Regional Manager, U.P.S.R.T.C, Etawah ... vs Hoti Lal & Anr on 11 February, 2003

Equivalent citations: AIR 2003 SUPREME COURT 1462, 2003 AIR SCW 801, 2003 LAB. I. C. 757, 2003 ALL. L. J. 693, 2003 (4) SRJ 521, (2003) 2 JT 27 (SC), 2003 (2) JT 27, 2003 (3) ALL CJ 1608, (2003) 1 SCR 1019 (SC), 2003 (1) SCR 1019, 2003 ALL CJ 3 1608, 2003 (2) SLT 112, 2003 (2) SERVLJ 56 SC, 2003 (2) ACE 286, 2003 (3) SCC 605, (2003) 6 ALLINDCAS 594 (SC), 2003 (6) ALLINDCAS 594, (2003) 96 FACLR 1076, (2003) 2 UPLBEC 1047, (2003) 2 LABLJ 267, (2003) 102 FJR 543, (2003) 2 ALL WC 1070, (2003) 2 SERVLR 419, (2003) 2 ESC 97, (2003) 1 SCT 941, (2003) 1 CURLR 712, (2003) 3 INDLD 386, (2003) 1 LAB LN 843, (2003) 2 SCALE 54, 2003 LABLR 344, 2003 SCC (L&S) 363

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Bench: Shivaraj V. Patil, Arijit Pasayat

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           CASE NO.:
Appeal (civil)  5984 of 2000

PETITIONER:
Regional Manager, U.P.S.R.T.C, Etawah & Ors.

RESPONDENT:
Hoti Lal & Anr.

DATE OF JUDGMENT: 11/02/2003

BENCH:
SHIVARAJ V. PATIL & RIJIT PASAYAT

JUDGMENT:
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J U D G M E N T ARIJIT PASAYAT J.

In this appeal the only point raised by the U.P. State Road Transport Corporation (hereinafter referred to as 'the employer') is whether the High Court was justified in interfering with the quantum of punishment awarded to the respondent no.1-Hoti Lal (hereinafter referred to as 'the employee').

The factual background in a nutshell is as follows:

The employee was appointed as a Conductor on 1.6.1976. On 9.7.1988 he was on duty in Bus No.UGG-108. While checking was done by the Assistant Regional Manager, it was found that 16 persons were without ticket. Even after realising fare from the passengers no ticket had been issued up to the time of checking. When the inspecting officer started checking, the employee hurriedly tried to issue tickets. Old tickets were found in his possession with the intent to use them again. Several tickets of various denominations were also recovered. These according to the authorities amounted to dereliction of duty, violation of Employee's Conduct Code and misappropriation of employer's money. The employee was placed under suspension on 23.7.1988. A charge-sheet containing, inter alia, aforesaid allegations was served on 16.8.1988 and finally on 30.3.1991 the order of termination was passed. An appeal was filed before the prescribed Appellate Authority which was dismissed by order dated 23.6.1991. The order of termination and the appellate order were questioned in a writ petition No.4535(S/S) of 1991. The same was dismissed with the conclusions that after full-fledged inquiry conducted by a retired District Judge, the employee was found guilty of misconduct and on consideration of materials the charges were fully established. The matter was carried in appeal before the Division Bench by the employee and by the impugned judgment the Division Bench set aside the order of termination leaving it open to the employer to award any punishment, but not of removal or termination or compulsory retirement. The conclusions of the Division Bench are, inter alia, as follows:

xxx xxx xxx xxx "In the instant case the petitioner was found to be carrying on ticketless passengers and certain old and used tickets were recovered from his possession but it was asserted before the learned Hon'ble the Single Judge that after issuing of the charge sheet no oral enquiry proceeded and the petitioner was punished. It was submitted that the punishment is too severe and harsh in proportion to the alleged misconduct in which the State suffered only a loss of Rs.16/-.

Considering the facts and circumstances of the case, we are of the view that the punishment awarded to the petitioner is not commensurate with the gravity of the charge, hence the writ petition deserves to be allowed."

Xxx xxx xxx xxx In support of the appeal learned counsel for the employer submitted that the High Court exceeded its jurisdiction in interfering with the quantum of punishment. Both learned Single Judge and the Division Bench found that the charges were proved after an elaborate and fair inquiry. The allegations were of very serious nature and even without indicating any reason as to why the punishment was not held to be proper, the directions have been given for imposing lesser penalty. If the three penalties which have been directed to be not excluded are kept out only minor penalties can be imposed.

Learned counsel for the respondents on the other hand submitted that in the employer's own case in case of another conductor, almost under identical circumstances a similar direction was upheld. Reliance was placed on U.P. State Road Transport Corpn. And Ors. vs. Mahesh Kumar Mishra and Ors. [2000 (3) SCC 450].

The scope of interference with the punishment awarded has been dealt with by this Court in several cases. A reference to applicable observations in some of these cases would suffice.

In B.C. Chaturvedi vs. Union of India and Ors. (1995 [6] SCC 749) it was held as follows:

"The next question is whether the Tribunal was justified in interfering with the punishment imposed by the disciplinary authority. A Constitution Bench of this Court in State of Orissa v. Bidyabhushan Mohapatra (AIR 1963 SC 779) held that having regard to the gravity of the established misconduct, the punishing authority had the power and jurisdiction to impose punishment. The penalty was not open to review by the High Court under Article 226. If the High Court reached a finding that there was some evidence to reach the conclusion, it became unassessable. The order of the Governor who had jurisdiction and unrestricted power to determine the appropriate punishment was final. The High Court had no jurisdiction to direct the Governor to review the penalty. It was further held that if the order was supported on any finding as to substantial misconduct for which punishment "can lawfully be imposed", it was not for the Court to consider whether that ground alone would have weighed with the authority in dismissing the public servant. The Court had no jurisdiction, if the findings prima facie made out a case of misconduct, to direct the Governor to reconsider the order of penalty. This view as reiterated in Union of India v. Sardar Bahadur (1972 [4] SCC 618). It is true that in Bhagat Ram v. State of H.P. (1983 [2] SCC 442) a Bench of two Judges of this Court, while holding that the High Court did not function as a court of appeal, concluded that when the finding was utterly perverse, the High Court could always interfere with the same. In that case, the finding was that the appellant was to supervise felling of the trees which were not hammer marked. The Government had recovered from the contractor the loss caused to it by illicit felling of trees. Under those circumstances, this Court held that the finding of guilt was perverse and unsupported by evidence. The ratio, therefore, is not an authority to conclude that in every case the Court/Tribunal is empowered to interfere with the punishment imposed by the disciplinary authority. In Rangaswami v. State of T.N. (1989 Supp[1] SCC

686) a Bench of three Judges of this Court, while considering the power to interfere with the order of punishment, held that this Court, while exercising the jurisdiction under Article 136 of the Constitution, is empowered to alter or interfere with the penalty; and the Tribunal had no power to substitute its own discretion for that of the

> authority. It would be seen that this Court did not appear to have intended to lay down that in no case, the High Court/Tribunal has the power to alter the penalty imposed by the disciplinary or the appellate authority. The controversy was again canvassed in State Bank of India's case (1994 [2] SCC 537) where the Court elaborately reviewed the case law on the scope of judicial review and powers of the Tribunal in disciplinary matters and nature of punishment. On the facts in that case, since the appellate authority had not adverted to the relevant facts, it was remitted to the appellate authority to impose appropriate punishment.

A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

In Union of India and Anr. vs. G. Ganayutham (1997 [7] SCC 463) it was held as follows:

> "The current position of proportionality in administrative law in England can be summarized as follows:
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> (1) To judge the validity of any administrative order or statutory discretion, normally the Wednesbury test is to be applied to find out if the decision was illegal or suffered from procedural improprieties or was one which no sensible decision-maker could, on the material before him and within the framework of the law, have arrived at. The court would consider whether relevant matters had not been taken into account or whether irrelevant matters had been taken into account or whether the action was not bona fide. The court would also consider whether the decision was absurd or perverse. The court would not however go into the correctness of the choice made by the administrator amongst the various alternatives open to him. Nor could the court substitute its decision to that of the administrator.

This is the Wednesbury (1948 1 KB 223) test.

(2) The court would not interfere with the administrator's decision unless it was illegal or suffered from procedural impropriety or was irrational in the sense that it was in outrageous defiance of logic or moral standards. The possibility of other tests, including proportionality being brought into English administrative law in future is not ruled out. These are the CCSU (1985 AC 374) principles.

(3)(a) As per Bugdaycay (1987 AC

514), Brind (1991 (1) AC 696) and Smith (1996 (1) All ER 257) as long as the Convention is not incorporated into English law, the English courts merely exercise a secondary judgment to find out if the decision-maker could have, on the material before him, arrived at the primary judgment in the manner he has done.

(3)(b) If the Convention is incorporated in England making available the principle of proportionality, then the English courts will render primary judgment on the validity of the administrative action and find out if the restriction is disproportionate or excessive or is not based upon a fair balancing of the fundamental freedom and the need for the restriction thereupon.

(4)(a) The position in our country, in administrative law, where no fundamental freedoms as aforesaid are involved, is that the courts/tribunals will only play a secondary role while the primary judgment as to reasonableness will remain with the executive or administrative authority. The secondary judgment of the court is to be based on Wednesbury and CCSU principles as stated by Lord Greene and Lord Diplock respectively to find if the executive or administrative authority has reasonably arrived at his decision as the primary authority.

(4)(b) Whether in the case of administrative or executive action affecting fundamental freedoms, the courts in our country will apply the principle of "proportionality" and assume a primary role, is left open, to be decided in an appropriate case where such action is alleged to offend fundamental freedoms. It will be then necessary to decide whether the courts will have a primary role only if the freedoms under Articles 19, 21 etc. are involved and not for Article 14.

Finally, we come to the present case. It is not contended before us that any fundamental freedom is affected. We need not therefore go into the question of "proportionality". There is no contention that the punishment imposed is illegal or vitiated by procedural impropriety. As to "irrationality", there is no finding by the Tribunal that the decision is one which no sensible person who weighed the pros and cons could have arrived at nor is there a finding, based on material, that the punishment is in "outrageous" defiance of logic. Neither Wednesbury nor CCSU tests are satisfied. We have still to explain "Ranjit Thakur (1987 [4] SCC 611)".

In Ranjit Thakur this Court interfered with the punishment only after coming to the conclusion that the punishment was in outrageous defiance of logic and was shocking. It was also described as perverse and irrational. In other words, this Court felt that, on facts, Wednesbury and CCSU tests were satisfied. In another case, in B.C. Chaturvedi v. Union of India (1995 [6] SCC 749) a three-Judge Bench said the same thing as follows: (SCC p. 762, para 18) "18.....The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

Similar view was taken in Indian Oil Corpn. Ltd. v. Ashok Kumar Arora (1997 [3] SCC 72) that the Court will not intervene unless the punishment is wholly disproportionate.

In such a situation, unless the court/tribunal opines in its secondary role, that the administrator was, on the material before him, irrational according to Wednesbury or CCSU norms, the punishment cannot be quashed. Even then, the matter has to be remitted back to the appropriate authority for reconsideration. It is only in very rare cases as pointed out in B.C. Chaturvedi's case that the Court might to shorten litigation think of substituting its own view as to the quantum of punishment in the place of the punishment awarded by the competent authority. (In B.C. Chaturvedi and other cases referred to therein it has however been made clear that the power of this Court under Article 136 is different.) For the reasons given above, the case cited for the respondent, namely, State of Maharashtra v. M.H. Mazumdar (1988 [2] SCC

52) cannot be of any help."

In Om Kumar and Ors. vs. Union of India (2001 [2] SCC

386) it was observed as follows:

> "Thus, from the above principles and decided cases, it must be held that where an administrative decision relating to punishment in disciplinary cases is questioned as "arbitrary" under Article 14, the court is confined to Wednesbury principles as a secondary reviewing authority. The court will not apply proportionality as a primary reviewing court because no issue of fundamental freedoms nor of discrimination under Article 14 applies in such a context. The court while reviewing punishment and if it is satisfied that Wednesbury principles are violated, it has normally to remit the matter to the administrator for a fresh decision as to the quantum of punishment. Only in rare cases where there has been long delay in the time taken by the disciplinary proceedings and in the time taken in the courts, and such extreme or rare cases can the court substitute its own view as to the quantum of punishment."

The decision in U.P. State Road Transport Corporation's case (supra) was really in a different factual background making it distinguishable from the facts of the present case, and has no application. In Karnataka State Road Transport Corporation v. B.S. Hullikatti (2001(2)SCC 574) 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 is the responsibility of the Bus Conductors to collect the correct fare from the passengers and deposit the same with the Corporation. They act in a fiduciary capacity and it would be a case of gross misconduct if knowingly they do not collect any fare or the correct amount of fare. It was finally held that the order of dismissal should not have been set aside. The view was re-iterated by a three Judge Bench in Regional Manager, RSRTC v. Ghanashyam 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.

It needs to be emphasized that the Court or Tribunal while dealing with the quantum of punishment has to record reasons as to why it is felt that the punishment does not commensurate with the proved charges. As has been highlighted in several cases to which reference has been made above, the scope for interference is very limited and restricted to exceptional cases in the indicated circumstances. Unfortunately, in the present case as the quoted extracts of the High Court's order would go to show, no reasons whatsoever have been indicated as to why the punishment was considered disproportionate. Reasons are live links between the mind of the decision taker to the controversy in question and the decision or conclusion arrived at. Failure to give reasons amounts to denial of justice. (See Alexander Machinery Dudley Ltd. v. Crabtree (1974 LCR 120) A mere statement that it is disproportionate would not suffice. A party appearing before a Court, as to what it is that the Court is addressing its mind. It is not only the amount involved but the mental set up, the type of duty performed and similar relevant circumstances which go into the decision-making process while considering whether the punishment is proportionate or disproportionate. If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, highest degree of integrity and trust-worthiness is must and unexceptionable. Judged in that background, conclusions of the Division Bench of the High Court do not appear to be proper. We set aside the same and restore order of learned Single Judge upholding order of dismissal.

The appeal is allowed.