

(2007) 01 GAU CK 0024

Gauhati High Court

Case No: None

Nagen Baruah

APPELLANT

Vs

Assam State Transport Corpn.
and Others

RESPONDENT

Date of Decision: Jan. 11, 2007

Acts Referred:

- Penal Code, 1860 (IPC) - Section 279, 304

Citation: (2007) 2 GLT 226

Hon'ble Judges: B.K. Sharma, J

Bench: Single Bench

Final Decision: Allowed

Judgement

B.K. Sharma, J.

The petitioner, who was a driver under the respondent-Corporation, is aggrieved by the order of removal from service, which was so passed, pursuant to a departmental proceeding against him.

2. The departmental proceeding against the petitioner was initiated firstly by placing him under suspension by Annexure-"B" order dated 20.6.2000 and thereafter, by issuing charge sheet dated 10.10.2000 under Rule 9 of the Assam Services (Discipline & Appeal) Rules, 1964. The departmental proceeding was in respect of the death of the conductor of the bus which the petitioner had driven. Altogether 4 charges had been leveled against the petitioner, but in effect, there was only one charge as could be gathered from the charges and the statement of allegation. Although the charge is stated to be driving of the vehicle carelessly and negligently, but on a reading of contents of the charges coupled with the statement of allegation, truly speaking, there was no such distinct and definite article of charge against the petitioner.

3. All the charges together with the statement of allegation only referred to the particular incident which occurred on 16.6.2000 on which date, the petitioner drove the Mangaldoi-Dhansiri bound bus bearing registration No. As-20-0560. It was during that journey, the conductor of the vehicle namely, Shri Bhaben Saharia died. As per the statement of allegation, the conductor had to get down from the vehicle to disperse the cows which blocked the road. Thereafter, the vehicle proceeded further and after sometime, it was detected that the conductor was not inside the bus. Situated thus, the petitioner drove the vehicle back for some distance and found the conductor lying on the road with certain injuries. As per the charge itself, the petitioner arranged for treatment of Shri Saharia in the nearby tea estate hospital. The case was referred to the Mangaldoi hospital, but on reaching the Mangaldoi hospital, the doctor present there declared Shri Saharia dead. Thus, as per the statements of allegation, the conductor of the bus said Shri Bhaben Saharia succumbed to his injuries.

4. On a bare perusal of all the charges coupled with the statement of allegation, there is nothing to indicate that it was because of rash and negligent driving of the petitioner, Shri Saharia fell down from the bus and thereby sustained injuries. It is an admitted position that he had got down from the bus to disperse the cows which gathered on the road.

5. In response to the charge sheet, the petitioner submitted his written statement of defence denying the allegation of rash and negligent driving on his part. Referring to his 30 years of service, the petitioner in his written statement of defence stated that there was no justification of asking him to go to Dhansiri from Mangaldoi on that fateful day. According to the written statement, the particular tyre of the vehicle was badly damaged because of which the vehicle could not be run on 14.6.2000 and 15.6.2000. But on the fateful day, the same very tyre in damaged condition was made use of and the petitioner was directed to ply the vehicle from Mangaldoi to Dhansiri at the evening hours of the day (5.30 P.M.).

6. After the submission of the written statement of defence, the Enquiry Officer appointed by the disciplinary authority conducted the purported enquiry and submitted his report on 8.11.2001 holding the petitioner guilty of all the charges. According to the petitioner, apart from the fact that he was not afforded with opportunity of engaging any defence counsel, he was also not afforded with opportunity to cross-examine the witnesses and that the witnesses were examined behind his back. I have verified the departmental proceeding file from which it appears that the Enquiry Officer examined one Shri Ajit Sarmah, an officer of the Assam State Transport Corporation, Bongaigaon. So far as the petitioner is concerned, his statement was recorded to the effect that he would stand by his written statement of defence submitted on 31.10.2000. In the statement furnished by Shri Ajit Sarmah, there is nothing to indicate that the petitioner was guilty of rash and negligent driving. On perusal of the statement given by him on 24.9.2001, what

has transpired is that he simply stated about the incident as he gathered from the petitioner. Nothing adverse has been stated against the petitioner. This is stated the solitary witness examined on behalf of the disciplinary authority.

7. As against the aforesaid evidence on the part of the disciplinary authority, the petitioner in his statement recorded on 24.9.2001, referred to his written statement of defence and stated that he would stand by the same. The plea of the petitioner in his written statement of defence has been indicated above.

8. From the above materials, it cannot be said that the charge of rash and negligent driving has been established. However, the Enquiry Officer in his report, held the petitioner guilty of all the charges. On a bare perusal of the enquiry report, it is seen that the findings arrived at by the Enquiry Officer are based on conjecture and surmises. The Enquiry Officer has simply referred to the charge sheet and the written statement of defence of the petitioner. Thereafter, he has referred to the statement of the aforesaid A.S.T.C. official, Shri Ajit Kumar Sarmah. The kind of statement made by Shri Sarmah has been noted above. The Enquiry Officer has also referred to the criminal proceeding initiated against the petitioner relating to the same very incident. Throughout the report except recording the facts relating to the incident, there is nothing to show that the petitioner was in any manner is guilty of rash and negligent driving. Thus, the finding arrived at by the Enquiry Officer out and out perverse and it is a case of no evidence at all.

9. After the enquiry report was furnished, the same was forwarded to the petitioner by letter dated 19.12.2001 asking him to submit reply in respect of the proposed penalty of removal from service. In response to the letter dated 19.12.2001, the petitioner submitted his reply dated 1.1.2002 reiterating his stand as reflected in the written statement of defence and strongly denied the allegation of rash and negligent driving. Referring to his 30 years of service, he also stated that the particular incident was the first of its kind in which his colleague unfortunately died.

10. By the impugned order dated 17.1.2002, the petitioner has been removed from service with the stipulation that he would not be entitled to anything beyond what he was paid during the period of suspension. The impugned order of removal from service has been passed by the Divisional Superintendent (In-Charge), A.S.T.C. Tezpur. It will be pertinent to mention here that after the incident, an F.I.R. was lodged by the A.S.T.C. authority on the basis of which after registering a police case, to G.R. Case No. 278/2000 under Sections 279/304 I.P.C. was registered. In the criminal case, the allegation of rash and negligent driving could not be established although a number of witnesses, some of whom are the officials of the A.S.T.C., were examined. The criminal Court by its judgment and order dated 30.5.2001 honorably acquitted the petitioner holding that the charge of rash and negligent driving against the petitioner could not be established by the prosecution.

11. Even after acquittal of the petitioner honorably by the criminal Court by the aforesaid judgment and order dated 30.5.2001, the authorities of the Corporation proceeded with the departmental proceeding and the statement of Shri Ajit Sarmah, the aforesaid A.S.T.C. official was recorded on 24.9.2001. On the same date, the statement of the petitioner was also recorded. This is the only date on which the purported departmental enquiry was conducted and that too, after the petitioner was honorably acquitted by the criminal Court in respect of the same very charge by judgment and order dated 30.5.2001. After recording the statement of the said Shri Sarmah as well as the petitioner about which a discussion has been made above, the disciplinary authority passed the impugned order dated 17.1.2002 removing him from service. Thus, the entire departmental proceeding was conducted at the time when the petitioner stood honorably acquitted by the criminal Court. In the criminal case relating to the same very incident and the same very charge.

12. Mr. B.K. Nath, learned Counsel led by Mr. R.P. Sarmah, learned Counsel for the petitioner submits that the entire action against the petitioner was ill-founded and that the petitioner having been acquitted in the criminal case relating to the same very charge, no departmental proceeding could have initiated against the petitioner. He further submits that the entire departmental proceeding was farcical one and nothing could be established against the petitioner. Referring to the enquiry report, he submits that the finding arrived at by the enquiry on the face of it, is perverse and that, it is a case of no evidence at all. Referring to the decision of the Apex Court as reported in [Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another](#), he submits that the petitioner having been acquitted in the criminal case relating to the same set of charge as in the departmental proceeding, the impugned order is not sustainable.

13. Countering the above submissions made by Mr. Nath, Ms. U. Baruah, learned Standing Counsel, A.S.T.C. submits that the petitioner having been found guilty of rash and negligent driving, the Enquiry Officer has rightly returned the finding of guilt against the petitioner. She submits the petitioner being a driver of the vehicle, was responsible for death of his colleague namely, Shri Saharia i.e., the conductor of the vehicle. She submits that rash and negligent driving on the part of the petitioner is explicit on the face of it in view of the fact that the petitioner could not detect that the conductor is missing in the bus. As regards the procedural defect in the enquiry, as has been alleged by the learned Counsel for the petitions, she submits that there was no procedural irregularity in conducting the enquiry.

14. I have given my anxious consideration to the submissions made by the learned Counsel for the parties and the materials on record including the departmental proceeding file. The charge sheet against the petitioner was issued under Rule 9 of the Assam Services (Discipline and Appeal) Rules, 1964. Rule 9(2) of the Rules envisages framing of definite charges on the basis of the allegations on which the enquiry is proposed to be held. Further, as per the requirement of Rule 9(2) of the

Rules, at the time of delivery of charges, the disciplinary authority shall invariably furnish to a Government servant a list of documents and witnesses by which its article of charges is proposed to be sustained. In the instant case, as has been noticed above, no definite charge was brought against the petitioner, although the incident referred to in the charge sheet has been stated to be because of rash and negligent driving on the part of the petitioner.

15. Nothing has been indicated in any one of the charges as to how the incident constituted rash and negligent driving on the part of the petitioner. Coupled with this, the mandatory requirement of furnishing the list of documents and witnesses was also not complied with. The charge sheet has revealed that the same was not accompanied with the list of documents and witnesses. The charge being void, the same was contrary to the requirement of framing of distinct and definite article of charge. Needless to say that only referring to an incident by itself does not constitute an allegation of misconduct unless such incident is relatable to any deficiency and/or misconduct on the part of the officer and/or against whom such incident is referable. In the instant case, except a reference to the incident, nothing was stated in the charge sheet as to how the said incident constituted any misconduct on the part of the petitioner.

16. In the so called departmental proceeding, the disciplinary authority examined only one witness about whom a mention has been made above. The said witness did not state anything so as to establish any charge of rash and negligent driving on the part of the petitioner. The petitioner in his statement clearly stated that he was not responsible for any rash and negligent driving and that the vehicle was also not in good condition so as to ply on the fateful day. This aspect of the matter so categorically stated by the petitioner has not been denied by the respondents.

17. When in the departmental proceeding, the charges as per own understanding of the disciplinary authority has not been established, the Enquiry Officer could not have held in the report that the charges against the petitioner have been established. On a bare perusal of the enquiry report, it will be seen that the findings arrived at by the Enquiry Officer are all based on conjectures and surmises and such findings are perverse on the face of it. It being a case of no evidence at all, the Enquiry Officer could not have held the petitioner guilty of the charge of rash and negligent driving. The possibility of the conductor's falling down from the vehicle due to his own rash and negligent action cannot be ruled out. It will have to be born in mind that the petitioner was at the driver's seat and the conductor was behind his back engaged in his own duties. At one stage, the petitioner detected that the conductor was missing in the bus and thereafter, drove the vehicle back and found him lying on the road. From this, an inference cannot be drawn that the petitioner was responsible for the incident. It is on record, rather admitted by the respondents that the petitioner did not flee from the scene and helped the conductor by taking him to a nearby tea estate hospital and thereafter, to Mangaldoi Civil Hospital.

However, the destiny as it was, the conductor succumbed to his injuries.

18. Apart from the above, the departmental proceeding on the same set of charge and on the same cause of action could not have been proceeded with, after the petitioner was honorably acquitted in the criminal case. It is in this connection, the learned Counsel for the petitioner has referred to the aforesaid Paul Anthony's case in which the Apex Court somewhat in similar circumstances observed as follows:

34. There is yet another reason for discarding the whole of the case of the respondents. As pointed out earlier, the criminal case as also the departmental proceedings were based on identical set of facts, namely, "the raid conducted at the appellant's residence and recovery of incriminating articles therefrom". The findings recorded by the Inquiry Officer, a copy of which has been placed before us, indicate that the charges framed against the appellant were sought to be proved by Police Officers and Panch witnesses, who had raided the house of the appellant and had effected recovery. They were the only witnesses examined by the Inquiry Officer and the Inquiry Officer, relying upon their statements, came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case but the Court, on a consideration of the entire evidence, came to the conclusion that no search was conducted nor was any recovery made from the residence of the appellant. The whole case of the prosecution was thrown out and the appellant was acquitted. In this situation, therefore, where the appellant is acquitted by a judicial pronouncement with the finding that the "raid and recovery" at the residence of the appellant were not proved, it would be unjust, unfair and rather oppressive to allow the findings recorded at the ex-parte departmental proceedings, to stand.

35. Since the facts and the evidence in both the proceedings, namely, the departmental proceedings and the criminal case were the same without there being any iota of difference, the distinction, which is usually drawn as between the departmental proceedings and the criminal case on the basis of approach and burden of proof, would not be applicable to the instant case.

19. For all the foregoing reasons, findings and conclusions, I have no hesitation to hold that the impugned order dated 17.1.2002 (Annexure-"J" to the writ petition) passed by the incharge Divisional Superintendent, Assam State Transport Corporation, Tezpur is not sustainable in law and accordingly, the same, is liable to be set aside and quashed which I accordingly, hereby do.

20. This now leads us to the question as to how the period of the petitioner's absence from service due to the impugned order of removal shall be treated. Ms. Baruah, learned Standing Counsel, ASTC submits that, considering the financial condition of the Corporation, there may not be a direction for payment of full back wages to the petitioner. On the other hand, Mr. Nath, learned Counsel for the petitioner placing reliance on a decision of the Apex Court in [Dipti Prakash Banerjee](#)

Vs. Satvendra Nath Bose National center for Basic Sciences, Calcutta and Others,

submits that in absence of anything to show that the petitioner during the period of absence was gainfully employed, the direction is required to be issued for payment of full back wages. It is true that there is nothing to indicate that the petitioner is presently gainfully employed, but at the same time, it will have to be borne in mind that the petitioner is a professional man. It is not unlikely that he being a driver is engaged in some kind of employment. Considering this, I am of the considered opinion that ends of justice will be met if a direction is issued for payment of 50% back wages to the petitioner for the period when the order of removal remained in operation.

21. The impugned order is set aside. The petitioner shall be deemed to be in service all throughout with 50% back wages. He shall be reinstated in service forthwith and the back wages shall be paid as expeditiously as possible, preferably within 6 (six) months.

The writ petition is allowed to the extent indicated above, leaving the parties to bear their own costs.