

**BEFORE THE PUBLIC SERVICES TRIBUNAL
UTTARAKHAND, BENCH AT NAINITAL**

CLAIM PETITION NO. 22/N.B./2010

Mahesh Singh Bora, S/o Ram Singh, Ex. Conductor of
Uttarakhand Transport Corporation, Tanakpur Depot, Distt.
Champawat.

.....Petitioner

VERSUS

1. Uttarakhand Transport Corporation, Through its
Managing Director, 117, Indira Nagar, Dehradun.
2. Mandaliya Prabandhak,
Uttarakhand Transport Corporation, Tanakpur.
3. General Manager (Administration),
Uttarakhand Transport Corporation, 117, Indira Nagar,
Dehradun.
4. State of Uttarakhand through Principal Secretary,
Transport Department, Dehradun.

..... Respondents

Coram: Hon'ble Justice J. C. S. Rawat

..... Chairman

&

Hon'ble U. D. Chaube

..... Member (A)

Present: Sri A. N. Sharma, Advocate for the petitioner.
Sri V.P. Devrani, A.P.O. for the respondent no. 4.
Smt. Seema Sah, Advocate for the respondent nos. 1 to 3.

JUDGMENT

DATE: 20-03-2013

Justice J. C. S. Rawat (Oral)

This claim petition has been filed by the petitioner against the respondents for seeking the following relief:-

- a) Quash the order bearing no. 438 dated 7-9-2009 passed by the respondent no. 2.
- b) Award all the consequential benefits from the date the applicant/petitioner was removed from service vide order dated 6-8-2008 till the date of his reinstatement.
- c) Any other further order or direction which the Hon'ble Tribunal may deem fit and proper in the circumstances of the case.
- d) Award the cost of the petition in favour of the petitioner and against the respondents.

2. The brief facts of the case are that the petitioner was found in drunken condition on 25-9-2005 by the Senior Station Incharge, Tanakpur while the petitioner was working as a Conductor on Delhi Jhula Ghat, Uttarakhand State Transport Corporation Bus, bearing no. U.A.-07-6635. Senior Station Incharge, Tanakpur reported the matter to his higher officers. Thereafter, a regular enquiry was conducted against the petitioner; and charge-sheet was given to the

petitioner; he replied against the said charge-sheet and thereafter evidence was recorded by enquiry officer (Service Manager, Tanakpur). Thereafter, he submitted his enquiry report holding the petitioner guilty of the charges levelled against him. Thereafter, the departmental authority/punishing authority issued a show-cause notice to the petitioner alongwith enquiry report, which was also replied by the petitioner which is Annexure-4 to this claim petition. The departmental authority respondent no. 2 passed an order dated 6-8-2008 (Annexure-1 to this claim petition) removing the petitioner from service. The petitioner preferred a departmental appeal before the appellate authority. The appellate authority vide its order dated 7-9-2009 (Annexure 2 to the claim petition), partially modified the punishment order of the departmental authority/punishing authority awarded the punishment of recovery of a sum of Rs. 3541/-; stoppage of five years annual increments with cumulative effect; and forfeiture of pay and allowances for the period he was kept out of employment. The appellate authority set-aside the rest of the punishment awarded by the punishing authority. The petitioner has challenged the punishment order passed by the appellate authority.

3. The respondents have contested the claim petition and they alleged in his written statement that the petitioner had consumed liquor on 25-9-2005 at the time of his duty. The matter was reported to the higher authorities, thereafter, an enquiry was conducted and the petitioner was found guilty. After considering the report of the enquiry officer and evidence on record, the punishing authority passed the dismissal order on 6-8-2008. Aggrieved by the said order,

the petitioner preferred an appeal before the appellate authority; the appellate authority modified the order and awarded the punishment instead of dismissal of the petitioner, stoppage of 5 years annual increments with cumulative effect; recovery of Rs. 3541/-; and forfeiture of pay and allowances for the period the petitioner remained out of employment. In written statement it is further alleged that the enquiry officer as well as appellate authority after going through the record passed the punishment order by the respondents. The respondents supported the order of appellate authority. At the last they prayed for the dismissal of the petitioner.

4. We have heard learned counsel for the parties and perused the records.

5. Learned counsel for the petitioner Mr. A. N. Sharma contended that the order passed by appellate authority is arbitrary and illegal without application of mind and against the evidence on record and the said order is based on mere presumption and assumption and he further contended that no medical examination of the petitioner was conducted by reporting authority or any of the officer of the respondent, as such it cannot be said in absence of the medical report of the petitioner that he had consumed the liquor. He further contended that the appellate authority has held that there is no medical evidence of the doctor to prove the fact that the petitioner had consumed the liquor. He further contended that in para 6 of the said order of the appellate authority, it is very much indicated that orders of enquiry officer and departmental authority was without any

application of mind and not based on any evidence. It was further contended that the respondent no. 2 has not given any explanation for not getting the medical examination of the petitioner so as to prove the charge of consumption of liquor on the event full day by the petitioner; the appellate authority has held that the I.O. or punishing authority did not pass the speaking order to punish the petitioner. Learned counsel further contended that that the above findings of the appellate authority has not been challenged by the respondents so it had attained finality. However, the appellate authority has awarded the punishment as referred above to the petitioner. It was further contended that there is no evidence on record according to the appellate authority however the petitioner had been punished on the basis of said inquiry report and the findings of the punishing authority.

6. The learned counsel Smt. Seema Sah appearing for the respondents (Uttarakhand Transport Corporation) supported the impugned appellate order and she further contended that appellant was in a drunken condition during his duty hours and as such the punishment awarded by appellate authority is totally justified.

7. We have gone through the impugned orders passed by appellate authority. The relevant portion of the appellate order is as below:-

"6. आरोपी कर्मचारी पर मुख्य आरोप मदिरापान कर कार्य से विरत रहने के कारण निगम को आर्थिक क्षति पहुँचाने का आरोप लगाया गया है। आरोप के समर्थन में पत्रावली पर श्री एन0 सी0 शर्मा कनिष्ठ

केन्द्र प्रभारी के बयान उपलब्ध हैं। श्री शर्मा के बयानों के अनुसार बस सं० यू० ए० ०७ ६६३५ में श्री महेश सिंह बोरा परिचालक कार्यरत थे। सिटी स्टेशन में श्री बोरा नशे की हालत में थे। केन्द्र तथा सेवा प्रबन्धक टनकपुर तब सिटी स्टेशन पर आये थे। क्षेत्रीय प्रबन्धक महोदय द्वारा निर्देश दिये जाने पर श्री बोरा परिचालक का बैग चैक करने पर ₹० ४२०५/- पाये थे। अन्य कर्मचारी भी वहां पर उपस्थित थे। आरोपी कर्मचारी द्वारा श्री शर्मा से जब यह प्रश्न किया गया कि यदि वह नशे की हालत में था तो उसका चिकित्सीय परीक्षण क्यों नहीं कराया गया, उक्त के उत्तर में श्री शर्मा द्वारा कहा गया कि "चलने में नशे की हालत प्रतीत हो रही थी क्षे० प्र० तथा सेवा प्रबन्धक इनको अपनी कार में बैठाकर ले गये थे।" ऊपर वर्णित गवाह के बयान से स्पष्ट होता है कि श्री शर्मा को परिचालक श्री बोरा के नशे की हालत में होने का विश्वास था किन्तु जब क्षे० प्र० एवं सेवा प्रबन्धक श्री बोरा को अपनी कार में बैठाकर ले गये तो उनके द्वारा आरोपी कर्मचारी का चिकित्सीय परीक्षण क्यों नहीं कराया गया स्पष्ट नहीं होता है। न क्षे० प्र० द्वारा अपनी बिन्दुवार आख्या में इसके सम्बन्ध में कोई प्रकाश डाला गया है। आरोपी परिचालक द्वारा अपने अन्तिम बयान में यह कहा गया है कि उसके पेट में दर्द होने के कारण उसके द्वारा पुदीन हरा का सेवन किया गया था जिसके जांच अधिकारी सेवा प्रबन्धक द्वारा सत्य माना गया किन्तु आरोपों के सम्बन्ध में परिचालक को अपनी जांच रिपोर्ट में दोषी बता दिया। दण्डाधिकारी (मण्डलीय प्रबन्धक टनकपुर) द्वारा अपनी दण्डादेश दिनांक ०६.०८.०८ में कहा गया है कि पत्रावली का अवलोकन करने पर पाया गया है कि आरोपी द्वारा ड्यूटी में रहते हुए नशे का सेवन किया। जिसस कारण विभाग की छवि धूमिल होने के साथ-साथ विभाग को आर्थिक हानि भी हुई जिसके लिए आरोपी लगाये गये आरोपों में पूर्ण रूप से दोषी पाये जाते हैं। अतः

परिचालक को निगम सेवा से पृथक किया जाता है। उसका पूर्व सेवाकाल भी स्वच्छ नहीं पाया गया है ऐसे कर्मचारी को वह निगम सेवा में रखना उचित नहीं समझते है। ऊपरवर्णित से स्पष्ट होता है कि जांच अधिकारी एवं दण्डाधिकारी के आदेश स्पीकिंग आर्डर नहीं है। किन्तु श्री शर्मा जो कि कनिष्ठ केन्द्र प्रभारी थे उनके द्वारा अपने बयानों में परिचालक के नशे में होने की पुष्टि की है। जांच अधिकारी एवं दण्डाधिकारी द्वारा जांच करने एवं दण्ड देने में अपने न्यायिक मस्तिष्क का प्रयोग नहीं किया है। इस कारण दण्डाधिकारी का आदेश स्थिर रहने योग्य नहीं है। किन्तु महेश सिंह बोरा परिचालक के द्वारा शराब का सेवन करने के कारण निगम को हानि होना इस प्रकरण में स्पष्ट होता है। तत्कालीन क्षे० प्र० एवं सेवा प्रबन्धक द्वारा श्री बोरा का चिकित्सकीय परीक्षण न कराकर अपने कर्तव्यों का पालन मेरी दृष्टि में उचित प्रकार से नहीं किया। अतः श्री बोरा को दिया गया दण्ड मेरी दृष्टि में अधिक एवं बिना किसी आधार के है। अतः आदेश दिये जाते हैं कि यात्रियों को वापस की गयी धनराशि रू० 3541/- की वसूली श्री बोरा से की जाना उचित है एवं उनके पूर्व के अस्वच्छ सेवा काल को दृष्टिगत रखते हुए उन्हें 05 वेतन वृद्धियाँ भविष्य प्रभाव सहित रोकते हुए निगम सेवा में बहाल किया जाता है। तदनुसार अपील का निस्तारण किया जाता है। इन्हें सेवा से बाहर रहने की अवधि का कोई वित्तीय लाभ/वेतन देय नहीं होगा। "

The perusal of order passed by appellate authority reveals that the punishment of removal was not based on any evidence and set-aside the said order and awarded a modified fresh punishment. We are completely in agreement with the contentions of the learned counsel of the petitioner. We have to proceed, keeping in mind the trite law that holding disciplinary proceedings against a government

employee and imposing a punishment on his being found guilty of misconduct by the punishing authority or by the appellate authority, under the statutory rules is in the nature of quasi-judicial proceedings. Though, the technical rules of procedure contained in the Code of Civil Procedure, 1908 and the provisions of the Indian Evidence Act, 1872 do not apply in a domestic enquiry or in appeal, however, the principles of natural justice require to be observed strictly. Therefore, the enquiry is to be conducted fairly and reasonably and enquiry report or the appellate order must contain reasons for reaching the conclusion. The charges framed in charge-sheet against the petitioner must be proved by evidence produced before the enquiry officer. It cannot be an ipse dixit of the enquiry officer or the appellate officer. Punishment for misconduct can be imposed in consonance with the statutory rules and principles of natural justice. The appellate authority has categorically held that the enquiry officer and punishing authority while punishing the petitioner passed the order without any application of mind and it was not based on evidence. It was further held by appellate authority that the punishing authority did not pass a speaking order to punish the petitioner. He has further held that respondent no. 2 has not given any explanation for not getting medical examination of the petitioner so as to prove the charge of consumption of liquor on the eventful day. These findings of the appellate authority has attained the finality as it has not been challenged by the respondents. However, the petitioner has been punished by the appellate authority by self-contradictory findings. Thus, the order of the appellate authority is not sustainable.

8. It was contended by the learned counsel for the appellant that the petitioner's past conduct had never been a part of charge-sheet or the show-cause notice; nor had the petitioner ever been informed that his past conduct was likely to be considered at the time of passing of the order of punishment by punishing authority or the appellate authority. Appellate authority failed to consider that in a case where there had been a violation of the statutory provisions or principles of natural justice, power of judicial review requires to be exercised. The order of appellate authority deserves to be set-aside. It was further contended that the petitioner has specifically and consistently averred in his replies that on the alleged date he had severe abdominal pain or he took the Ayurvedic Medicine 'Puddin Hara' and not alcohol. It was further contended that while concluding the enquiry, the enquiry officer has held that appellant/petitioner consumed the Ayurvedic Medicine Puddin Hara on the eventful day as such order of punishment is liable to be set-aside. It was further contended that the impugned order regarding the recovery of Rs. 3541/- is also quite, arbitrary and illegal. It was further contended by the learned counsel for the petitioner that the aforesaid amount was refunded to the passengers due to road blockage between Tanakpur and Jhulaghat and not due to fault of the petitioner. The learned counsel for the respondents refuted the contentions.

9. It is settled proposition of law that the appellate authority or disciplinary authority could not consider the past conduct of the petitioner to justify for punishment passed by authorities without

bringing it to the notice of the appellant. The case of Mohd. Yunus Khan v. State of U.P. & others 2010 (7) Supreme 970. The Hon'ble Supreme Court held as under:-

“33. The courts below and the statutory authorities failed to appreciate that if the disciplinary authority wants to consider the past conduct of the employee in imposing a punishment, the delinquent is entitled to notice thereof and generally the charge-sheet should contain such an article or at least he should be informed of the same at the stage of the show cause notice, before imposing the punishment.

34. This Court in Union of India & Ors, v. Bishamber Das Dogra, 26 (2009) 13 SCC 102, considered the earlier judgments of this Court in State of Assam v. Bimal Kumar Pandit, 27 AIR 1963 SC 1612, India Marine Service (P) Ltd. vs. Their Workmen, 28 AIR 1963 SC 528, State of Mysore v. K. Manche Gowda, 29 AIR 1964 SC 506, Colour-Chem Ltd. v. A.L. Alaspurkar & Ors, 30 AIR 1998 SC 948, Director General, RPF v. Ch. Sai Babu, 31 (2003) 4 SCC 331, Bharat Forge Co. Ltd. v. Uttam Manohar Nakate, 32 (2005) 2 SCC 489 and Govt. of A.P. & Ors. v. Mohd. Taher Ali, 33 (2007) 8 SCC 656 and came to the conclusion that it is desirable that the delinquent employee be informed by the disciplinary authority that his past conduct could be taken into consideration while imposing the punishment. However, in case of misconduct of a grave nature, even in the absence of statutory rules, the Authority may take into consideration the indisputable past conduct/service record of the delinquent for adding the weight to the decision of imposing the punishment if the act of the case so required.”

The punishment order passed by respondents is liable to set-aside on the above score also. We are completely in agreement with the contentions of the learned counsel of the petitioner.

Thus, the order of punishing authority is not sustainable.

10. We are of the considered opinion conclusion awarding punishment against the petitioner is not sustainable. The enquiry officer has already held that the petitioner had consumed the Puddin Hara. It was further held by the inquiry officer that if Puddin Hara would have been consumed by the petitioner it could not be detected as liquor in the medical examination. Appellate authority has rightly held that there is no basis of awarding punishment for the charges levelled against the petitioner that he had consumed the liquor on the event full day. In spite of the above finding the punishing authority and the appellate authority awarded the punishment to the petitioner which cannot be allowed to be sustained.

11. The perusal of the record reveals that the petitioner has alleged this fact in para 4 (l) & para 5 (iii) as follows:-

“4(l) That the recovery of Rs. 3541/- is also quite arbitrary and illegal in as much as that the said amount was refunded to the passengers, because of Road block on the said date, as is apparent from the informations received under the Right to Information Act vide letter dated 31-8-2009 from Public Information Officer, Tanakpur (Annexure no. 6 to the claim petition).

5 (iii) Because, the recovery of amount of Rs. 3541/- sought to be recovered (vide impugned order shown as Annexure no. 2) is also quite arbitrary and illegal as the said amount was refunded to the passengers, because of Road block on that date and not because of any lapse on the part of the applicant/petitioner, hence not legally sustainable, liable to be quashed.”

The respondents have replied the said para 16 & 17 in their counter affidavit as under:-

“16. That the contents of paragraph 4 (1) of the claim petition as stated are not admitted and are denied.

17. That the contents of paragraph 5 grounds of the claim petition are not admitted and are denied.”

The respondents have not specifically denied the above fact as alleged by the petitioner. The respondents had given an evasive reply. The petitioner has also referred Annexure 6 to the claim petition in support of his pleadings which reads as under:-

कार्यालय मण्डलीय प्रबन्धक

उत्तराखण्ड परिवहन निगम, टनकपुर।

पत्रांक द० क्षे०/1-स्था०/सूचना का अधिकार-अधिनियम/09-1830 दि० 31.8.09

श्री श्याम सिंह कार्की, एडवोकेट

ग्राम:- खर्ककार्की

पो०ओ०-चम्पावत

जिला-चम्पावत।

आपके पत्र दिनांक 12-8-09 के कम में चाही गई सूचना बिन्दुवार उपलब्ध कराई जा रही है।

(1) दिनांक 25-09-2005 को टनकपुर-पिथौरागढ़ मार्ग बन्द था।

(2) दिनांक 25-9-2005 को टनकपुर-पिथौरागढ़ मार्ग बन्द होने के कारण दिल्ली-देहरादून से पिथौरागढ़ आने वाले यात्रियों के पैसे वापस किये गये हैं। उक्त यात्रियों का पैसा केवल लोहाघाट/पिथौरागढ़ डिपो के परिचालकों द्वारा ही वापस किया गया है। क्योंकि टनकपुर डिपो से कोई सेवा देहरादून-दिल्ली की सीधे पिथौरागढ़ संचालित नहीं होती है।

(3) मार्ग जगह-जगह अवरूद्ध होने के कारण यात्रियों को किसी अन्य वाहन में स्थानान्तरण नहीं किया गया है।

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 (के0 के0 जोशी)
 लोक सूचना अधिकारी
 टनकपुर।

The learned counsel for the respondents could not demonstrate that the contents of above referred document is not correct. There is no need to explain the issue further because the above referred document is self explanatory. We find substance in the contentions of the learned counsel for the petitioner.

12. In view of the above, the order of punishment against the petitioner is liable to be quashed. The petition deserves to be allowed. In the facts and circumstances of the case and in order to meet the ends of justice it is desirable that he may be paid full salary with D.A. without any allowances from the date of his removal from service till the date of reinstatement.

13. In view of the above, the claim petition is allowed accordingly. No order as to costs.

Sd/-
 U. D. Chaube
 Member (A)

Sd/-
 Justice J.C.S. Rawat
 Chairman

Date: 20-03-2013

B. K.