

CASE NO.:
Appeal (civil) 696 of 2006

PETITIONER:
Uttaranchal Transport Corporation

RESPONDENT:
Sanjay Kumar Nautiyal

DATE OF JUDGMENT: 27/02/2008

BENCH:
Dr. ARIJIT PASAYAT & D.K. JAIN

JUDGMENT:
J U D G M E N T

Dr. ARIJIT PASAYAT, J

1. In this appeal, Uttaranchal Roadways Transport Corporation (in short the 'Corporation') calls in question legality of the judgment rendered by a learned Single Judge of the Uttaranchal High Court partly allowing the writ petition filed by the appellants-Corporation. Before the High Court the Corporation had challenged the order passed by the Presiding Officer, Labour Court, Dehradun in Reference Case No.25 of 2000 whereby it had ordered that respondent shall be re-instated into service with 50% back wages with minor punishment of stoppage of two increments without cumulative effect.

2. Background facts in a nutshell are as follows:
Sanjay Kumar Nautiyal-respondent was employed as conductor in the appellants-establishment and was posted at Saharanpur Depot at the relevant time. On 22.4.1996 respondent was assigned duty of conductor in bus having registration No.UP-15-9496. Duty of respondent included booking of tickets and collecting money when the said bus plied on its assigned route. The respondent was duty bound to keep correct accounts by filling details of tickets and making entry in the waybill sheet provided by the appellants, thereby showing number of passengers travelling, place of boarding and destination of passengers.

On the same day i.e. 22.4.1996, surprise checking was conducted by the personnel of appellants under the supervision of Jamil Ahmad, Traffic Inspector with M.A. Khan and Nandan Singh, Assistant Traffic Inspectors. The bus was plying on the Saharanpur Haridwar route. On checking by the above-mentioned persons it was found that the respondent had not mentioned the destination and boarding places of the passengers in the waybill. The column pertaining to above-mentioned details was left blank deliberately in order to misappropriate public money. Further, the respondent had also manipulated the entries and had entered wrong/lesser amounts charged from the passengers. Tickets issued by the respondent also did not clearly show the destination and boarding places of the passengers and it was deliberately written in the said manner, by the respondent in order to conceal the correct information in case of any cross verification.

Some tickets issued by the respondent did not show any destination or boarding place, which was left blank deliberately. The respondent had not issued tickets to about half of the total passengers travelling on the bus and had also charged money against the un-issued ticket, from the passengers. Entry regarding the above-mentioned irregularities by the respondent had been made by checking staff in the waybill. Therefore, it is absolutely clear that respondent had mis-appropriated the public money, and had deliberately made wrong entries to such effect in the way bill.

Checking staff of the Corporation made the complaint against respondent on the same day i.e. 22.4.1996. The conduct of respondent from the above-mentioned facts was treated to be grossly improper and against the Service Rules as framed for the employees of appellant. The conduct also amounts to mis-appropriation of public money and cheating.

On receiving complaint from checking staff, Assistant Regional Manager, Saharanpur issued directions to Senior Station-in-charge, Saharanpur to give report after examining the documents regarding the previous way bills and ticket counter foils submitted by the respondent. On examination of the way bills and ticket counter foils by Senior Station-in-charge it was found that the respondent attended duties only for four days in the relevant month before the surprise checking was conducted. It was found that on all occasions respondent had taken recourse to similar tactics in filling up of passenger tickets and waybills, as was found by checking staff on 22.4.1996. Over writing in the tickets, destination and boarding place of passenger not mentioned in the ticket, if it was mentioned, the same was not clear or legible or readable. There was no carbon impression found on backside of ticket. In the waybill the amount of money has been altered by over writing and deducted from the original. Report was submitted to Assistant Regional Manager, U.P. SRTC, Saharanpur on 9.7.1996.

After receiving report Assistant Regional Manager, Saharanpur forwarded the matter to Regional Manager, Dehradun with recommendation of disciplinary enquiry along with the above mentioned enquiry report. Regional Manager, Dehradun after consideration of complaint against the respondent by checking staff, report of Traffic Inspector, recommendation of Assistant Regional Manager, Saharanpur and seriousness as well as gravity of the matter, initiated disciplinary proceedings against the respondent. Charge sheet was served upon the respondent and in total 13 charges were framed against him on the basis of above mentioned records, by the appellant.

The respondent filed reply to the charge sheet served upon him by the appellant. Respondent could not explain the irregularities committed and took the way of general defence that the column in the waybill was left blank due to the fact that large number of passengers were travelling in the bus. The respondent further claimed that there was no over-writing done by him on the waybill, and someone else may have done it, in order to falsely implicate him. The respondent refused to cross-examine the witness produced by the appellant before the enquiry officer, Shiv

Ratan Kumar, Traffic Inspector. The witness who had conducted enquiry proved the report before enquiry officer. The respondent also failed to give clarification to enquiry officer regarding blank columns in tickets and carbon impression. Again he took the general defence that it has been made by mistake. The enquiry report was submitted to Regional Manager, Dehradun and in the report it was found that charges proposed in the charge sheet were proved against the respondent on the basis of documents, oral statement and circumstances of the case. The report was submitted to Regional Manager, Dehradun.

Regional Manager, Dehradun on perusal of enquiry proceedings as well as report and evidence recorded by enquiry officer (documentary as well as oral) proposed termination of services of the respondent along with forfeiture of salary pertaining to suspension period of the respondent. Show cause notice to such effect was issued to the respondent. Respondent replied to the show cause notice and raised certain issues regarding the conduct of disciplinary proceedings. However, Regional Manager, Dehradun found the respondent guilty of gross misconduct on duty as well as mis-appropriation of public funds/ticket money and also for submitting tempered waybills. Regional Manager, Dehradun dismissed respondent from service and forfeited the salary for suspension period.

Appeal against the order of Regional Manager, Dehradun before General Manager, Western Division, UPSRTC, Meerut filed by respondent was dismissed. Second appeal before Assistant Managing Director, UPSRTC, Lucknow was also dismissed. Subsequently, respondent filed Adjudication Case No.25 of 2000 before the Labour Court, Dehradun, thereby challenging the dismissal from service by the appellant. The Labour Court vide order dated 31.7.2000 set aside the dismissal of respondent by appellant. The punishment/penalty to respondent was considered to be harsh in comparison to the quantum of misconduct and it was reduced to stoppage of two annual increments in salary without future effect with forfeiture of 50% of the back salary.

It is to be noted that the Labour Court had found the respondent guilty of charges framed in the charge sheet. Labour Court did not deem it proper to record oral evidence of the parties and had only relied upon the documentary evidence pertaining to the disciplinary enquiry.

Aggrieved by the above mentioned order of Labour Court dated 31.7.2000 in Adjudication case No.25 of 2000, appellant filed Writ Petition before the High Court of Uttaranchal at Nainital. The High Court dismissed the Writ Petition of appellant on the ground that the presumption that the punishment of removal/dismissal from service was excessive and Labour Court was correct in exercising powers provided under Section 6(2-A) of U.P. Industrial Disputes Act, 1947 (in short the 'Act') by setting aside the order of removal/dismissal.

Before the High Court primary stand of the appellant was that in view of the proved mis-conduct of respondent the punishment awarded was fully justified and the Labour Court

should not have interfered with the punishment. The High Court did not accept the stand. It noted that the amount involved was meager and therefore the punishment awarded was dis-proportionate. However, the High Court held that the respondent shall not be paid any back wages but other punishments awarded were maintained.

In support of the appeal, learned counsel for the appellant submitted that the Labour Court and the High Court had unnecessarily given consideration to the amount involved without appreciating the fact that the conductor holds a post of trust and therefore the punishment of removal from service as awarded cannot be considered dis-proportionate.

It is submitted that order of the High Court has been passed without appreciating the fact that termination of service is very appropriate to the seriousness of charges levied against the respondent in view of fraud and misappropriation of public money by the respondent clearly proved by the surprise checking team as well. The station in charge and the court below have also held respondent to be guilty of fraud and mis-appropriation of public money and the charges levied on respondent were clearly proved after proper enquiry.

3. In spite of service of notice the respondent has not appeared.

4. In V. Ramana v. A.P. SRTC and Ors. (2005 (7) SCC 338) it was held as follows:

"4..In Karnataka State Road Transport Corporation v. B.S. Hullikatti (JT 2001 (2) SC 72), it was held that misconduct in such cases where the bus conductor either had not issued tickets to a large number of passengers or had issued tickets of lower denomination, punishment of removal is proper. It is the responsibility of the conductors to collect correct fare charges from the passengers and deposit the same with the Corporation. They act in fiduciary capacity and it would be a case of gross misconduct if they do not collect any fare or the correct amount of fare. A conductor holds a post of trust. A person guilty of breach of trust should be imposed punishment of removal from service. The factual position shows that the appellant's conduct in collecting fare at the designated place and not collecting fare from persons who had already travelled were in violation of various Regulations contained in The Andhra Pradesh State Road Transport Corporation Employees (Conduct) Regulations, 1963 (in short 'Regulations'). In the Karnataka State Road Transport case (supra) it was held that it is misplaced sympathy by Courts in awarding lesser punishments where on checking it is found that the Bus Conductors have either not issued tickets to a large number of passengers, though they should have, or have issued tickets of a lower denomination knowing fully well the correct fare to be charged. It was finally held that the order of dismissal should

not have been set aside. The view was reiterated by a three Judge Bench in Regional Manager, RSRTC v. Ghanshyam Sharma (2002 (1) LLJ 234), where it was additionally observed that the proved acts amount either to a case of dishonesty or of gross negligence, and Bus Conductors who by their actions or inactions cause financial loss to the Corporations are not fit to be retained in service.

5. The principle was reiterated in Regional Manager, U.P.S.R.T.C. Etawah and Ors. v. Hoti Lal and Anr. (JT 2003 (2) SC 27)

5. Above being the position, the Labour Court and the High Court were not justified in holding that the punishment awarded was dis-proportionate.

6. In view of the above, the order of the High Court is set aside. The punishment awarded by the disciplinary authority as upheld by the appellate authority stands restored.

7. The appeal is allowed with no order as to costs.