IN THE HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

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WRIT PETITION NO.29404 OF 2012

DATED 29th SEPTEMBER, 2015

Between:

K.B. Chowdary, E-62983, Supdt(T)

… Petitioner

and

The APSRTC rep by its Vice Chairman & Managing Director, Musheerabad, Hyderabad and others

… Respondents

THE HON'BLE SRI JUSTICE SANJAY KUMAR

WRIT PETITION NO.29404 OF 2012

ORDER

This writ petition was allowed by this Court on 27.02.2015 but before the order was signed, a mention was made by Sri S.V. Ramana, learned standing counsel for the Andhra Pradesh State Road Transport Corporation (APSRTC), that his earlier concession that no enquiry was held against the petitioner was factually incorrect. The case was therefore directed to be listed under the caption 'For Being Mentioned' to examine this aspect of the matter.

Heard Sri S.M. Subhan, learned counsel for the petitioner, and Sri S.V. Ramana, learned standing counsel for the APSRTC. Perused the original record produced by the learned standing counsel.

The petitioner was a Superintendent (Traffic) in the service of the APSRTC at its Simhachalam Depot. He was subjected to disciplinary proceedings in February, 2012, and was visited with the punishment of reversion to the post of Deputy Superintendent (Traffic), under the final order dated 29.08.2012 passed by the Depot Manager, APSRTC, Simhachalam. Aggrieved thereby, he filed the present writ petition.

By order dated 24.09.2012, this Court granted interim suspension of the impugned final order dated 29.08.2012, noting that the punishment imposed thereunder was a major punishment but the order did not disclose any enquiry having been conducted, which was in violation of the APSRTC's own regulations.

However, in the counter filed on behalf of the APSRTC by its Law Officer, it was stated that the charges against the petitioner were got enquired into by the Depot Manager, Maddilapalem, who was appointed as the Enquiry Officer. It was in this context that the learned standing counsel was asked to produce the original record.

The impugned final order dated 29.08.2012 refers to the office charge sheet-cum-show cause notice No.P3/535(1)/12 dated 09.02.12, the office charge sheet-cum-show cause notice No.P3/535(3)/12 dated 10.02.12 and the office charge sheet of even number dated 10.02.12 having been issued to the petitioner. However, perusal of the original record reflects that the petitioner only submitted explanation dated 25.03.2012 to the charge sheet No.P3/535(8)/12 dated 02.03.12. This charge sheet is not even mentioned in the impugned final order. The statement of the petitioner appears to have been recorded by the Enquiry Officer, the Depot Manager, APSRTC, Maddilapalem, on 14.06.2012, in connection with charge sheet No.P3/535(8)/12 only. The translation of the questions and answers put to the petitioner by the Enquiry Officer was made part of the record and reads as under:

"1. Are you ready to give statement?

A: Yes I am ready.

2. On observation of operations up to Feb.2012 and cancellation of kilometers of Simhachalam depot it is noticed that 95.78 services operation and 4.21 percentage of services (pertaining to evening services) were cancelled. You have been ordered several times to see that no service and kilometers are cancelled. You have failed to adhere said instructions. Due to non appropriate planning services were cancelled and financial loss caused to the corporation. For this your lack of supervision is the reason. Give your answer?

A. Due to Every day in the Chart 25 Conductors and Drivers (leaves, sick, absenteeism, ODs (norms short) shortage is coming. 10-15 crew have been convinced for double duties. More than that it was not possible. Due to the shortage of ADCs, usage of conductor services in place of ADCs, shortage of conductors, the non cooperation of union people for double duties. In spite of my persistent efforts there are some blanks hence, services have been cancelled, but not due to my fault.

3. Due to non adherence of higher officials instructions, decisions,

lack of plan of operation of schedules in SML depot, mainly the shortage of crew in the second shift not only causing cancellation of bus services and kilometers and causing financial loss to the corporation. For this yours lack of supervision is not the reason? Answer this?

A. I have been adhering the instruction of higher officials. Few services were not operated, mainly in Simhachalam depot due to the shortage of derives, conductors, employees sickness, leaves, absenteeism and out of designation duties, few employees only have been available for double duties in spite of my efforts. Crew have not coming forward on double duties for operation of afternoon services. The cooperation of union leaders also less. Because said reasons cancellation of afternoon services were more. But not due to my lack of supervision.

4. Still you want say anything?

A. Herein after, I will try my level best to not to cancel the services.

Above statement has been recorded, on telling from my mouth. I have read the statement and found that the same has been recorded as I stated."

The findings of the Enquiry Officer referred to Case No.P3/535(3)/12 and are dated 14.06.2012. By another Enquiry Report of the same date, the Enquiry Officer dealt with Case No.P3/535(1)/12. These Enquiry Reports are identical and read as under:

'As nominated by the Regional Manager, Visakhapatnam to conduct enquiry on the allegations against Sri K.B.Chowaday E.062983 Supdt (T) of Simhachalam depot, I have conducted the enquiry on the Chargesheet no P3/535(1)/2012-SML dated 09.02.2012.

Charge:1 It is alleged that E.7 services were cancelled and cancellation 1125 Kms were cancelled during the 2nd shift of 08.02.2012 and caused inconvenience to the traveling public, besides loss of revenues to the Corporation.

The delinquent stated that, more number of staff availed leave/sick/absenteeism owing to which the services were cancelled. He asked the crew to perform the Double duties. But they have not agreed to do the same.

Charge:2 It is alleged that for having failed to operate total schedules on 08.02.2012 in the 2nd shift resulted in loss of revenue to the corporation to a tune of Rs.5756/- on your part which shows your gross negligence for operation of total Kms.

The delinquent stated that, more number of staff availed leave/sick/absenteeism due to which the services were cancelled. He asked the crew to perform the Double duties. But they have not agreed to do the same.

FINDINGS:- From the above it is proved that, being a responsible supervisor to operate all the Schedules to cater the needs of the traveling public in the public interest the above allegations may not be occurred. The crew position and sick/leave/absenteeism position is with in the norm of 2.6. If he planned to operate the vehicles as well as manpower properly there is no inconvenience was occurred to the traveling public.

Hence I concluded that the above allegations are proved beyond all reasonable doubts and the above named supervisor is fully held responsible for the allegations made.'

Perusal of the charge sheet-cum-show cause notice of recovery bearing No.P3/535(3)/12 dated 10.02.12 reflects that the allegation leveled against the petitioner thereunder related to the events that took place on his second shift on 09.02.2012. The charge sheet-cum-show cause notice of recovery bearing No.P3/535(1)/12 dated 09.02.12, on the other hand, related to the events which took place on the second shift of the petitioner on 08.02.12. The record further reflects that Depot Manager, APSRTC, Maddilapalem, submitted a Preliminary Enquiry Report dated 06.07.2012, not only in connection with Case Nos.P3/535(1)/12 and P3/535(3)/12 but also Case No.P3/535(8)/12. This last case seems to have related to two charges which were not with reference to any particular date and read as under:

'<u>CHARGE NO.1</u>

For having given scope for cancellation of services in the evening operations without proper monitoring and plan which ultimately resulted in abnormal cancellation to an extent of 4.21% in the evening operations and loss of revenue to the corporation beside causing inconvenience to the travelling public who solely depended on our operations, while you were working as a Supervisor at Simhachalam Depot, which constitutes mis-conduct under Reg.28(vii, ix.a & xxxii) of APSRTC Employees (Conduct) Regulations, 1963.

<u>CHARGE NO.2</u>

> For having failed to adhere to the instructions issued by the Higher Authorities from time to time and failed to operate all services in the evening operations which resulted in much financial loss to the corporation, causing inconvenience to the travelling public and encouraging illicit operations, while you were working as a Supervisor at Simhachalam depot which constitutes mis-conduct under Reg.28(vii, viii, ix.a & xxxi) of APSRTC Employees (Conduct) Regulations, 1963.'

The findings recorded against the petitioner in this Preliminary Enquiry Report are as under:

> 'As per the discussions and facts on record, it is crystal clear that heavy cancellation of Kilometers were caused particularly during 2nd shift of Feb.2012 at Simhachalam Depot, resulting in much inconvenience to the travelling public besides loss of revenue to the corporation.
>
> Though Sri K.B. Chowdary E.62983 Supd (T) was charge sheeted on 09.02.12, 10.02.12 and 02.03.12 for failure to operate all the services, he turned deaf ear to the instructions of higher authorities in operating all the services, causing much inconvenience to the travelling public besides loss of revenue to the corporation. He has to plan meticulously for operating all the services and use his supervisor qualities in operating services but he failed to do so. Being a senior supervisor he has to inform the position to his officer for regarding the situation to have smooth functioning of the depot without cancellation.
>
> Hence, Sri K.B.Chowdary E.62983, Supd (T) of Simhachalam Depot is held responsible for the heavy cancellation of Kilometers during Feb.2012 and the charges framed against him are proved beyond any reasonable doubt.
>
> This is for favour of information and further action please.'

The petitioner seems to have been furnished a copy of this Enquiry Report along with the show-cause notice dated 16.07.2012 proposing his reversion. He submitted his explanation thereto under letter dated 14.08.2012 stating that no domestic enquiry had been conducted in respect of the charges leveled against him and that he could not be held responsible on merits as sufficient staff was not available for operating the services and despite his best efforts, the services had to be cancelled for want of crew.

It is therefore clear that three charge-sheets were issued against the petitioner and enquiry reports of different dates are available in the record, two dated 14.06.2012 and one dated 06.07.2012. The last one is strangely captioned as a Preliminary Enquiry Report.

It is not in dispute that pursuant to the interim order granted by this Court, the impugned order of reversion was not given effect to and the petitioner continued to work as the Superintendent (Traffic) in the service of the APSRTC till his retirement, upon attaining the age of superannuation, on 31.07.2014.

Unless the APSRTC is able to establish before this Court that the punishment was imposed upon the petitioner in accordance with the due procedure and that the same does not warrant interference, the question of denying him the benefit of the service already rendered by him would not arise at this late stage.

In this regard, it is relevant to note that the Andhra Pradesh State Road Transport Corporation Employees (Classification, Control and Appeal) Regulations, 1967 (for brevity, 'the Regulations of 1967') govern the procedure to be followed for imposition of penalties. Regulation 8 details the penalties which may be imposed upon an employee. In so far as reduction to a lower post is concerned, it falls within Regulation 8(vii) and Regulation 12 provides that such a penalty shall not be imposed except after following the due procedure prescribed therein. Regulation 12, to the extent relevant, reads as under:

'**12. Procedure for imposing penalties:**

(1) ……..

(2) No order imposing on an employee any of the penalties specified in items (vii) (viii) and (ix) of clause (1) of regulation 8 shall be passed except after an enquiry is held as far as may be in the manner hereinafter provided.

(3) The grounds on which it is proposed to take action shall be reduced to the form of a definite charge or charges and communicated to the employee charged together with statement of the allegations or a copy of the report on which each charge is based, and of any other circumstances which it is proposed to take into consideration in passing orders on the case.

(4) The employee shall be required within such time as

may be considered by the enquiring authority reasonably adequate in the circumstances of the case (ordinarily not less than seven clear days from the date he receives the charge-sheet) to put in a written statement of his defence.

(5) The employee charged shall, if he so desires, for the purpose of preparing his defence, be permitted to inspect and take extracts from such official records as he may specify.

Provided that the enquiring authority may, for reasons to be recorded in writing, refuse him such access if in its opinion—

(a) Such records are not relevant for the purpose or it is against the public interest to allow access thereto; Or

(b) Such records are of a secret or confidential nature, provided that the substance of such records is communicated to the delinquent employee.

(6) If within the prescribed time or such further time as the Enquiring Authority may allow no written statement in defence is filed and no request for being heard in person is received, the Enquiring Authority may proceed to record his findings without holding any further enquiry.

(7) If the employee charged desires to be heard in person, or if the Enquiring Authority considers it necessary to hear him in person, he shall be so heard by the Enquiry Authority. If he desires that an oral Enquiry be held or if the Enquiring Authority or the authority competent to impose the penalty considers it necessary an oral Enquiry may be held by the Enquiring Authority into such charges as are not admitted.

(8) The Enquiring Authority shall in the course of the Enquiry consider such documentary evidence and take such oral evidence as may be relevant or material to the charges. The employee concerned shall be entitled to cross examine any witness examined by the Enquiring Authority. If the Enquiring Authority declines to examine any witness, it shall record its reasons in writing.

(9) The statements made by the employee and the witnesses, if any, shall be recorded either in English or in the language in which they are made, according as the Enquiring Authority may decide. The Enquiring Authority may put such questions as it may deem necessary to the employee or to the witnesses, to elicit information on any points which, in its opinion, require clarification. The Statement so recorded shall be read over to the deponent and; if necessary, explained to him in the language in which it was given. It shall be corrected, if necessary, or the Enquiring Authority may make a memorandum

of the objection, if any, raised by the deponent and add such remarks as it may consider necessary. The statements shall then be signed by the deponent, by the employee charged, if he himself is not the deponent, and by the Enquiry Authority. The employee charged may, if he so desires, be allowed to take copies of the statements so recorded.

(10) At the conclusion of the Enquiry, the Enquiring Authority shall prepare a report of the enquiry, record its findings on each of the charges with reasons therefor, and forward the proceedings of the enquiry to the authority competent to impose the penalty, unless the Enquiring Authority is itself competent to do so. The proceedings of the enquiry shall contain the charges framed against the employee along with the grounds of the charge, the written statements, if any filed in defence, the oral evidence taken during the enquiry, the documentary evidence considered in the course of the enquiry, the orders if any, made by the Enquiring Authority in regard to the enquiry, and a report setting out the findings on each charge and the reasons therefor.

…………..'

In the present case, the haphazard manner in which disciplinary proceedings were conducted against the petitioner by the APSRTC is patent. The charge against the petitioner in all the three charge-sheets was that he had failed to operate all the services, thereby causing loss of revenue to the APSRTC and inconvenience to the traveling public. His defence was that sufficient staff was not available and despite his best efforts, he could only convince some of the available staff to discharge double duties and was therefore left with no option but to cancel the other services. In such circumstances, it was necessary for the APSRTC to demonstrate before the Enquiry Officer the culpability of the petitioner in terms of the failure to operate full services being completely attributable to him. Surprisingly, except for examining the petitioner by way of a questionnaire containing four short questions, of which two were of no effect whatsoever, the Enquiry Officer took no other steps to determine the lapses, if any, on the part of the petitioner. No other witnesses were examined to verify the *bonafides* of the explanation put forth by the petitioner and no documents were marked in evidence to determine the availability of staff for undertaking the services which were cancelled. The answers given by the petitioner to the only two relevant questions put to him were to the effect that due to shortage of drivers and conductors and the available crew not coming forward to undertake double duties for operation of the afternoon services, he had to cancel the other services. These issues were not even subjected to verification by examination of any other witnesses or documentary evidence. There was no examination of the scope of the petitioner's duties in terms of the lapses attributed to him and actual verification of whether he fell short of such duties.

Sri S.M. Subhan, learned counsel, placed reliance on ***K. DAVID WILSON V/s. SECRETARY TO GOVERNMENT LAW DEPARTMENT (LEGISLATIVE AFFAIRS AND JUSTICE), HYDERABAD***[1], wherein a Division Bench of this Court held as under:

> 'A departmental enquiry conducted for the purpose of disciplinary action against a public servant is not an empty formality. It is a serious proceeding intended to give the delinquent a chance to meet the charges and prove his innocence. The right of the delinquent officer to cross-examine witnesses who give evidence against him is a valuable right and in order to effectively exercise this right, it is necessary that the examination-in-chief of the witnesses should be recorded in the presence of the party against whom the deposition is made…..'

On the above analysis of the facts and legal position, this Court has no hesitation in holding that the enquiry held against the petitioner was a mere mockery.

It is relevant to note that the petitioner initially entered the service of the APSRTC as a conductor and was thereafter promoted to the post of Superintendent. The principles of natural justice and the APSRTC's own regulations therefore required that he should be given every opportunity to defend himself. There is no indication of the petitioner being apprised of the protection afforded to him by the regulations and being asked as to whether he wished to examine any witnesses on his own behalf. That apart, as stated *supra*, the Enquiry Officer only examined the petitioner and that too by posing only two questions of relevance. This enquiry therefore fell far short of the required standard as per the APSRTC's own regulations and also the principles of natural justice. Based on this tainted enquiry, the APSRTC visited the major penalty of reversion to a lesser post upon the petitioner. Protected by the interim suspension granted by this Court, the petitioner discharged his duties in the higher post of Superintendent (Traffic) till his superannuation. This Court therefore sees no reason to permit the APSRTC to give effect to the impugned order of reversion at this late stage. All the more so, as it is not shown to be a legal and valid exercise even now.

The writ petition is therefore allowed, setting aside the impugned order dated 29.08.2012. Pending miscellaneous petitions shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

29th SEPTEMBER, 2015

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[1] 2001(5) ALD 406 (DB)