

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5971 OF 2014

Ashok S/o Pundlikrao Daware,
Age-58 years, Occu-Nil,
R/o : 302-B, Omkar Residency,
Ganesh Nagar, Ambejogai Road,
Latur

- PETITIONER

Versus

1. The Maharashtra State Road Transport Corporation,
Through Vice President and
Managing Director,
Central Office, Maharashtra Vahatuk Bhavan,
Dr.Anandrao Nair Road,
Mumbai-8,
2. The Inquiry Officer,
Deputy General Manager,
(Shri M.U.Kamthekar)
Maharashtra State Road Transport Corporation,
Central Training Institute,
Bhosari, Pune.
3. The Vice President and
Managing Director,
Central Office, Maharashtra Vahatuk Bhavan,
Dr.Anandrao Nair Road,
Mumbai-8,
4. The Chairman and the Appellate Authority,
Special Appellate Committee,
Central Office, Maharashtra Vahatuk Bhavan,
Dr.Anandrao Nair Road,
Mumbai-8,
5. The State of Maharashtra,
Through the Secretary,
General Administration Department,
Mantralaya, Mumbai - 32.

- RESPONDENTS

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Advocates appearing for :
Petitioner : Shri Mukul S. Kulkarni
Respondents 1, 3 and 4 : Smt. R.D.Reddy,

Respondent 5 : Shri U.H.Bhogle, AGP
Respondent 2 : Served.

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CORAM : RAVINDRA V. GHUGE, J.
Dated : 01/09/2015

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.
2. The petitioner is aggrieved by the order dated 10/09/2013 and 10/02/2014 passed by respondent No.3 and 4 Authorities imposing punishment upon the petitioner in the light of the Enquiry Report dated 27/11/2012.
3. Mr.Kulkarni, learned Advocate for the petitioner submits that the petitioner was the Divisional Controller with the respondent No.1 MSRT Corporation. In 2009, he received an application for transfer by two employees namely Mr.A.G.Kale and Mr.B.B.Saurkar. Both had sought a mutual transfer thereby seeking to replace each other. Mr.Kale was Artisan C (Lohar) and Mr.Saurkar was Artisan C (Engineer).
4. The petitioner, out of misconception and under the belief that he had the power to issue a transfer order, accordingly, transferred the employees by order dated 14/06/2010. It was later on revealed that firstly, the petitioner did not have the power to issue such a transfer order and secondly, both the employees belonged to different trades. As a result and

upon realizing his mistake, the petitioner promptly withdrew the transfer order and cancelled the same on 14/07/2010.

5. The petitioner was served with a charge sheet dated 19/03/2012 after about 18 months. Mr.Kulkarni submits that 3 charges were levelled upon the petitioner. One charge was as regards misusing the respondent's vehicle for private purpose. The second charge was that he ordered temporary promotion of a retired Senior Clerk Mr.Katayarmal. The third charge was that he had issued a transfer order unauthorizedly.

6. Mr.Kulkarni submits that though the petitioner denied all the charges and further explained that he had realized the error committed in issuing the transfer order, had voluntarily cancelled the same promptly and had brought it to the notice of the Seniors, the respondent yet decided to conduct an enquiry after 18 months of the alleged charge.

7. He further submits that since the petitioner is not a workman, the respondent conducted a domestic enquiry as if the petitioner was a workman by following the procedure set out in the Discipline and Appeal Rules. He, however, clarifies that the Enquiry Officer submitted his findings (undated) on 27/11/2012 thereby exonerating the petitioner of the first two charges and in so far as the third charge of transfer was concerned, it was concluded that the petitioner had issued the transfer order without considering the circular applicable to transfers. He was thus held guilty of negligence and violation of a circular.

8. Mr.Kulkarni submits that the act of issuing a transfer order was not suppressed by the petitioner. Even in the enquiry, he was honest upfront and specifically stated that because the circular with regard to transfers was not available, he had inadvertently issued the transfer order and promptly cancelled the same. No loss or harm of any nature was caused either to the respondent MSRTC or to the concerned employees.

9. Mr.Kulkarni further submits that even if it is presumed that the charge of negligence and non-compliance of rules may be said to be proved, a major punishment in the form of permanent stoppage of 3 increments was shockingly disproportionate. According to the Discipline and Appeal Rules of the respondent, this punishment was a maximum punishment available other than dismissal. Between permanent stoppage of three increments and dismissal, there is no punishment prescribed. He, therefore, submits that the respondent/Corporation should have taken a pragmatic view.

10. Mrs.Reddy, strenuously defends the order of punishment dated 10/09/2013 issued by the competent authority. She states that the petitioner was a Divisional Controller, who has committed a serious misconduct of having transferred two employees on mutual request who belonged to different trades. Without considering the circular, the order was issued. Being a high ranking officer, greater punishment was required to be imposed as greater responsibilities were cast upon the petitioner.

11. I have considered the submissions of the learned Advocates for the respective sides. The issue is as regards the proportionality of the punishment. The punishment of permanent stoppage of three increments has been imposed upon the petitioner. He preferred a first appeal before the Appellate Authority on 22/10/2013 for challenging the order dated 10/09/2013. By order dated 10/02/2014, the Appellate Authority confirmed the order of punishment dated 10/09/2013.

12. The petitioner has recently retired. It is not the case of the respondents that the past service record of the petitioner is blemished. However, I find that there has been one instance of the petitioner having not acted diligently to avoid a strike that occurred in the Jalna Depot and for which 5 officers including the petitioner were directed to pay Rs.15,000/- as their individual share for making good the loss caused to the Jalna Depot due to the strike of the workers.

13. I have considered the Discipline and Appeal Rules placed on record by the respondent. Permanent stoppage of 3 increments was the maximum punishment available, which was lesser than the punishment of dismissal. The charge proved against the petitioner is of negligently issuing a transfer order, which he himself has promptly cancelled.

14. In the above fact situation, I do not find that the punishment of permanent stoppage of 3 increments would be commensurate to the gravity and the seriousness of the mis-conduct proved against the petitioner. In my

view, stoppage of one increment permanently would be a commensurate punishment.

15. In the light of the above, the impugned orders dated 10/09/2013 and 10/02/2014 stand modified and reduced to permanent stoppage of one (1) increment.

16. The respondents shall, accordingly, calculate the effect of permanent stoppage of one increment and shall do the needful for releasing the retiral benefits of the petitioner.

17. This petition is, therefore, partly allowed and Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)

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