

IN THE HIGH COURT OF JUDICATURE FOR
RAJASTHAN
BENCH AT JAI PUR.

ORDER

S. B. CIVIL WRIT PETITION NO. 2975/ 1995.

Rajasthan State Road Transport Corporation Alwar
Vs.

Joginder Singh & Anr.

Date of order:- March 31, 2009.

HON BLE MR. JUSTICE MOHAMMAD RAFI Q

Shri Mukesh Verma for the petitioner.

Shri Zaki r Hussain, Additional Government Counsel.

BY THE COURT:-

In this writ petition challenge has been made against the award dated 25/10/1994 passed by the Industrial Tribunal Jai pur by which reference on the industrial dispute with regard to validity of four different orders of penalty passed against the respondent workman, was answered.

2) Shri Mukesh Verma, learned counsel for the petitioner has argued that the learned Tribunal was wholly unjustified in reducing the punishment of stoppage of two annual grade increments with cumulative effect vide order dated 12/3/1984 to stoppage of one annual grade increment. It was argued that it was on account of the negligence of the petitioner that the bus driven by him collided

with the truck standing on the road side. Petitioner was required to have driven the vehicle on the left side of the road. As a result of accident, the bus was damaged causing loss to the Corporation. Finding was recorded to the effect that he was rashly driving the bus in a negligent manner. Tribunal was justified in rejecting the punishment. It was further contended that vide order dated 28/6/1993, penalty of stoppage of one annual grade increment was awarded to the respondent workman which was illegally set aside by the learned Tribunal. Learned counsel submitted that charge against the petitioner in the enquiry was that he absented from duties on 8/7/1980 without getting the leave sanctioned and without prior permission, which obstructed the work of the Corporation and the respondent workman as Driver could not be deputed to ply the vehicle. Tribunal was wholly unjustified in holding that petitioner got himself involved in a fight with one Yudhisthar leading to injury and his hospitalization and thus absence of one day was not wilful. Tribunal was further unjustified in setting aside the penalty order dated 25/4/1984 for this incident by which one annual grade increment with cumulative effect was stopped. It was contended that this penalty was imposed on the proven charge that respondent was deputed to deposit the vehicle of Dholpur Depot with Jaipur Workshop. When the vehicle was inspected at the check post, it was found that

14 passengers were there in that vehicle out of them, 4 were employees of the UPSRTC and from remaining 10 passengers fare was charged by the respondent workman and Mechanic Bal ki shan. It was contended that respondent was not authorised to charge the fare from the passengers because the vehicle was not meant to carry passengers. Learned Tribunal has accepted the defence of the respondents that Mechanic Bal ki shan charged fare from passengers without his knowledge and he was not having any information about his having received the amount. It is contended that please that passengers would be allowed to board a vehicle and that fare would be charged from them by the Mechanic without the knowledge of respondent, does not inspire confidence.

3) Learned counsel appearing for the respondent - workman has opposed the writ petition and argued that award passed by the Tribunal is perfectly just and reasoned and it does not call for any interference. Tribunal has on the first order of penalty dated 12/3/1984 merely reduced quantum of punishment from stoppage of two annual grade increments with cumulative effect to that of stoppage of one annual grade increment with cumulative effect. Penalty order dated 28/6/1983 has been set aside only because absence of the petitioner from duty on 8/7/1980 was not found to be wilful and it was owing to the fact that he was

subjected to beating by one Yudhisthar which led to several injury being suffered by the respondent and due to which he was hospitalised on that day. Presence of the respondent therefore could not be termed as deliberate. In so far as penalty order dated 25/3/1984 is concerned, there is no evidence that Mechanic Balkishan allowed the passengers to board the bus and charged from them fare. For the misconduct on the part of the Mechanic, respondent workman would not be punished. Tribunal was justified in setting aside the penalty order dated 25/3/1984.

4) Having heard learned counsel for the parties and perused the material on record, I find that in so far as penalty order dated 12/3/1984 is concerned, Tribunal has upheld the finding on the aspect of guilt of the respondent but has merely reduced the quantum of punishment from stoppage of two annual grade increments with cumulative effect to just stoppage of one annual grade increment with cumulative effect and that was because the Tribunal held that there was no loss of life due to the accident and that the accident had taken place 10 years ago. In these facts, reduction of penalty from stoppage of two annual grade increments with cumulative effect to stoppage of one annual grade increment with cumulative effect, cannot be said to be wholly without justification. Such reduction does not call for any interference by this Court. In so

far as charge of willful absence of the petitioner from duty on 8/7/1980 is concerned, fact that the respondent workman sustained grievous injury and was hospitalised has not been seriously disputed even by the petitioner and this fact having been proved before the enquiry officer, absence of the petitioner even though may have been proved but such absence could not be said to be wilful. Findings recorded by the Tribunal on that aspect of the matter cannot be held to be perverse or otherwise erroneous. In so far as however, interference made by the Tribunal with the penalty of order dated 25/3/1984 is concerned, Tribunal has interfered with that order by merely upholding the plea of the respondent workman that passengers were allowed to board the vehicle from which fare was charged only by Mechanic Bal ki shan and that petitioner was having no knowledge of this, therefore he cannot be held guilty for misconduct of Bal ki shan. Such a plea set up by the respondent, who was Driver hardly inspires any confidence. It cannot be accepted that respondent in whose charge vehicle was put and who was required to take the vehicle and deposit with the Jai pur Workshop of petitioner RSRTC would be completely unaware if certain passengers have boarded such vehicle and that fare would have been charged from such passengers. It cannot be accepted that Bal ki shan would have allowed such passengers without the consent of the respondent and charged

from them fare also. Findings of the Tribunal interfering with that penalty order setting aside the same, are wholly erroneous, perverse and cannot be approved.

In the result, this writ petition is partly allowed. Direction of the Tribunal setting aside the penalty order dated 28/ 6/ 1983 by which one annual grade increment with cumulative effect was stopped for the period of suspension except allowances already paid, is set-aside and the award dated 25/ 10/ 1994 is accordingly modified.

(MOHAMMAD RAFI Q , J.

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