

U. P. State Road Tpt. Corpn. and Others

Vs

Musai Ram and Others

Civil Appeal No. 3285 of 1984

(Sujata V. Manohar, R. C. Lahoti JJ)

12.01.1999

ORDER

1. The respondent was a bus conductor in the Uttar Pradesh State Roadways Organisation. On 17-4-1971, he was placed under suspension. A charge-sheet dated 13-10-1971 was served upon the respondent. In the charge-sheet, two charges were framed. These charges were to the effect that on 13-8-1969 while the respondent was acting as the conductor of a bus, he had charged the passengers amounts in excess of the prescribed fare. When Shri Paras Nath Pandey, the Assistant Traffic Inspector inspected the bus on that date, the respondent declined to return the excess fare and misbehaved with the Assistant Traffic Inspector. The charge was that he had misbehaved with the checking staff and refused to return the excess amount. He was guilty of failure to discharge his duty properly, misbehaviour and misappropriation of the passengers' money. Copy of the report of Shri Paras Nath Pandey, Assistant Traffic Inspector, Jalalpur dated 18-8-1969 was annexed with the charge-sheet.
2. The second charge was that on 1-9-1969 while the respondent was acting as the conductor of a bus, it was checked by Shri Paras Nath Pandey, Assistant Traffic Inspector, Jalalpur. It was found that though the fare had been collected from 5 passengers, no tickets were issued by the respondent to the passengers. When the ATI demanded from the respondent blank ticket-book for issuing tickets to those passengers, the respondent caused hindrance. He was, therefore, guilty of failure to discharge his duty properly, had intended to misappropriate government revenue and had been guilty of misconduct. The charge-sheet also stated the evidence which was proposed to be considered in support of the second charge. The documents relied upon were (1) report of Shri Pandey dated 2-9-1969, a copy of which was enclosed and (2) Way Bills Nos. 345-46/56 dated 1-9-1969 with checking remarks, which the respondent was asked to see in the office. He was required to put in a written submission in defence, in reply to each of the charges. He was also informed that if he desired to be heard in person or wished to examine or cross-examine any witness, the name and address of the witness with a brief indication of the evidence that each witness would be expected to give, should be submitted in writing.
3. The respondent gave his reply dated 28-10-1971. He also stated that he proposed to examine two witnesses, Shri Tiwary and Shri Ahluwalia. Thereafter, an enquiry was held. The enquiry report is dated 24-12-1971. Following the report, a show-cause notice was issued to the respondent by the Assistant General Manager on 31-12-1971. The respondent gave his reply to the show-cause notice which is dated 7-1-1972. On 16-4-1972, the Assistant General Manager passed an order removing the respondent from service. The respondent filed an appeal from this order which was dismissed on 13-11-1973 by the General Manager of the Uttar Pradesh State Roadways Organisation.

4. The respondent thereafter gave a notice under Section 80 of the Civil Procedure Code and filed a suit which was transferred to the Uttar Pradesh Public Services Tribunal on the constitution of that Tribunal. The Tribunal dismissed the claim of the respondent by its order dated 2-2-1978. The respondent filed a writ petition before the High Court which has been allowed. Hence, the appellants have filed the present appeal. The appellants are a statutory organisation which have taken over the Uttar Pradesh State Roadways Organisation which had employed the respondent.

5. The Tribunal in its order has expressly stated that the enquiry file was produced before it at the instance of the plaintiff, the present respondent. The Tribunal has also recorded that the enquiry file showed that Shri Pandey was examined before the enquiry officer and his two reports dated 13-8-1969 and 1-9-1969 were proved by Shri Pandey. The enquiry file also showed that the respondent did not cross-examine Shri Pandey and stated that he did not wish to cross-examine Shri Pandey or any other witness. The Tribunal has also recorded that although Shri Tiwary and Shri Ahluwalia, the Traffic Superintendent, who were proposed to be examined as witnesses by the respondent, had remained present on several occasions, the respondent examined only Shri Tiwary, whose evidence is noted by the enquiry officer. He did not examine Shri Ahluwalia, the Traffic Superintendent. The Tribunal held that the principles of natural justice were not violated in the present case and the respondent had been given full opportunity to defend himself. The Tribunal, therefore, dismissed the claim of the respondent. The Tribunal also noted that although an appeal from the order of dismissal had been dismissed, the respondent had not challenged the appellate order. The High Court, however, seems to have proceeded on the basis that the Assistant Traffic Inspector, Shri Pandey, on the basis of whose report the charges were framed, was not examined by the enquiry officer. We fail to see how the High Court has reached such a conclusion when the Tribunal has expressly said that it examined the enquiry file and found that Shri Pandey had been examined and that the respondent had declined to cross-examine Shri Pandey.

6. It is also contended that Shri Pandey had made his report after recording the statement of the passengers. The respondent was not given copies of the statements of those passengers and those passengers were not examined. Hence, there is a violation of the principles of natural justice. Whether there is such a violation or not, obviously depends upon the facts of each case. In the present case, in the charge-sheet it is clearly stated that what is proposed to be relied upon is a report submitted by the Assistant Traffic Inspector on both the occasions. Although the Assistant Traffic Inspector was examined and he proved his reports, the respondent did not cross-examine even the Assistant Traffic Inspector. He could have cross-examined the Assistant Traffic Inspector regarding the statements of passengers on the basis of which the report was made. He did not choose to do so. It is, therefore, not possible for him to contend that the enquiry ought to have been based on the statements of the passengers recorded by the Assistant Traffic Inspector or that the enquiry officer ought to have examined the passengers or that he ought to have been given a chance to cross-examine the passengers. When he has not challenged the reports filed by the Assistant Traffic Inspector, there is no question of violation of the principles of natural justice.

7. Learned counsel for the respondent had relied upon several authorities dealing with the question whether in cases where the statements of witnesses are recorded during the preliminary enquiry and are relied upon in support of the charges, if copies of such statements are not given to the person charge-sheeted, there would be a violation of the principles of natural justice. We will only refer to one of these authorities which summarises the decisions on this issue, which is *Chandrama Tewari v. Union of India* (1987 Supp SCC 518 : 1988 SCC (L&S) 226 : (1987) 5 ATC 369). The Court has held that where the documents are mentioned in the memo of charge but are neither relevant to the charge nor referred to or relied upon by the authorities nor are necessary for cross-examination, non-

supply of such documents would not vitiate the proceedings and there would be no violation of the principles of natural justice.

8. In the present case, the respondent did not cross-examine even the Assistant Traffic Inspector, much less challenged the reports filed by the Assistant Traffic Inspector. Even in the charge-memo, the predecessors of the present appellants had not relied upon the statements of the passengers.

9. The question whether the authority can act upon the reports filed by the Assistant Traffic Inspector or not and whether these reports should be accepted or not is a matter which has to be examined by the enquiry officer. The Court does not sit in appeal over the findings of the enquiry officer. If the findings are based on uncontroverted material placed before the enquiry officer, it cannot be said that these findings are perverse.

10. The High Court, therefore, seems to have reached the conclusions without examining the file relating to the enquiry. The facts on which the High Court's judgment is based do not appear to have been correctly appreciated by the High Court. The Tribunal on the contrary has clearly recorded the facts pertaining to the enquiry. In the premises, we set aside the impugned judgment and order of the High Court and restore the decision of the Tribunal. The appeal is allowed accordingly.