Uttarakhand Transport Corporation ... vs Sukhveer Singh on 10 November, 2017

Equivalent citations: AIR 2017 SUPREME COURT 5686

Author: L. Nageswara Rao

Bench: L. Nageswara Rao, Arun Mishra

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Non-Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL No. 18448 of 2017
(Arising out of Special Leave Petition (Civil) No.4012 of 2017)

Uttarakhand Transport Corporation
(Earlier known as U.P.S.R.T.C.) & Ors. .... Appellants

Versus

Sukhveer Singh ….Respondent

JUDGMENT

L. NAGESWARA RAO, J.

Leave granted.

This Appeal is filed by the employer against the judgment of the High Court by which the order of dismissal of the Respondent- driver from service was set aside by the High Court.

2. The Respondent was appointed as a driver with the Appellants- Road Transport Corporation in the year 1989. On 27th October, 1995 while driving a vehicle on Karnal-Haridwar route, the Respondent did not stop the vehicle when the inspection team signalled. The inspection team had to follow the vehicle which was stopped six kilometres away from where it was signalled to stop. On verification, it was found that 61 passengers were travelling without a ticket. The Respondent was placed under suspension on 31st October, 1995 and disciplinary proceedings were initiated by

issuance of a charge sheet on 3rd November, 1995. The Respondent submitted his explanation after which an inquiry was conducted by the Assistant Regional Manager, Haridwar. After considering the material on record, the inquiry officer found that the charges against the Respondent were proved. The inquiry officer relied upon the admission of the Respondent that though there was a signal by the inspecting team to stop the vehicle at Bidouli, he stopped the vehicle only after driving for two kilometres. The explanation given by the Respondent that he drove the vehicle due to a call given by the conductor was not accepted by the inquiry officer. It was held that the Respondent was duty bound to stop the vehicle when a signal was given by the inspecting team. The inquiry officer further held that the Respondent colluded with the conductor and did not stop the vehicle as there were a number of ticketless passengers in the bus. The disciplinary authority issued a show cause notice on 26th December, 1996 along with which the inquiry report was supplied to the Respondent. Not satisfied with the explanation submitted by the Respondent to the show cause notice, the disciplinary authority dismissed him from service by an order dated 23rd April, 1997. The appellate authority dismissed the appeal filed by the Respondent on 25th July, 2000.

3. A reference was made to the labour court which was answered in favour of the Respondent on 15 th November, 2007. The writ petition filed by the Respondent challenging the award of the labour court was allowed by the High Court and the labour court was directed to reconsider the matter. After remand, the labour court by an award dated 12th September, 2011 upheld the order of dismissal of the Respondent from service. The Respondent challenged the award of the labour court by filing a writ petition in the High Court of Uttarakhand at Nainital. The High Court while relying upon a judgment of this Court in Managing Director ECIL Hyderabad & Ors. v. B. Karunakar & Ors.1 allowed the writ petition and set aside the dismissal order. The High Court directed that the Respondent should be deemed to be in service with all consequential benefits. Assailing the legality of the said judgment of the High Court, the Appellants have approached this Court.

4. It is contended on behalf of the Appellants that the impugned judgment is contrary to the law laid down in Managing Director ECIL Hyderabad & Ors. v. B. Karunakar & Ors. (supra). It is further submitted that a copy of the inquiry report was in fact supplied to the Respondent. The other point that was canvassed by the Appellants is that the Respondent neither pleaded nor proved that any prejudice was caused to him by the non-supply of the inquiry report prior to the issuance of show cause notice. The counsel for the Respondent supported the judgment of the High Court by submitting that it was incumbent upon the disciplinary authority to supply the inquiry report prior to the issuance of the show cause notice as per the judgment of this Court in 1 (1993) 4 SCC 727 Managing Director ECIL Hyderabad & Ors. v. B. Karunakar & Ors. (supra). He also relied upon certain findings in the inquiry report which were in favour of the Respondent. He finally submitted that the punishment of dismissal from service is disproportionate to the delinquency.

5. The award of the labour court was set aside by the High Court on the sole ground that non-supply of the inquiry report prior to the show cause notice vitiated the disciplinary proceedings. The High Court, in our opinion, committed an error in its interpretation of the judgment in Managing Director ECIL Hyderabad & Ors. v. B. Karunakar & Ors. (supra). It is no doubt true that this Court in the said judgment held that a delinquent employee has a right to receive the report of the inquiry officer before the disciplinary authority takes a decision regarding his guilt or innocence. Denial of a

reasonable opportunity to the employee by not furnishing the inquiry report before such decision on the charges was found to be in violation of principles of natural justice. In the instant case, the disciplinary authority communicated the report of the inquiry officer to the Respondent along with the show cause notice. There is no dispute that the Respondent submitted his reply to the show cause notice after receiving the report of the inquiry officer. On considering the explanation submitted by the Respondent, the disciplinary authority passed an order of dismissal. Though, it was necessary for the Appellants to have supplied the report of the inquiry officer before issuance of the show cause notice proposing penalty, we find no reason to hold that the Respondent was prejudiced by supply of the inquiry officer's report along with the show cause notice. This is not a case where the delinquent was handicapped due to the inquiry officer's report not being furnished to him at all. In Managing Director ECIL Hyderabad & Ors. v. B. Karunakar & Ors. (supra) this Court, while considering the effect on the order of punishment when the report of the inquiry officer was not furnished to the employee and the relief to which the delinquent employee is entitled, held as under:

> [v] .....When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non-furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with back-wages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an "unnatural expansion of natural justice" which in itself is antithetical to justice.

6. The question of the relief to be granted in cases where the report of the inquiry officer was not supplied to the delinquent employee came up for consideration of this Court in Haryana Financial Corpn. v. Kailash Chandra Ahuja2 in which it was held as follows:

> 21. From the ratio laid down in B. Karunakar [(1993) 4 SCC 727] it is explicitly clear that the doctrine of natural justice requires supply of a copy of the inquiry officer's report to the delinquent if such inquiry officer is other than the disciplinary authority. It is also clear that non-supply of report of the inquiry officer is in the breach of natural justice. But it is equally clear that failure to supply a report of the inquiry officer to the delinquent employee would not ipso facto result in the proceedings being declared null and void and 2 (2008) 9 SCC 31 the order of

> punishment non est and ineffective. It is for the delinquent employee to plead and prove that non-supply of such report had caused prejudice and resulted in miscarriage of justice. If he is unable to satisfy the court on that point, the order of punishment cannot automatically be set aside.

After a detailed examination of the law on the subject, this Court concluded as follows:

> 44. From the aforesaid decisions, it is clear that though supply of report of the inquiry officer is part and parcel of natural justice and must be furnished to the delinquent employee, failure to do so would not automatically result in quashing or setting aside of the order or the order being declared null and void. For that, the delinquent employee has to show "prejudice". Unless he is able to show that non-supply of report of the inquiry officer has resulted in prejudice or miscarriage of justice, an order of punishment cannot be held to be vitiated.

And whether prejudice had been caused to the delinquent employee depends upon the facts and circumstances of each case and no rule of universal application can be laid down.

7. It is clear from the above that mere non-supply of the inquiry report does not automatically warrant re-instatement of the delinquent employee. It is incumbent upon on the delinquent employee to plead and prove that he suffered a serious prejudice due to the non-supply of the inquiry report. We have examined the writ petition filed by the Respondent and we find no pleading regarding any prejudice caused to the Respondent by the non-supply of the inquiry report prior to the issuance of the show cause notice. The Respondent had ample opportunity to submit his version after perusing the report of the inquiry officer. The Respondent utilised the opportunity of placing his response to the inquiry report before the disciplinary authority. The High Court committed an error in allowing the writ petition filed by the Respondent without examining whether any prejudice was caused to the delinquent employee by the supply of the inquiry officer's report along with the show cause notice. We are satisfied that there was no prejudice caused to the respondent by the supply of the report of the inquiry officer along with the show cause notice. Hence, no useful purpose will be served by a remand to the court below to examine the point of prejudice.

8. The Respondent contended that the punishment of dismissal is disproportionate to the delinquency. It is submitted that he was working as a driver and the irregularity in issuance of tickets was committed by the conductor. We are in agreement with the findings of the inquiry officer which were accepted by the disciplinary authority and approved by the appellate authority and the labour court that the Respondent had committed the misconduct in collusion with the conductor. It is no more res integra that acts of corruption/misappropriation cannot be condoned, even in cases where the amount involved is meagre. (See - U.P.SRTC v. Suresh Chand Sharma3).

9. For the aforementioned reasons, we allow the appeal and set aside the judgment of the High Court. No order as to costs.

.....J. [ARUN MISHRA] ..

.....J. [L. NAGESWARA RAO] New Delhi, November 10, 2017.

3 (2010) 6 SCC 555 at Para 21-23