

Court No. - 39

Case :- SPECIAL APPEAL No. - 1180 of 2013

Appellant :- Maya Shankar

Respondent :- R.M. U.P.State Road Transport Corporation Meerut

Counsel for Appellant :- Deeptiman Yadav,Prabhakar Dwivedi

Counsel for Respondent :- Samir Sharma,Rahul Agarwal

Hon'ble Saumitra Dayal Singh,J.

Hon'ble Shiv Shanker Prasad,J.

1. Heard Shri Vikram Bahadur Yadav, holding brief of Shri Prabhakar Dwivedi, learned counsel for the petitioner-appellant and Shri Rahul Agrawal along with Ms. Akashi Agarwal, learned counsel for the respondent.

2. Present intra court appeal arises from the order of the learned single judge dated 17.07.2013 in *Writ - A No. 29414 of 1990 (Maya Shanker vs U.P.S.R.T.C.)*. By that order, the learned single judge has dismissed the writ petition filed by the petitioner-appellant and thus confirmed the punishment order awarding major punishment of dismissal from service, to the petitioner-appellant. Further, order of recovery of Rs. 6,830/- directed to be made from the petitioner-appellant, was also sustained.

3. Admittedly, at the relevant time, the petitioner-appellant was working on the post of Conductor on Roorkee-Delhi via Muzaffar Nagar route. For the months of May, June & July 1989, allegation of embezzlement appeared against the petitioner-appellant. He was thus alleged to have embezzled Rs. 2,090/- in May 1989; Rs. 2,100/- in June 1989 and, Rs. 2,580/- in July 1989. Arising from that, petitioner-appellant was not found guilty on the strength of any evidence led against him. allegation, departmental enquiry

proceeding was initiated against the petitioner-appellant. Though the charge-sheet is not on record, perusal of the punishment order dated 27.9.1990 does bring out the charge levelled against the petitioner-appellant of having overwritten on the way-bill so as to score out the station description - 'Muzaffar Nagar' and to overwrite the same as 'Meerut' to cause financial loss to the corporation. Similar other allegations had been made against the petitioner-appellant with respect to other charges.

4. Primarily, it was the fact allegation levelled against the petitioner-appellant that he had scored out the station name and replaced it with another station name so as to shorten the description of the journey resulting in ticket of lesser value being shown issued. That misconduct is stated to have given rise to the allegation of financial embezzlement by charging the passenger for a actual/longer journey while accounting for the ticket money for a shorter journey. With respect to the above, it is noticeable and relevant that in none of the journeys conducted by the petitioner-appellant, the bus on which the petitioner-appellant was posted, was subjected to any road check. Therefore, no direct evidence of financial embezzlement or wrong disclosure of destination/ticket sale emerged.

5. In fact, it is the case of the respondent corporation that the financial embezzlement was detected later. Thus, on certain occasions, the Depot Accountant and on certain other occasions, the Senior Station In-charge noticed the overwriting committed by the petitioner-appellant. Relying on the same, it is also the case of the respondent corporation that evidence in support of the embezzlement thus alleged to have committed by the petitioner-appellant came to light upon report made by the Depot Accountant

as also the Senior Station Manager and on scrutiny, 10% of all way-bill submitted by conductors.

6. Clearly, the charges levelled against the petitioner-appellant were most serious. However, upon perusal of the enquiry report (copy not dated) which is RA-1 to the rejoinder affidavit filed before the learned single judge, it is seen, the allegations were not proven against the petitioner-appellant. Three reports were submitted against the petitioner-appellant being report dated 25.07.1989 and 03.08.1989 submitted by Depot Accountant, report dated 22.07.1989 submitted by Senior Station In-charge and, another report dated 20.07.1989 submitted by one R.K. Verma was also proven.

7. Crucially, for the purpose of adjudication to be made in the present proceedings, other than proving the existence of such reports, the fact allegations contained in those reports have been proved. Thus, the authors of the reports appeared before the enquiry officer and proved the existence of their report. However, neither any evidence was led by the management witnesses or such to establish the correctness of the fact allegations of overwriting made so as to score out the description of the destination and the number of passengers on the way bills mentioned in those reports. Only other fact proven at the departmental enquiry proceedings was the fact occurrence of overwriting in the way-bill. Perusal of the enquiry report clearly brings out that the petitioner-appellant, without establishing the authorship of the overwriting at the departmental enquiry, adverse conclusions were drawn. The petitioner-appellant had disputed the same. It was the case of the petitioner-appellant that some other persons who may have been inimical to the petitioner-appellant may have caused the

overwriting after the way-bill had been submitted by him. In that regard, he also referred to fact that he had been granted incentive allowance for the months of May, June & July 1989 i.e. during the period in dispute for reason of his fare collections being good. At most, the petitioner-appellant is seen to have admitted one mistake of having written 'Muzaffar Nagar' in place of 'Meerut'. Barring that single admission, no other admission was made by the petitioner-appellant. Even in that case, no further fact was proven to establish short account of fare money.

8. Therefore, it may have never become open to the respondent corporation to over rely on the half admission in face of serious allegations of repeated overwriting in the way-bills to cause financial loss to the corporation. Even with respect to that single admission, there exists no corroborative or supportive evidence to establish that the petitioner-appellant did not account for all tickets sold. The number and the value of the tickets sold were found tallied against the issued tickets. No passenger was examined and, in fact, no passenger could have been examined in view of the enquiry having arisen not upon a road inspection but on a scrutiny of the way bills.

9. The respondent corporation completely failed to discharge its obligations and it completely failed to lead any evidence to establish either that the overwriting had been made by or in the handwriting of the petitioner-appellant or that cutting of the journey stations corroborated with the short account of fare.

10. Thus, by way of law, the fact allegation made against the petitioner-appellant though very serious, remained unproven at the departmental enquiry proceedings. Unless evidence had been led to establish that the overwriting on way bills had been caused by

and/or in the handwriting of the petitioner-appellant and unless it had been further proven that by such overwriting, the petitioner-appellant had changed the name of the journey stations so as to reduce the amount of journey fare collected, the inferential allegation of having caused financial embezzlement by not accounting for the total fare, remained unproven. In fact, the foundation of that allegation being not proven, we do not find any evidence existing at the departmental enquiry as may have led to the conclusion of the guilt.

11. Plainly, the conclusions recorded in the enquiry are not founded on the evidence that was led before the enquiry officer. To that, conclusions may be described as perverse.

12. The departmental enquiry being thus deficient, the heavy punishment of dismissal from service may not have arisen.

13. No useful purpose would be served in remitting the matter to the learned single judge, as pleadings have been exchanged and we have heard the appeal on merits and further since the appeal has remained pending for ten years.

14. In view of the above, the present appeal is **allowed**. The impugned order dated 17.07.2013 passed by the learned single judge is set aside.

15. For the purposes of grant of relief, we find that the petitioner appellant was dismissed from service with about 30 years of service remaining. Accordingly, considering the fact that the petitioner-appellant has attained the age of superannuation, in the meanwhile, we provide, by way of monetary relief towards wages, the respondent corporation shall pay lumpsum amount of Rs.

10,00,000/- (ten lacs) to the petitioner-appellant in lieu of salary for the period during which the petitioner remained suspended or dismissed from service till the date of his attaining the age of superannuation. As to the retiral dues, further direction is issued requiring the respondent to compute retiral dues of the petitioner-appellant treating the petitioner-appellant to have remained in service from the date of dismissal from service to the date of superannuation.

16. The aforesaid compliance may be made within a period of three months from the date petitioner-appellant files a copy of this order before the respondent/Regional Manager, U.P. State Road Transport Corporation, Meerut.

Order Date :- 7.11.2023
Prakhar

(Shiv Shanker Prasad, J.)

(S.D. Singh, J.)