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Court : Delhi

Decided On : Feb-07-2011

Judge : Pradeep Nandrajog; Suresh Kait, Jj.

Acts : Constitution of India - Article 226

Appeal No. : W.P.(C) 4496/1993

Appellant : Bani Singh

Respondent : Union of India

Advocate for Def. : Mr.B.V.Niren; Mr.Abhishek Goyal, Advs.

Advocate for Pet/Ap. : Mr.Ajay Veer Singh; Ms.Anisha Jain, Advs.

Judgement :

1. Whether the Reporters of local papers may be allowed to see the judgment?

2. To be referred to Reporter or not?

3. Whether the judgment should be reported in the Digest?

1. In the instant writ petition the petitioner has challenged the order dated 04.03.1993 dismissing the petitioner from service and the order dated 16.06.1993 of the appellate authority dismissing the appeal preferred by the petitioner.

2. The petitioner was employed as a Head Constable (Driver) in the CISF and was attached in the unit at Rihand Nagar, Uttar Pradesh in the year 1980. On 13.08.1992 the 1 ton vehicle driven by the petitioner in which jawans of CISF were being transported met with an accident resulting in the death of one HC G.D.Singh, a passenger in the vehicle and injuries to other unit personnel.

3. A departmental enquiry was initiated against the petitioner on 01.10.1992, wherein the following charges were levied against him:-

"Charge-I

No.801340220 P.R./Driver Bani Singh is charged for total negligence. On 13.08.1992 he was driving Truck No UHA-4441 with a great speed and was driving the same without any control over the same. Resulting the truck overturned near the temporary township opposite to Quarter Type No.I By this the truck over turned and P.R./G.D.Singh died due to this some other persons of the unit also received injuries. The Government truck damaged body.

Charge-II

For No.80134220/DR/Driver Bani Singh against whom charges are for violation of instruction and order; that on 13.08.1992 at about 0430 to 044 hours he had driven CISF Truck No. UHA-4441 by violation the order and direction."

4. During the departmental enquiry 16 prosecution witnesses were examined to prove the charges and 5 defence witnesses were examined by the petitioner.

5. Ignoring the testimony of the prosecution witnesses who were not eye witnesses, we may briefly note the testimony of such witnesses who claimed to have witnessed the incident. ASI Ramesh Singh PW-5, deposed that on 13.08.1992 he along with other officers was travelling in a CISF truck No.UHA-4441, driven by the petitioner. That the petitioner was driving rashly and despite being told to slow down, continued speeding unnecessarily. The officers were being dropped at their respective stops. He stated that at Intech Watch Post the truck stopped with a screech at about 6- 7 meters away from the stop. Thereafter the driver detoured and sped straight into a temporary township area. Once again

he i.e PW-5 told the petitioner to slow down but the petitioner ignored his suggestion and assured him that he was capable of driving at this speed since he was appointed at the fire brigade station earlier. On a turn in the temporary township area, the petitioner suddenly applied breaks due to which the truck tilted and overturned. He suffered a fracture in the arm and several others were seriously injured. In his cross examination he stated that the truck was running at 60-70 km/hr when last checked by him on the speedometer.

6. HC Nayak S.C.Ram, PW-8 deposed that on 13.08.1992 his duty shift was at North gate, he proceeded to the duty post by truck bearing license No.UHA-4441. That the truck was being driven rashly by the petitioner and in spite of being repeatedly requested to drive at a slow speed, the petitioner did not listen. After repeated application of the emergency brakes, the vehicle skid at a distance. While crossing Buddh Market (Wednesday market) the driver further increased the speed and suddenly applied emergency brakes due to which the vehicle overturned. That due to repeated application of brakes, foul smell from the tyres was smelt by him. Sh.S.Murmure PW-9, deposed in sync with the previous two witnesses. Sh.Mehtab Singh PW-10, also deposed in sync with PW-5, PW-8 and PW-9 with further addition of the fact that the driver Bani Singh was driving the vehicle at high speed and was applying emergency brakes frequently due to which the seated personnel felt jerks. He further deposed that some members repeatedly asked the driver for mercy and not kill them on Rakhi Festival, but it made no difference. On the way to Intec Bal emergency brakes were applied due to which the tyre of the vehicle skid up to 10-15 feet, there was notice of foul smell which felt like tyre burning. On this HC Karan Singh came near the petitioner and asked him by raising his hand to stop the vehicle but the petitioner continued to speed. He asked the driver whether he wanted to kill all members. ASI Ramesh Singh also asked petitioner to drive on a slow speed. The moment vehicle reached to U type turn, the driver took a turn on high speed and while turning, the driver applied brakes but he could not balance the vehicle in that speed, this resulted in the vehicle overturned. Ct. T.D.Charan PW-13 deposed on similar lines.

7. The petitioner produced 4 defence witnesses. R.Brijender Pal DW-4 was not a witness of occurrence.

8. DW-1 HC Siya Ram, DW-2 R.Sanjive Kumar and DW-3 R.L.D.Mandal, all deposed that driver Bani Singh was driving the vehicle at a normal speed. Vehicle had stopped smoothly wherever designated. All of sudden 2-3 cows came in front of the vehicle. Driver blew horn repeatedly, thereafter, applied emergency brakes which resulted in loss of control of the truck due to which the accident was caused.

9. The petitioner examined himself as DW-5 had also made his defence statement wherein he stated that it was the night time. He saw two cows, after blowing the horn to get them out of his way, the cows got startled and scattered on the road. In order to save the cows he successfully maneuvered the truck, alas the wheel of the vehicle got jammed. In order to save the passengers he made a right turn but due to the jam wheel, the truck tilted towards the left side and finally overturned.

10. A photocopy of the mechanical inspection report has been marked as a proved document being D-2, for which we note nobody has deposed and as per the same the left front wheel of the truck was found jammed.

11. In view of the testimony of the afore-noted witnesses the Inquiry Officer has held that there was sufficient evidence to return the finding that both charges were proved. Dealing with the mechanical inspection report as per which the left front wheel of the truck was jammed and considering the defence that the truck overturned due to a brake failure i.e. the brake disc jamming the wheel, the Inquiry Officer has held that the possibility of the wheel being damaged being the result of the accident and not the cause thereof could not be ruled out.

12. The copy of the report was sent to the petitioner for his reply and after considering the reply and not finding any substance therein the disciplinary authority inflicted the punishment of dismissal from service vide its order dated 04.03.1993. The petitioner preferred an appeal against the order dated 04.03.1993. The appeal was dismissed vide order dated 16.06.1993 by Deputy Inspector General by considering all the grounds taken by the petitioner.

13. During argument of the writ petition the learned counsel for the petitioner argued that the front left wheel of the vehicle had got jammed when the petitioner applied brakes when he saw cows on the road ahead and since the truck was in

motion, it had to turn turtle and thus the cause of the accident was not the stated rash driving by the petitioner, but a mechanical failure.

14. Having gone through the original record of the inquiry against the petitioner, we were not convinced with the said arguments of the petitioner that the reason behind the accident was the jammed left wheel of the truck. PW-5, PW-8, PW-9, PW-10 and PW-13 have deposed that the petitioner was driving the truck at a high speed and in spite of repeated requests to drive slowly, the driver showed no response, also the excessive usage of the emergency brakes especially at a turning which eventually resulted in loss of balance and finally overturning of the truck. He was repeatedly asked to go slow but he did not listen to anyone. He repeatedly used the emergency brakes without reducing the speed and even on taking a right turn at the turning point he did not put the vehicle on slow speed due to which he could not control the vehicle and the vehicle got over-turned.

15. As deposed by the aforementioned PWs that the petitioner drove the truck at high speed and repeatedly used emergency brakes. There is a greater probability of the wheel being jammed due to excessive brake pressure and which is in harmony with the testimony of the prosecution witnesses.

16. While hearing this petition under Article 226 of the Constitution of India under extra ordinary jurisdiction, we are not sitting as appellate court and are not supposed to re- appreciate the evidence on record. Under Article 226 of the Constitution of India we have to see if there was any procedural lapse in conducting the departmental inquiry; whether the petitioner was given due opportunity of hearing, whether the petitioner was given all the relied documents etc. We have perused the record and heard the learned counsel for the petitioner who did not point out even a single procedural lapse occurred in the present case.

17. Keeping in view the aforesaid discussion, we are of the considered opinion that there is no discrepancy in the impugned order passed by the disciplinary authority and the appellate authority. Therefore, we are not inclined to interfere with the orders passed by the respondents. The writ petition is accordingly dismissed.

18. No orders as to costs.

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