

(2002) 07 AHC CK 0151

Allahabad High Court

Case No: C.M.W.P. No. 15159 of 1992

Najmul Hasan Rizvi

APPELLANT

Vs

Regional Manager, U.P. S.R.T.C.
and Others

RESPONDENT

Date of Decision: July 31, 2002

Acts Referred:

- Constitution of India, 1950 - Article 14, 21
- Penal Code, 1860 (IPC) - Section 147, 148, 149, 307

Citation: (2002) 5 AWC 3854

Hon'ble Judges: Rakesh Tiwari, J

Bench: Single Bench

Advocate: M.A. Qadeer, S.C., Shukla and K.P. Shukla, for the Appellant; Rajiv Sharma, R.A. Gaur and Azaz A. Khan, for the Respondent

Final Decision: Allowed

Judgement

Rakesh Tiwari, J.

Heard the learned Counsel for the parties and perused the records.

2. By means of this writ petition, the Petitioner has challenged the validity and correctness of the enquiry report dated 15.9.1990 and order of dismissal from service dated 1.4.1992 Annexures-13 and 16 to the writ petition.

3. The brief facts of the case are that the Petitioner was a confirmed conductor in U.P. State Road and Transport Corporation and was posted at Banda at the relevant time. On 11.10.1985, Traffic Superintendent along with Traffic Inspectors intercepted Bus No. U.R.Y. 641, which was going from Rajapur to Banda in which the Petitioner was conductor. The Petitioner alleged that the aforesaid persons have no jurisdiction to check the Bus. However, in the garb of checking they snatched the relevant papers from the Petitioner and tore out some of them. It is alleged that all the passengers were travelling with valid tickets and none was found without ticket.

4. The Petitioner on reaching Banda made a complaint in writing to the station incharge about the said occurrence and on coming to know about the complaint made by the Petitioner against them, Sri P. K. Dube, Traffic Superintendent made a complaint against the Petitioner to the Regional Manager, U.P. State Road and Transport Corporation, Jhansi. A preliminary enquiry was held and a charge-sheet was issued to him. He challenged the charge-sheet before this Court on the ground that the Regional Manager had no jurisdiction to issue charge-sheet. The said charge-sheet and the order of suspension of the Petitioner were quashed by this Court. On 2.5.1987, the Petitioner was again served with a charge-sheet in which Respondent No. 1 had mentioned two incidents dated 29.8.1982 and 11.10.1985. Sri C. P. Singh, Traffic Inspector also lodged an F.I.R. in respect of incident dated 29.8.1982, on the basis of which the Petitioner was tried in Session Trial No. 503 of 1983 along with Shamim Khan and Rahman Khan under Sections 147, 148, 307/149, I.P.C., police station Atrauli, district Banda and was acquitted by the special Judge vide judgment and order dated 29.5.1994. According to the Petitioner, the said judgment was not challenged and the same has become final.

5. The Petitioner submitted detailed reply to the said charge-sheet on 13.8.1987 denying the charges levelled against him, Annexure-3 to the writ petition. Sri R. K. Sikoria was appointed as Inquiry Officer and the Petitioner was directed to appear before him on 26.2.1988. In compliance of the notice the Petitioner appeared before the Inquiry Officer, but on that date the representative of the department neither appeared nor produced any witness and the case was adjourned without fixing any date.

6. The Petitioner was informed by letter dated 2.3.1988 that now 29.3.1988 is the next date fixed before the Inquiry Officer. The Petitioner again appeared on the said date but nothing was done on that date also. Again vide letter dated 11.4.1988 the Petitioner was informed to appear on 28.4.1988. On that date too, none appeared on behalf of the department.

7. Lastly, the Petitioner was directed to appear on 4.8.1989, but none appeared on behalf of the department to support the charges. It is averred in paragraph 20 to the writ petition that on all the dates referred to above, the Petitioner had appeared with witnesses, but their statements were not recorded. It is alleged that on 4.8.1989, the Petitioner had specifically requested the Inquiry Officer to proceed with the case and to take Petitioner's evidence, but the Inquiry Officer asked him to pay bribe of Rs. 5,000, which the Petitioner alleges, he refused to pay. Thereafter, the case was listed on 4.9.1989, 4.11.1989, 28.3.1990, 2.6.1990 and 30.6.1990. Nine consecutive dates had been fixed, but no representative on behalf of the department attended the enquiry.

8. In paragraph 32 of the writ petition it has been alleged that on 30.6.1990 the date fixed for enquiry, he was neither given any date nor received any information through letter or next date fixed. It appears that the enquiry was fixed on 10.8.1990,

but the Inquiry Officer did not communicate the date, time and place to the Petitioner and as such he could not attend the enquiry proceedings on 10.8.1990 as he had no knowledge or information about this date.

9. The counsel for the Petitioner submits that without ascertaining the fact that the Petitioner was informed about date, time and place of enquiry or not, the Inquiry Officer proceeded with the enquiry ex parte and three witnesses of the department were examined. Even no date was further fixed to enable the Petitioner to cross-examine them and an ex parte report was submitted against the Petitioner. Thereafter, the services of the Petitioner were terminated by the impugned order dated 1.4.1992, which has been appended as Annexure-16 to the writ petition. The impugned order has been assailed on the ground that the enquiry proceedings were not fair and proper and the enquiry report dated 15.9.1990 submitted by Respondent No. 2 was tainted with mala fide and bias and that he had adopted double standard in the departmental enquiry. It is further submitted that Respondent No. 2 acted with material irregularity and discrimination. It has also been submitted that the Petitioner has been denied an opportunity to lead evidence violating the principles of natural justice. The punishment awarded to the Petitioner is too severe, looking at the gravity of the charges and the arbitrary act of the Respondents suffers from manifest error of law and causes irreparable loss and injury to him.

10. In view of the averments made in the writ petition and in the counter-affidavit, this Court by order dated 29.4.1999 directed the Respondents to produce the original records of the departmental enquiry proceedings. The time was further extended for production of the records, but the original records of departmental enquiry proceedings has not been produced before this Court.

11. Counsel for the Respondents has contended that the Petitioner has an alternative and statutory remedy of filing an appeal before the Deputy General Manager of the region concerned under Regulation 69 of U.P.S.R.T.C. (Employees other than Officers) Service Rules, 1981. It is averred in the counter-affidavit that 16 passengers were found travelling without ticket and the checking authority has full jurisdiction to check the Bus. It is denied that any illegal gratification was asked for from the Petitioner. It has been specifically stated in paragraph 20 of the counter-affidavit that the Petitioner had noted down the date fixed on 10.8.1990 on the order-sheet and had signed the same. He was also informed by letter dated 20.6.1990 about the next date fixed in the case, but he did not appear. The Respondents have not denied that they had not participated in the enquiry proceedings on nine consecutive dates. The reply of paragraph 31 of the writ petition, in which it is stated that on nine consecutive dates the Petitioner appeared along with his witnesses, but the representatives of the department neither appeared nor produced any witness. The reply to para 31 has been given in paragraph 19 of the counter-affidavit, which is as under:

"19. That the contents of paragraph Nos. 23 to 31 of the writ petition need no reply.

12. It appears from the records that the Inquiry Officer in the matter of Petitioner proceeded in hurried manner. The employers had ample opportunity to present their case on any of the nine consecutive dates, but they did not appear. The Petitioner was entitled to atleast one more opportunity, if he had failed to appear only on one date. It is also not denied by the Respondents that they remained absent on all the nine consecutive dates. This gives an irresistible conclusion that there is some ulterior motive in the mind of the department and the Inquiry Officer to have concluded the enquiry only on one hearing in which the Petitioner was not present.

13. The enquiry held by the Respondents is without giving reasonable opportunity to the Petitioner to defend himself and is in violation of all corners of principles of natural justice. The impugned order of termination as well as the enquiry report, therefore, cannot be sustained.

14. The Respondents have not conducted the enquiry muchless according to the procedure prescribed. Reliance has also been placed by the Petitioner in this regard on the judgment of this Court in [Radhey Shyam Pandey Vs. Chief Secretary U.P. and others](#), , in which the order of dismissal of the Petitioner was held to be not justifiable. It was held that:

"No specific date, time and place of enquiry was fixed or documentary evidence against the Petitioner should have been adduced in his presence and he should have been given an opportunity to cross-examine the witnesses against him and also he should have been given an opportunity to produce his own witnesses and evidence. A dismissal order is a major punishment having serious consequences and hence should be passed only after complying the rules of natural justice. Since in the present case, no regular and proper enquiry was held ... It is clear case that the Petitioner has not been afforded a fair opportunity muchless a reasonable opportunity to defend himself that has resulted in violation of principles of natural justice and fair play.

15. The facts and circumstances of the instant case are similar to that of the case referred to above. Neither any enquiry is said to have been held in the charge of misconduct of remaining unauthorisedly absent nor the Petitioner was informed about any date, time and place of hearing of the enquiry.

16. In [D.K. Yadav Vs. J.M.A. Industries Ltd.](#), , the Apex Court in paragraphs 13 and 14 held as under:

"13. The power to terminate the services of an employee/ workman in accordance with just, fair and reasonable procedure is an essential in - built of natural justice. Article 14 strikes at arbitrary action. It is not the form of the action but the substance of the order that is to be looked into. It is open to the Court to lift the veil and gauge

the effect of the impugned action to find whether it is the foundation to impose punishment or is only a motive. Fair play is to secure justice, procedural as well as substantive. The substance of the order is the soul and the affect thereof is the end of the result.

14. It is thus well-settled law that right to life enshrined under Article 21 of the Constitution would include right to livelihood. The order of termination of service of an employee/ workman visits with civil consequences of jeopardising not only his/her livelihood but also career and livelihood of dependents. Therefore, before taking any action putting an end to the tenure of an employee/ workman fair play requires that a reasonable opportunity to put forth his case is given and domestic enquiry conducted complying with the principles of natural justice. In *D.T.C. v. D.T.C. Mazdoor Congress and Ors.*(supra) the Constitution Bench, per majority, held that termination of the service of a workman giving one month's notice or pay in lieu thereof without enquiry offended Article 14. The order terminating the service of the employees was set aside.

17. For the reasons stated above, the writ petition is partly allowed and the impugned order dated 1.4.1992 passed in pursuance of the ex parte enquiry report dated 15.9.1990 is quashed. The Respondents are directed to hold de novo enquiry permitting the Petitioner to produce his witnesses and also to cross-examine the witnesses of the department within one month from the date of production of a certified copy of the order and conclude the same within a period of three months thereafter, after affording full opportunity of hearing to the Petitioner. No order as to costs.