

(2018) 12 UK CK 0020

Uttarakhand High Court

Case No: Writ Petition (S/S) No. 1243 Of 2009

Sakur Ahamad

APPELLANT

Vs

Uttarakhand
Transport Corporation
And Another

RESPONDENT

Date of Decision: Dec. 1, 2018

Hon'ble Judges: Sudhanshu Dhulia, J

Bench: Single Bench

Advocate: Pawan Mishra, Rajeev Singh Bisht

Final Decision: Allowed

Judgement

Sudhanshu Dhulia, J

1. The petitioner was a Driver in the Uttarakhand Transport Corporation (from hereinafter referred to as the "Corporation"). While he was driving a vehicle bearing No.UP-32T-1757 which was going from Dehradun to Delhi, the vehicle stopped at Roorkee. The vehicle reached its destination in Delhi the next day but later on it was found that one of the passengers who was also boarded in the vehicle was found dead near roadside at Roorkee Railway Crossing. Meanwhile, Claim Petition was filed on behalf of the deceased, in which the stand of the Corporation was that in the death there was no negligence or dereliction of duties on the part of the petitioner and the Corporation had no liability in the matter. This was throughout the case of the Corporation. However, the Motor Accident Claim Tribunal gave a compensation of Rs.5,74,712/- (Rupees Five Lakhs Seventy Four Thousand Seven Hundred Twelve Only) in favour of the claimants vide order dated 16.04.2004 and directed the Corporation to pay the

aforesaid amount. Against this order, an appeal was preferred by the Corporation, where the order of the Motor Accident Claim Tribunal was upheld

by this Court vide order dated 21.08.2007. The SLP filed by the Corporation before the Honâ€™ble Apex Court was also dismissed by the

Honâ€™ble Apex Court vide order dated 04.02.2008.

2. It appears that thereafter an inquiry was instituted against the petitioner and it was found that since the loss was caused by the petitioner to the

department, recovery proceedings were initiated against the petitioner vide order dated 26.11.2009. Aggrieved, the petitioner has filed the present writ

petition before this Court.

3. The service condition of the petitioner is governed by the Uttar Pradesh State Road Transport Corporation Employee (Other than Officers) Service

Regulation 1981. Regulation 62 defines what will constitute misconduct. Regulation 62 (9) of the aforesaid Regulation reads as under:-

â€™62 (9) Neglect of work or negligence in the performance of duty,â€™

4. Considering the conduct of the petitioner, he was awarded a minor penalty. Penalties have been defined under Regulation 63 of the aforesaid

Regulation. Regulation 63 reads as under:-

â€™63. The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on an employee, namely-

Minor Penalties

(1) Censure;

(2) Withholding of increment;

(3) Stoppage at an efficiency bar otherwise than on the ground of unfitness to cross the bar;

(4) Recovery from pay or deposit at his credit the whole or the part of a pecuniary loss caused to the Corporation by negligence or breach of order;

Major Penalties

(5) Reduction to a lower grade or post or to a lower stage in a time scale;

(6) Removal from service which shall not be a disqualification for future appointment;

(7) Dismissal from service which shall be disqualification for future appointment;â€™

5. In this case, the reason on which this recovery is being made from the salary/pension of the petitioner cannot be sustained inasmuch as the stand of the Corporation throughout was that the accident was not due to the negligence of the driver. When this stand has been taken throughout, the Corporation cannot change its stand and take a somersault and award punishment to the petitioner holding that the loss is caused to the Corporation due to the negligence of the petitioner.

6. This Court has been informed that the petitioner has reached the age of superannuation and retired from service in the year 2013. In view of the above, the writ petition is allowed. Order dated 26.11.2009 is quashed and set aside. Whatever amount so far has been recovered from the salary/pension of the petitioner shall be returned to him within a period of six weeks from the date of production of a certified copy of this order.