

(2002) 09 AHC CK 0209**Allahabad High Court****Case No:** C.M.W.P. No. 36687 of 2002

Swatantra Kumar Dubey

APPELLANT

Vs

U.P. State Transport Corporation
and Others

RESPONDENT

Date of Decision: Sept. 3, 2002**Acts Referred:**

- Constitution of India, 1950 - Article 226, 309, 311(2)
- Uttar Pradesh State Road Transport Corporation Employees (Other than Officers) Service Regulations, 1981 - Regulation 69

Citation: (2002) 5 AWC 3502**Hon'ble Judges:** S.P. Mehrotra, J**Bench:** Single Bench**Advocate:** Kailash Nath Kesarwani, for the Appellant; M.M. Sahai, for the Respondent**Final Decision:** Dismissed

Judgement

S.P. Mehrotra, J.

This writ petition has been filed by the Petitioner, inter alia, challenging the enquiry report (Annexure-9 to the writ petition) and the show cause notice dated 1.8.2002 (Annexure-10 to the writ petition).

2. From the allegations made in the writ petition, it appears that on account of certain charges against the Petitioner, the Petitioner was suspended in contemplation of enquiry by an order dated 26th September, 2001 (Annexure-5 to the writ petition) issued by the Regional Manager, U.P. State Road Transport Corporation, Etawah.

3. A charge-sheet dated 29th September, 2001 (Annexure-6 to the writ petition) was issued to the Petitioner by the Regional Manager, U.P. State Road Transport Corporation, Etawah.

4. It was, inter alia, also stated in the said charge-sheet that the Assistant Regional Manager, (Finance), U.P. State Road Transport Corporation, Etawah (Respondent No. 3 herein) was appointed as enquiry officer to conduct the enquiry against the Petitioner.

5. By an order dated 13th November, 2001 (Annexure-8 to the writ petition), the Petitioner was provisionally re-instated in service.

6. The enquiry against the Petitioner was conducted by the said Enquiry Officer, ultimately, he submitted the enquiry report dated 1st August, 2002, a copy whereof had been filed as Annexure-9 to the writ petition.

7. After the submission of the said enquiry report, the Regional Manager, U.P. State Road Transport Corporation, Etawah (Respondent No. 2) issued a show cause notice dated 1st August, 2002, to the Petitioner calling upon the Petitioner to show cause against the proposed punishment. A copy of the said enquiry report was also sent to the Petitioner along with the said show cause notice.

8. Thereafter, the Petitioner has filed the present writ petition challenging the said enquiry report and the said show cause notice dated 1st August, 2002.

9. I have heard Sri Kailash Nath Kesarwani, learned Counsel appearing for the Petitioner and Sri M. M. Sahai, learned Counsel appearing for the Respondents.

10. Considering the facts and circumstances narrated above, I am of the opinion that this writ petition filed by the Petitioner is premature. The enquiry officer has submitted his enquiry report. The said show cause notice dated 1st August, 2002, has been issued to the Petitioner to show cause against the proposed punishment. A copy of the said enquiry report has also been sent to the Petitioner along with the said show cause notice. No final decision has as yet been taken regarding punishment to be imposed on the Petitioner. In the circumstances, this writ petition is liable to be dismissed as premature.

11. It is further noteworthy that after the final decision is taken in regard to the punishment to be imposed on the Petitioner, the Petitioner has got a right of appeal against such decision under Regulation 69 of the U.P. State Road Transport Corporation Employees (Other than Officers), Service, Regulations, 1981. In this view of the matter also, no interference is called for in this writ petition at this stage. The said Regulation 69 is quoted below:

69. Appeal.-

(1) An employee shall be entitled to appeal to the next higher authority from an order passed by the appointing or any other authority.

(2) An employee preferring an appeal shall do so in his name. The memorandum of appeal shall contain all material statements and arguments relied upon by the Appellant.

(3) The appeal shall not contain any intemperate language. Any appeal, which contains such language may be liable to be summarily dismissed.

(4) The appeal shall be addressed to the appellate authority and submitted to the authority, against whose order it is preferred through the normal proper channel.

(5) The appeal shall be preferred within three months of the date of the order. An appeal preferred beyond three months but not beyond six months of the date of the order, may be accepted by the appellate authority if sufficient cause is shown for the delay. An appeal preferred beyond time shall be dismissed summarily.

12. Learned Counsel for the Petitioner has, however, submitted that in view of the decision of the Apex Court in Yoginath D. Bagde Vs. State of Maharashtra and Another, Respondent No. 2 (Regional Manager, U.P. State Road Transport Corporation, Etawah) was bound to give opportunity of hearing to the Petitioner before taking a decision to agree with the enquiry report submitted by the enquiry officer. Learned Counsel submits that as no such opportunity was given to the Petitioner, the show cause notice dated 1st August, 2002, issued by the Respondent No. 2 was vitiated. I have considered the submissions made by the learned Counsel for the Petitioner.

13. In Yogi Nath D. Bagde's case (supra), the Lordships of the Supreme Court laid down as follows (paragraph 31 of the said S.C.C.):

"31. In view of the above, a delinquent employee has the right of hearing not only during the enquiry proceedings conducted by the enquiry officer into the charges levelled against him but also at the stage at which those findings are considered by the disciplinary authority and the latter, namely, the disciplinary authority forms a tentative opinion that it does not agree with the findings recorded by the enquiry officer. If the findings recorded by the enquiry officer are in favour of the delinquent and it has been held that the charges are not proved, it is all the more necessary to give an opportunity of hearing to the delinquent employee before reversing those findings. The formation of opinion should be tentative and not final. It is at this stage that the delinquent employee should be given an opportunity of hearing after he is informed of the reasons on the basis of which the disciplinary authority has proposed to disagree with the findings of the enquiry officer. This is in consonance with the requirement of Article 311(2) of the Constitution as it provides that a person shall not be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. So long as a final decision is not taken in the matter, the enquiry shall be deemed to be pending. Mere submission of findings to the disciplinary authority does not bring about the closure of the enquiry proceedings. The enquiry proceedings would come to an end only when the findings have been considered by the disciplinary authority and the charges are either held to be not proved or found to be proved and in that event

punishment is inflicted upon the delinquent. That being so, the "right to be heard" would be available to the delinquent up to the final stage. This right being a constitutional right of the employee cannot be taken away by any legislative enactment or service rule including rules made under Article 309 of the Constitution.

14. This decision of the Supreme Court in *Yogi Nath D. Bagde* (supra) dealt with a case where the charges against the delinquent employee were found to be not proved by the inquiring officer, while the disciplinary authority disagreed with the findings of the inquiring officer and held that the charges against the delinquent employee were proved. In this context, it was held by the Apex Court that the disciplinary authority ought to have given opportunity to the delinquent employee before taking a decision to disagree with the findings of the inquiring officer.

15. This decision of the Apex Court is thus not applicable to the facts and circumstances of the present case. In the present case, the inquiring officer has found that the charges against the Petitioner have been proved. The Regional Manager, U.P. State Road Transport Corporation, Etawah (Respondent No. 2) has agreed with the report of the inquiring officer and has sent a show cause notice to the Petitioner along with a copy of the said enquiry report. The conclusion recorded by the Regional Manager in the said show cause notice regarding agreement with the enquiry report is evidently tentative, and it is open to the Petitioner to assail the findings of the inquiring officer while giving reply to the said show cause notice.

16. This will be in accord with the decisions of the Apex Court in *Union of India and Ors. v. Mohd. Ramzan Khan* AIR 1991 SC 471 and in [Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc.](#) No prejudice has been caused to the Petitioner, and no interference is called for in the exercise of writ jurisdiction under Article 226 of the Constitution of India.

17. In view of the aforesaid discussion the writ petition is liable to be dismissed as premature and the same is accordingly dismissed, as such.