

BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL  
AT NAINITAL

Present: Hon'ble Mr. Ram Singh

----- Vice Chairman (J)

Hon'ble Mr. D.K.Kotia

-----Vice Chairman (A)

**CLAIM PETITION NO. 23/NB/DB/2013**

Vijay Singh, S/o Shri Hira Singh, Employed as Conductor, Uttarakhand Transport Corporation, Tanakpur, District Champawat, R/o Village Lalapur Pipalsana, P.O. Surjan Nagar, Tehsil Thakurdwara, District Moradabad, Uttar Pradesh.

.....Petitioner

**VERSUS**

- 1.State Uttarakhand through Secretary, Transport, Uttarakhand Secretariat, Dehradun.
- 2.Uttarakhand Transport Corporation through its Divisional Manager, Tanakpur Division, District Champawat.
- 3.Regional Manager, Tanakpur, Uttarakhand Transport Corporation Tanakpur, District Champawat.
- 4.General Manager (Administration), Uttarakhand Transport Corporation, 117, Indira Nagar, Dehradun.

.....Respondents

Present: Sri Mohd. Matloob, Ld. Counsel  
for the petitioner.

Sri V.P. Devrani, Ld. A.P.O.  
for the Respondent No. 1

Sri Ashish Joshi, Ld. Counsel  
for the respondents No. 2 to 4

**JUDGMENT****DATED: APRIL 25, 2017****(HON'BLE MR. RAM SINGH, VICE CHAIRMAN (J))**

1. The petitioner has filed this petition with the prayer to quash and set aside the impugned order dated 2.12.2004 (Annexure: 10), passed by the Regional Manager, Tanakpur, Uttarakhand Transport Corporation Tanakpur and the order dated 8.01.2010 (Annexure: 11) passed by General Manager (Administration), Uttarakhand Transport Corporation, Dehradun and the order dated 21 March, 2013 (Annexure: 12) passed by Assistant General Manager, Tanakpur, District Champawat.

2. Briefly stated facts of the case are that on 14.03.2004, the petitioner was performing his duties as Conductor in the Bus No. 3282, which was going from Kashipur to Dehradun and Malkeet Singh was its driver. Before reaching Nazibabad, a technical fault (airlock) was started in the bus and driver tried to remove the defect and after several efforts, anyhow, the bus reached Nazibabad. The Incharge of the workshop at Nazibabad was informed about the defect and a trial was made to remove the same in the workshop, but they failed. Thereafter, the petitioner apprised the workshop Incharge of Kashipur Depot about the defect in the bus from where one technical person, Sri Vineet Kumar, fitter was sent for its maintenance. On 15.3.2004 when the bus was being brought back to Kashipur from Nazibabad, it again suffered the same technical defect (airlock) twice upto Dhampur. After reaching Dhampur, 25 passengers again boarded on the bus and petitioner started to issue tickets to the passengers, but after running 1 K.M, the bus was again air-locked and stopped running. The fitter (technical person) who was also accompanying the bus asked to the petitioner further not to issue tickets to the passengers and advised to wait till the bus is made fit to run.

3. When the bus was standing on the road side and was being checked by the fitter, in the mean time, two Inspectors of the department reached there and demanded for waybill, which was immediately made available to them, and the entire story was narrated to the inspecting team, which was verified by the fitter and driver of the bus, but the inspecting team did not pay any heed to their statements and made their endorsement on the waybill. Thereafter, the driver of the bus, Sri Malkeet Singh and fitter, Sri Vineet Kumar also informed to the Regional Manager of Kashipur Depot regarding the incident, but the petitioner was suspended vide order dated 16.3.2004 without holding any preliminary enquiry. Thereafter, the enquiry officer was appointed, who submitted his report with the conclusion that the petitioner was not responsible for any fault. During the enquiry, the Regional Manager, Kashipur Depot confirmed about the fact of sending the fitter, Vineet Kumar. During the enquiry, Mr. Malkeet Singh, driver and Vineet Kumar, fitter were also examined alongwith some other independent persons, Sri Jaswant Singh and Kulwant Singh and supported the version of petitioner. Consequently, the enquiry officer submitted his report finding no fault of the petitioner, but the Regional Manager of the department being the punishing authority issued, a show cause notice on 2.11.2004 to the petitioner, writing the facts that he was not satisfied with the enquiry report and the petitioner was directed to show cause as to why he be not placed on initial pay scale for five years along with cessation of pay of the suspension period. The show cause notice was properly replied by the petitioner narrating all the facts and evidence, but the punishing authority without considering all the facts and evidence, passed impugned order dated 02.12.2004 and placed the petitioner at the initial pay scale for five years along with cessation of pay for the suspension period. Against the order of punishment, the petitioner preferred appeal/representation to the General Manager (Administration), but the same was rejected vide order dated 08.01.2010. However, even after affirming the impugned order dated

02.12.2004, vide appellate order dated 08.1.2010, the same was not given effect till 21.3.2013, but the petitioner was surprised to receive order dated 21.3.2013 whereby a recovery of Rs. 1,39,252/- has been fastened against the petitioner. The order for such recovery on the basis of the orders dated 2.12.2004 and 08.01.2010 have already lost its sanctity as it was not given effect for a long period of 9 years, but the same was issued in utter violation of the departmental rules and the principles of natural justice. There is no provision for imposing the punishment of placing an employee to his initial pay scale in the rules. Hence, the orders are without jurisdiction and have been passed in utter violation of the departmental circular order dated 30.08.2007 and the order of Managing Director passed in 1993.

4. The petitioner has also challenged the impugned orders on the ground that they are in violation of Regulation 69 of the Uttar Pradesh State Road Transport Corporation Employees (other than officers) Service Regulations, 1981. The punishment awarded is unknown to the rules and the Regulations. The punishment was awarded even if the enquiry officer submitted its report in the favour of the petitioner and the sufficient reason for disagreement with the enquiry report, was not recorded. The conclusion drawn by the punishing authority is against the evidence and record and is against the principles of natural justice. The statement of complainant (Reportkarta) was relied upon, whereas, evidence and statement of eye witnesses, the driver, fitter and the passengers were not considered. The impugned orders are passed in violation of principles of natural justice and were based on non-application of mind and liable to be set aside. Hence this petition.

5. The respondents opposed the petition with the version that the petitioner was carrying the passengers without tickets in the bus. The enquiry was conducted against the petitioner in which the enquiry officer wrongly reached to the conclusion that the petitioner was not responsible. therefore, the Regional Manager was not satisfied with the

enquiry report and issued a show cause notice to the petitioner on 22.11.2004 to show cause why he be not placed on initial pay scale for five years and cessation of pay for the suspension period. As the petitioner was unable to put any cogent evidences against the charges, hence the order of punishment was passed. The Appellate Authority also came to the conclusion that during the inspection, it was found that the petitioner was carrying the passengers without tickets and looking into the misconduct of the petitioner, the appeal was also dismissed and the punishment order was confirmed. The petitioner failed to file any evidence before the inspecting officer and the enquiry officer to disprove the content of letter of Inspecting Officer written to Regional Manager on 16.03.2004 that during the inspection from the oral evidences of the passengers, it came to his knowledge that the petitioner refused to issue tickets to the passengers despite of their repeated request.

6. In the show cause notice, it was specifically enquired from the petitioner as to why his remaining salary of suspension period will not be forfeited and why he should not be downgraded on the initial pay scale. The disciplinary authority after going through the entire record as well as reply to the show cause notice, passed the order of punishment correctly.

7. In the order, the disciplinary authority has also observed that on previous occasions too in 1992, 1996 and 1999, the claimant was given punishment after disciplinary proceedings, hence, the punishment was awarded. The petition is liable to be dismissed having no force in the eyes of law.

8. We have heard both the sides on merit. After hearing both the parties and going through the entire record before the court, this court came to the conclusion that the enquiry officer who was appointed to enquire into the incident found no fault of the petitioner and in his

enquiry report, it was specifically mentioned that the witnesses for such incident were the passengers but the inspecting team never recorded the statements of the passengers. The enquiry officer has also recorded that the passengers were cooperating with the inspecting team. Even then, the statements of the passengers were not recorded. Learned counsel for the petitioner has referred to the departmental guidelines No. 154/प्र०नि०/विविध(अनु०)/०७ dated 30.08.2007 and specifically mentioned that the statements of the passengers without tickets should necessarily be recorded and if it is not possible, then the name and addresses of the passengers should be mentioned in the waybill. It is an admitted fact that the vehicle was not properly running and it was suffering repeatedly with a technical fault. This fact was confirmed by the evidence of the Regional Manager, Kashipur that the fitter was sent from Kashipur to Nazibabad and he was accompanying the bus. It is nowhere disputed that at the time of inspection, the bus was not running and it was standing aside the road in faulty condition and the fitter was trying to remove the defect of the bus. From Dhampur, the passengers boarded the bus, which was airlocked just one kilometre from that place. The statements of fitter and the driver were recorded by the inspecting team as well as by the enquiry officer and they were the rightful persons to narrate the real fact and according to their statements, petitioner was advised by the fitter not to issue tickets to the passengers because the bus was not fit to move and there was no point to withhold the passengers in the bus. This fact was very much brought in the knowledge of the inspecting team and the enquiry officer, was satisfied with the same. Not only driver and fitter but independent witnesses/passengers also supported the story of petitioner and none of the passengers have reported to the inspecting team that the petitioner has received any amount on account of fare from them. Hence, the report of the enquiry officer which was based on the correct evidence and the facts, was without any bias to anyone. Why this report was disbelieved by the disciplinary authority and reasons of disagreement with the conclusion of the enquiry officer, is not convincing and it is very funny. The

disciplinary authority may disagree with the report of the enquiry officer, but when the evidence collected during the enquiry, strongly and specifically supported the version of the petitioner unless there is other strong evidence to the contrary, the enquiry report should be relied upon. In the present case, the disciplinary authority disagreed with the enquiry report without any sufficient reasons and conclusion of disciplinary authority is very perverse because there were several independent witnesses to support the version of the petitioner and the conclusion of the enquiry officer and there was no evidence to disbelieve the same.

9. Report of enquiry officer (Annexure-1) is very reasoned and based on evidence. Annexures: 2 and 3, confirm this fact that fitter, Vineet Kumar was sent from Kashipur to Nazibabad and he was accompanying the bus. The statement of the driver, Malkeet Singh (Annexure:4) and fitter Vineet Singh (Annexure: 5) are in favour of the petitioner. Their statements were recorded as evidence. Sri Vineet Kumar further confirmed their statement in the enquiry vide Annexure:6. Independent witnesses, Sri Jashwant Singh and Kulvinder Singh supported their evidence vide Annexure: 7. The show cause notice dated 22.11.2004 is Annexure: 8 in which it was mentioned by the disciplinary authority that he did not agree with the report of the enquiry officer because of the reasons that when cross examination was done by the petitioner with the informant/inspecting team, the informant has specifically stated that the petitioner had already received the amount of fare from the passengers and such equal amount of fare was deposited by the petitioner with the inspecting team. Hence, the conclusion was drawn only on the basis of the statement of the inspectors, who were not the eye witnesses to the payment of fare by the passengers and they never recorded the statement of the passengers whether they have paid any amount of fare to the petitioner or not. Only on the basis of the fact that the

conductor deposited the amount of fare out of his pocket, cannot be treated as the acceptance of his guilt specifically when the fact was denied by him at the scene and his statement was supported by four other persons. There was no statement of any person that they have paid any fare to the petitioner. The passengers were the rightful and first persons to be asked about the tickets and if they were not having any tickets, their statement about payment of fare, must have been recorded, which was not done and none of the persons has reported to the inspecting team that they had already paid the fare to the petitioner and in absence of these evidence, the evidence of the driver, fitter and independent persons could not be disbelieved. The reasons of disagreement with the enquiry report recorded by the disciplinary authority are without any basis, without any evidence and it is only based on the statement of the informant. Whereas, the informant was not boarding the bus from its starting point and he came to check the bus only when it was standing aside the road. He cannot be said to be an eye witness of any payment. There is no other reason mentioned in the show cause notice for the disagreement of the report of the enquiry officer and this fact was not only proved but was within the knowledge of the inspecting team that the vehicle was suffering from technical fault of airlock and it was not properly moving. Hence, there was sufficient reason for the conductor not to issue the tickets to the passengers till the vehicle was made fit for running. Hence, the show cause notice and the reasons disbelieving with the enquiry report is without any application of mind and is not based on any reason and evidence. Accordingly, the show cause notice is perverse and was not issued as per law.

10. The petitioner has also challenged the punishment order on the basis that the punishment awarded by the disciplinary authority, is unknown to the law and it is nowhere mentioned in the rules. Learned counsel for the petitioner has referred to a circular No. 4566 LAS/93 of



the respondent corporation passed on July 1993 and it has been argued that punishment of putting an employee to an initial pay scale is unknown to the law. The petitioner has also referred to a circular of the respondent passed on 06.11.2006 and circulated to the office of the corporation that the punishment of putting an employee to the initial scale is not correct. This court is of the view that the show cause notice and all the proceedings thereafter, are not as per law and are liable to be set aside. Furthermore, the punishment awarded is unknown to the law. The appellate authority did not apply its judicial mind in disposal of the revision of the petitioner and hence, along with the impugned order of punishment, the appellate order also deserves to be set aside.

11. The petitioner has also challenged the impugned order of punishment on the ground that while passing the order of punishment, the past conduct of the petitioner was also considered as a ground to hold the guilt of the petitioner, whereas, it was not made a part in the charge sheet. It is settled principles of law that when the previous conduct of an employee is to be considered in the departmental enquiry against him then this fact should also be mentioned in the charge sheet or in the show cause notice so that the employee can submit his version against the same and without giving an opportunity of hearing on this point, if disciplinary authority passed any sentence that needs to be set aside. In the present case, past conduct of the petitioner was also considered while passing the punishment but it was not mentioned in the charge sheet or in the show cause notice. Hence, on this ground too, the punishment orders also need to be set aside.

12. In the result, this court is of the view that the principles of natural justice have not been followed, the relevant law and Government Orders of the department were ignored and the finding of the disciplinary authority is perverse as against the report of the enquiry officer and also against the evidence on record. The reasons of disagreement with the enquiry report recorded by the disciplinary

authority are without any substance. The action on the basis of the impugned orders, was taken very late in time and the order of recovery debaring the petitioner from salary for the suspension period is without any basis and substance. In the result, the petition deserves to be allowed and the impugned orders deserve to be set aside.

ORDER

The claim petition is allowed. The impugned order dated 02.12.2004, passed by the Regional Manager, Tanakpur, Uttarakhand Transport Corporation Tanakpur, the order dated 08.01.2010 passed by General Manager (Administration), Uttarakhand Transport Corporation, Dehradun and the order dated 21 March, 2013 passed by Assistant General Manager, Tanakpur, District Champawat are hereby set aside. No order as to costs.

**(D.K.KOTIA)**  
VICE CHAIRMAN(A)

**(RAM SINGH)**  
VICE CHAIRMAN(J)

*DATE: APRIL 25, 2017*  
*NAINITAL*

*KNP*