esa fdlh ls vkSj dqN dguk gS rFkk dksbZ lk{; izLrqr djuk gS \\
mRrj&&jheku~ th fdlh ls dqN ugha iwNuk gS vkSj u gh dksbZ lk{; gh izLrqr djuk gS
A**

9. In view of the aforesaid, it is clear that the petitioner has not adduced any evidence either oral or documentary to substantiate his version of ailment which was of such a nature that he being well versed with the duty of the Conductor has committed very basic mistakes which he claims to be innocuous in nature i.e., no entry in way bill, not issuing tickets after taking money from 59 passengers. Needless to say that the burden is always first on the department/employer proving charges but at the same time in view of the nature of the allegations and the explanation so offered by the charged employee the proof is to be insisted from the party who is in position to give positive evidence being in his control. As explanation offered by the petitioner in the light of defence could have been proved by some positive evidence, no negative evidence can be expected from the employer. So far the case in hand is concerned the departmental witness says that the petitioner was in a fit mental condition at the time of checking then what proof or evidence in this respect could be expected from them and on the other hand as the petitioner has stated to be suffering from mental disbalance and physical ailment for which he has stated that it is in the full knowledge of the three of the staff of the Corporation whose name have also been given as referred above but in spite of the opportunity by the Enquiry Officer petitioner has not chosen to examine any of the staff. It has also come in the order of the Disciplinary Authority that petitioner has stated in his reply that he has not been given opportunity to cross-examine the Traffic Inspector and the bus driver but the Disciplinary Authority has rightly concluded that the petitioner himself has stated that he need not to examine/cross-examine any body. It also appears from the report of the Enquiry Officer that charge against the petitioner is that he is responsible for cancellation of the bus service from Allahabad to Bahraich as after reaching Allahabad he did not turn up for which the Driver has also reported in writing. In view of the aforesaid it appears that the Disciplinary Authority after taking into consideration the findings of the Enquiry Officer after noticing them in detail and reply as has been submitted by the petitioner, after assigning reason that the explanation of the petitioner has not been found to be sufficient has confirmed the proposed punishment and removed the petitioner from service. The Appellate Authority and the Revisional Authority have also agreed with the findings of the Disciplinary Authority. Appellate Authority has mentioned the matter in detail. Full facts have been mentioned, the explanation of the petitioner have been mentioned, findings of the Enquiry Officer have been referred and thereafter the agreement with the decision of the Disciplinary Authority has been recorded and therefore, it cannot be said to be a case of non-application of the mind leading to violation of principles of natural justice. Same is the situation with the order of the Revisional Authority. Although, the Revisional Authority has not mentioned facts in great detail as has been done by the two

authorities but on a reading of the order it is clear that he was conscious of all the facts and he has rightly observed relevant aspect of the matter that during the course of the enquiry petitioner has just reiterated his stand of ailment but has not adduced any evidence in support thereof and therefore, in the absence of any evidence that cannot be accepted. In view of the aforesaid examination, it is clear that on the facts of the present case it cannot be said that the orders passed by either of the authority suffer from non-application of the mind, for the reason of there being no reason. In view of the aforesaid, decisions as has been referred by the learned Counsel for the petitioner having no application to the present case are of no assistance to him. On the other hand decisions as has been referred by the learned Counsel for the respondents that in the event the Disciplinary Authority refers to the findings of the Enquiry Officer and then proceeds to record a reason that there is nothing to discard the reasonings and the findings and to disagree with the same then it is a clear case of application of mind and no further reiteration of all the facts an independent reason is required. It has been stated by the Apex Court that it is only in those cases where the fresh enquiry is to be directed or the Disciplinary Authority intends to disagree with the findings then only the independent reasonings are required.

10. In view of the aforesaid analysis it is clear that petitioner has been punished on the charge of serious lapses on his part in discharge of duty. The explanation given by him has not been found to be substantiated by any material and there being a finding on a question of fact the Court do not find any perversity or apparent mistake in the findings and conclusions arrived at by the Enquiry Officer or the Disciplinary Authority and thus petitioner is not entitled to get any relief from this Court.

11. For the reasons recorded above writ petition fails and is dismissed.