

# SUPREME COURT OF INDIA

U.P. State Road Transport Corp.

Vs.

Suresh Chand Sharma

C.A.No.3086 of 2007

(Dr.B.S.Chauhan and Swatanter Kumar JJ.)

26.05.2010

## JUDGEMENT

### **Dr.B. S.Chauhan, J.**

1. Both these appeals have been preferred against the impugned judgment and order of the High Court of Uttaranchal at Nainital in Writ Petition No. 4143 of 2001 by which the Writ Petition filed by the Respondent-employee of the U.P. State Road Transport Corporation (hereinafter referred to as the 'Corporation') has been allowed directing his re-instatement in service, but without back wages. The Corporation has filed appeal being aggrieved of the order of re- instatement and reversal of the Award of the Labour Court dated 28.4.1995, while Civil Appeal No.3088 of 2007 has been preferred by the employee Shri Suresh Chand Sharma claiming full back wages.

2. Facts and circumstances giving rise to these appeals are that the said employee while working as a Conductor on bus No.UTL-9194 on the route Haridwar-Rishikesh was found, on checking on 24.5.1987, carrying 13 passengers without ticket from whom he has already recovered the fare and on 10.5.1988 on bus No.UGA-9059 on which he was working as a Conductor, 10 passengers were found without ticket.

“However, the employee had already recovered the fare from them. The Corporation served charge sheets upon the employee on 16.5.1988 and 7.7.1988 in respect of the mis- conducts dated 10.5.1988 and 24.5.1987. Employee submitted his reply to the charge sheets. However, the management not being satisfied with his reply decided to proceed with the regular enquiry and one Shri H.L. Saxena, a retired I.F.S. Officer was appointed as Enquiry Officer. The enquiry was conducted on both the charges giving full opportunity of hearing/defence to the employee. Enquiry Officer submitted the enquiry report wherein charges in respect of both the misconducts had been found proved. The Disciplinary Authority accorded its concurrence thereto. The management served the copy of the enquiry report and issued a second show cause dated 14.12.1988 to the employee to which he submitted his reply on 9.1.1999. The

Disciplinary Authority was not satisfied with his reply and after considering the material on record, the Authority passed the punishment order dated 29.1.1989 dismissing the employee from service.”

3. Being aggrieved, the Employee preferred a Departmental Appeal which was duly considered by the Appellate Authority and rejected vide order dated 21.3.1990. The Employee raised an industrial dispute and thus, the matter was referred by the Appropriate Government to the Labour Court vide reference dated 19.12.1991 to the following effect:

“Whether the termination of the services of the applicant/workman Shri S.C. Sharma s/o Late Shri Om Prakash, conductor by the employer from 29.1.1989 is unjustified and/or illegal? If so, which benefit/compensation the applicant/workman is entitled and to what extent?”

4. Both the parties appeared before the Labour Court, filed their replies and affidavits. Both parties filed documentary evidence and also led oral evidence and advanced submissions in support of their respective cases. The Labour Court considered all aspects and vide Award dated 28.4.1995 held that enquiry had been held strictly in accordance with law and both the charges in respect of both the incidents were found duly proved. Therefore, the employee was not entitled to any relief whatsoever.

5. Being aggrieved, the employee challenged the Award by filing C.M.W.P. No.9129 of 1996 before the High Court of Judicature at Allahabad which was transferred to the High Court at Nainital after Re-organisation of States and the said transferred case was registered as Writ Petition No. 4143 (M/S) of 2001. The High Court allowed the Writ Petition partly vide impugned judgment and order dated 7.9.2005 and directed the re-instatement of the employee without back wages. Hence, these appeals.

6. We have heard Shri Suraj Singh, learned counsel appearing for the Corporation and Dr. J.N. Dubey, learned senior counsel appearing for the employee. Large number of submissions have been made by the parties and it has been contended on behalf of the Corporation that the High Court has not recorded any reason whatsoever while setting aside the Award of the Labour Court. No fault could be found with the Award of the Labour Court and it was not necessary for the checking authority to record the evidence of the passengers who were found travelling without tickets nor it was necessary to check the cash at the hand of the employee.

“The High Court mis-directed itself while setting aside the well- reasoned Award of the Labour Court without giving any reason whatsoever. Thus, the appeal of the Corporation deserves to be allowed and Award of the Labour Court deserved to be restored.”

7. Per contra, Dr. J.N. Dubey, learned counsel appearing for the employee has submitted that the High Court was justified in accepting the submissions on behalf of the employee that

material witnesses were not examined. Thus, no disciplinary proceeding could be initiated against the employee. There was no justification for imposing the punishment of dismissal by the authority and once the Award of the Labour Court is set aside, the employee was entitled to full back wages. Thus, the Corporation's appeal is liable to be dismissed and appeal filed by the employee deserves to be allowed.

8. We have considered the rival submissions made by learned counsel for the parties and perused the record.

9. The Labour Court has considered the matter at length and came to the conclusion that enquiry had been conducted strictly in accordance with law. There has been no violation of the principles of natural justice or any other statutory provision. The employee was given full opportunity to defend himself, cross examined the witnesses examined by the Corporation. The Enquiry Officer has rightly appreciated the evidence and found the charges proved in respect of both the incidents. The Disciplinary Authority has taken a right decision accepting the enquiry report and punishment order was passed after serving second show cause to the employee.

“The Labour Court recorded the findings on facts as under:

"As far as the question of conclusions drawn by the Enquiry officer is concerned, in the enquiry conducted in respect of first charge sheet dated 7.7.1988 Ext.E/2, statement of Shri Atar Singh, Traffic Inspector has been recorded wherein he has proved the report Ext.E/1 of Shri Atar Singh, Traffic Inspector. Shri Atar Singh had checked the vehicle and 13 without ticket passengers have been found travelling from whom the petitioner-workman had already taken Rs..43/- as fare. Shri Atar Singh has accordingly made a remark on the way bill and obtained the signatures of petitioner-workman also.

The petitioner-workman did not ask any question in cross-examination to this witness. The petitioner workman has also not asked any question in cross- examination with the other witness Shri Kailash Chandra, Traffic Inspector.”

(Ephasis added)

10. The Labour Court recorded a finding of fact that in respect of both the mis-conducts the passengers were found travelling without tickets and they had already paid fare to the employee/Conductor. Thus, it is not a case where the said employee could not issue the ticket and recover the fare from the travelling passengers, rather the finding has been recorded that after recovering the fare from the passengers, he did not issue tickets to them. Thus, there was an intention to mis- appropriate the fare recovered from the passengers who were found travelling without tickets at both the times.

11. The High Court dealt with the matter in a most cryptic manner. Relevant/main part of the judgment of the High Court reads as under:

“5.....The Inspector in the cross-examination has also stated on oath that the cash was not checked. The learned counsel for the petitioner further submitted that when the bus was checked, ten passengers were boarded on the bus and they were drunk and they were also denying taking the tickets. The learned Tribunal has not considered this fact at all. I find force in the contention of the learned counsel for the petitioner. The learned Tribunal ought to have considered this fact that neither the passengers were examined, nor the cash was checked. Therefore, the order of the learned Tribunal cannot be sustained in the eye of law.”

(Emphasis added)

12. The High Court has decided the Writ Petition only on the ground that the passengers found without tickets, had not been examined and the cash with the employee was checked.

13. No other reasoning has been given whatsoever by the Court.

“this Court has categorically held that in a domestic enquiry, complicated principles and procedure laid down in the Code of Civil Procedure, 1908 and the Indian Evidence Act, 1872 do not apply. The only right of a delinquent employee is that he must be informed as to what are the charges against him and he must be given full opportunity to defend himself on the said charges. However, the Court rejected the contention that enquiry report stood vitiated for not recording the statement of the passengers who were found travelling without ticket. The Court held as under:

"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 courts below were right in over-turning the finding of the domestic tribunal.”

14. In view of the above, the reasoning so given by the High Court cannot be sustained in the eye of law. More so, the High Court is under an obligation to give not only the reasons but cogent reasons while reversing the findings of fact recorded by a domestic tribunal. In case the judgment and order of the High Court is found not duly supported by reasons, the judgment itself stands vitiated. (Vide *State of Maharashtra*<sup>1</sup> this Court observed that "giving of reasons is an essential element of administration of justice. A right to reason is, therefore, an indispensable part of sound system of judicial review."*Negi*<sup>2</sup> this Court held as under:

“Right to reason is an indispensable part of a sound judicial system; reasons at least sufficient to indicate an application of mind to the matter before Court.

Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made.”

15. In *Raj Kishore Jha* (supra), this Court observed as under:

“Before we part with the case, we feel it necessary to indicate that non-reasoned conclusions by appellate Courts are not appropriate, more so, when views of the lower Court are differed from. In case of concurrence, the need to again repeat reasons may not be there. It is not so in case of reversal. Reason is the heartbeat of every conclusion. Without the same, it becomes lifeless.”

16. In fact, "reasons are the links between the material, the foundation for these erection and the actual conclusions.

17. They would also administer how the mind of the maker was activated and actuated and their rational nexus and synthesis with the facts considered and the conclusion reached". (vide:

18. Therefore, the law on the issue can be summarized to the effect that, while deciding the case, court is under an obligation to record reasons, however, brief, the same may be as it is a requirement of principles of natural justice. Non- observance of the said principle would vitiate the judicial order.

19. Thus, in view of the above, the judgment and order of the High Court impugned herein is liable to be set aside.

20. We do not find any force in the submissions made by Dr. J.N. Dubey, learned Senior counsel for the employee that for embezzlement of such a petty amount, punishment of dismissal could not be justified for the reason that it is not the amount embezzled by a delinquent employee but the mens rea to mis-appropriate the public money. *Bihari & Ors.*<sup>3</sup>, this Court held as under:- "In a case of such nature - indeed, in cases involving corruption - there cannot be any other punishment than dismissal. Any sympathy shown in such cases is totally uncalled for and opposed to public interest.

21. The amount misappropriated may be small or large; it is the act of misappropriation that is relevant."

“Similar view has been reiterated by this Court in *Ruston & Anr.*<sup>4</sup>, *Janatha Bazar (South Kanara Secretary, Sahakari Noukarara Sangha & Ors.*<sup>5</sup>, *Hullikatti*<sup>6</sup> and *Regional Manager*<sup>7</sup>, this Court held that the punishment should always be proportionate to the gravity of the misconduct.

However, in a case of corruption/misappropriation, the only punishment is dismissal.”

22. Thus, in view of the above, the contention raised on behalf of the employee that punishment of dismissal from service was disproportionate to the proved delinquency of the employee, is not worth acceptance.

Appeal preferred by the Corporation i.e. Civil Appeal No. 3086 of 2007 is allowed. The judgment and order of the High Court dated 7.9.2005 is hereby set aside and the Award of the Labour Court dated 28.4.1995 is restored. The appeal preferred by the employee i.e. Civil Appeal No.3088 of 2007 is hereby dismissed. No order as to costs.

<sup>1</sup>*AIR 1990 SC 2205*

<sup>2</sup>*AIR 2008 SC 2026*

<sup>3</sup>*AIR 1996 SC 1249*

<sup>4</sup>*(1997) 11 SCC 370*

<sup>5</sup>*(2000) 7 SCC*

<sup>6</sup>*AIR 2001 SC 930*

<sup>7</sup>*(2008) 1 SCC 115*