

SUPREME COURT OF INDIA

North West Karnataka Road Transport Corp.

Vs.

H.H. Pujar

C.A.No.4520 of 2008

(Dr. Arijit Pasayat and P. Sathasivam JJ.)

18.07.2008

JUDGMENT

Dr.Arijit Pasayat, J.

1. Leave granted.
2. Challenge in this appeal is to the judgment of a Division Bench of the Karnataka High Court in the writ appeal no.3830/2005 dismissing appeal against the order of learned Single Judge in Writ Petition No.17519/2000. The writ appeal was dismissed as not maintainable and, therefore, the challenge in the present is essential to the order of learned Single Judge.
3. Background facts in a nutshell are as follows:

“Respondent-Conductor was commissioning as such in Bus No. F-16 on 15.9.1993 when the bus was intercepted by the checking staff. It was found that the respondent had not issued tickets to 20 out of 136 passengers. Appellant conducted domestic enquiry which found him guilty. Consequently, he was dismissed from service vide order dated 3.4.1995. The same was challenged by the respondent before the Labour Court invoking Section 10(4-A) of the *Industrial Disputes Act, 1947* (in short the 'Act'). The Labour Court held that the domestic inquiry was fair and proper on the basis of the memorandum filed by the respondent conceding to the fairness of the domestic inquiry. However, the Labour Court set aside the order of dismissal and directed reinstatement of respondent with full back wages, continuity of service and other consequential benefits. The basis for this order was non- checking of cash bag of the respondent and non-examination of ticketless passengers. The order was challenged before the High Court. By order dated 21.10.2005, the learned Single Judge held that the order was correct so far as setting aside dismissal order is concerned, direction for reinstatement and continuity of service and consequential benefits. However, the direction relating to back wages was set aside. The writ appeal as noted above was dismissed on the ground that the same was not maintainable.”

4. In support of the appeal learned counsel for the appellant submitted that the primary reason indicated by the Labour Court to hold that the order of dismissal was bad, was the alleged non-examination of the passengers to whom the respondent had not issued the tickets. It also did not find any substance in the stand of the Corporation that earlier also on 12 occasions for similar charges punishments were awarded but the respondent did not improve his conduct. The High Court found that the conclusions of the Labour Court were correct. It was noted that if more passengers were carried within the permissible limit, it was fault of the Corporation who did not take timely reformatory and remedial measures.

5. Learned counsel for the appellant submitted that the view expressed by the High Court is clearly contrary to the law laid down by this Court. Further, when the respondent himself conceded to the fairness of the proceedings and the fact that he had not issued tickets to twenty passengers, their non-examination is of no consequences.

6. There is no appearance on behalf of the respondent in spite of service of notice.

7. In *State of Haryana and Anr. v. Rattan Singh*¹, it was, inter alia, held as follows:

"4. It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and Administrative Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through case-law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fairplay is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good. However, the courts below misdirected themselves, perhaps, in insisting that passengers who had come in and gone out should be chased and brought before the tribunal before a valid finding could be recorded. The 'residuum' rule to which counsel for the respondent referred, based upon certain passages from American Jurisprudence does not go to that extent nor does the passage from Halsbury insist on such rigid requirement. The simple point is, was there some evidence or was there no evidence -- not in the sense of the technical rules governing regular court proceedings but in a fair commonsense way as men of understanding and worldly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainly available for the court to look into because it amounts to an error of law apparent on the record. We find, in this case, that the evidence of Chamanlal, Inspector of the Flying Squad, is some evidence

which has relevance to the charge levelled against the respondent. Therefore, we are unable to hold that the order is invalid on that ground.”

5. Reliance was placed, as earlier stated, on the non-compliance with the departmental instruction that statements of passengers should be recorded by inspectors. These are instructions of prudence, not rules that bind or vitiate in the violation. In this case, the Inspector tried to get the statements but the passengers declined, the psychology of the latter in such circumstances being understandable, although may not be approved. We cannot hold that merely because statements of passengers were not recorded the order that followed was invalid. Likewise, the re-evaluation of the evidence on the strength of co-conductor's testimony is a matter not for the court but for the Administrative Tribunal. In conclusion, we do not think the courts below were right in overturning the finding of the domestic tribunal."

8. The view was reiterated in *Divisional Controller KSRTC (NWKSRTC) v. A.T. Mane*².

9. As rightly contended by the appellant since fairness of the proceedings was conceded and the respondent admitted that he had not issued tickets to 20 passengers, their non-examination is really of no consequence.

10. In view of what has been stated by this Court in Rattan Singh's case (supra) and in A.T. Mane's case (supra) award of the Labour Court and impugned order of the High Court cannot be maintained and are set aside. The order of dismissal passed by the Corporation is to operate.

11. The appeal is allowed without any order as to costs.

¹(1977 (2) SCC 491)

²(2004 (8) SCALE 308)