THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

WRIT PETITION No. 41341 OF 2014

O R D E R:

The petitioner, who was employed as a Conductor with the Andhra Pradesh State Road Transport Corporation (henceforth referred to as 'the Corporation'), was functioning as such at Karimnagar Depot-II. It appears, he has absented for duties from 15.10.2012 onwards without leaving any prior intimation or securing any leave sanctioned for his absence. In those circumstances, the Depot Manager, Karimnagar Depot-II has drawn a charge sheet on 03.01.2013 framing the following two charges:

1) For having absented from your duties unauthorizedly without prior intimation or sanctioned leave from 15.10.12 to till date which resulted to dislocation of depot services and much inconvenience to the passengers, besides loss to the legitimate revenues of the corporation, thereby you are an profitable employee and unproductive employee which constitutes mis-conduct in terms of Reg. (xxvii) of APSRTC Employees (Conduct) Reg. 1963.

2) For having maintained irregular attendance during the period from Jan. 12 to Dec.12 by way of reporting sick 18 availed CL/EL 23 and absent 45 days, which speaks of your gross negligence towards your normal duties which constitutes mis-conduct in terms of Rg.28 (ix) of APSRTC Employees (Conductor) Reg. 1963.

It appears, the charge-sheet has been sent to the last known residential address of the petitioner on 05.01.2013 by Registered Post acknowledgment due and it has also been displayed on the notice board of the Depot. The postal cover has since been returned on 22.01.2013 with an endorsement by the postal authorities, which reads under:

" No such addressee"

The Assistant Depot Manager, who has been appointed as an Enquiry Officer, has fixed 31.01.2013 as the date for conducting the enquiry and as the notice sent by him and also exhibited on the notice board could not secure the presence of the petitioner at the enquiry on 31.01.2013, again, the Enquiry Officer has drawn a detailed note on 31.01.2013 informing the petitioner to attend for the enquiry on 07.02.2013 at 10.30 hours and communicated the same to him as well

as affixing the same on the notice board of Karimnagar Depot-II. The delinquent did not attend the enquiry on 07.02.2013 either. A third intimation has been addressed by the Enquiry Officer informing the petitioner that the enquiry is posted to 15.02.2013 at 10.30 hours. That notice was also affixed on the notice board of the Corporation. The petitioner did not care to attend the enquiry. Hence, he was set *ex parte* on 15.02.2013 and the Traffic Inspector-III has been examined at the said enquiry. It is the Traffic Inspector, who has sent up the report on 02.01.2013 to the Depot Manager informing about the unauthorized absence of the petitioner from 15.10.2012 onwards. Therefore, the said report was also taken on record. The Enquiry Officer concluded the enquiry and submitted his detailed report on 16.02.2013. The Enquiry Officer's findings have also been made available to the petitioner through a communication dated 20.02.2013 providing him an opportunity to submit his comments/objections to the said Enquiry Officer's report. That also did not produce any response from the petitioner. Thereafter, the Depot Manager has drawn a show cause notice proposing to impose on the petitioner the punishment of removal from service on 28.02.2013 and called him upon to submit his objections, if any. The petitioner has not responded to the said call even. After looking into the material gathered by the Enquiry Officer during the course of domestic enquiry and after perusing the Enquiry Officer's report, the Depot Manager has finalized the proceedings, dated 11.03.2013 imposing on the petitioner the punishment of removal from service with immediate effect.

It appears, the petitioner has preferred an Appeal there against to the Deputy Chief Traffic Manager, Karimnagar. That Appeal has been rejected by the Appellate Authority. Since there is a provision for preferring a review before the Regional Manager, the petitioner has preferred a review before the Regional Manager, Karimnagar, who rejected it on 09.05.2014. Thereafter, the petitioner has submitted a further review on 07.06.2014 before the Executive Director of the Corporation. The Executive Director has taken a compassionate view

of the matter and passed orders on 04.09.2014 reinstating the petitioner into service as a Conductor with immediate effect, subject, of course, to his producing the medical fitness certificate. The Executive Director has imposed the punishment of deferring his annual increment for a period of two years with cumulative effect. The intervening period between the date of removal and the date of the order passed by the Executive Director i.e. 04.09.2014 is ordered to be treated as *'not on duty'* for all purposes. It is this order of the Executive Director, which is under challenge, after reporting to duty on 22.10.2014.

Smt. Indira, learned counsel for the petitioner would contend that without conducting any enquiry whatsoever, the Depot Manager, the disciplinary authority, has imposed the major punishment of removal from service and hence, the removal order itself is bad in law. She would further contend that when the petitioner has been hospitalized, the question of his receiving the communications addressed by the Depot Manager to his residential address, would not have arisen at all and as soon as he has come out of the hospital, he has produced the necessary material in support of his medical history and the treatment required to be taken by him for getting over the ailment. In spite of the same, no opportunity whatsoever has been provided to the petitioner before the punishment is imposed. Hence, for no justifiable reason, the petitioner is sought to be penalized. It was further contended by the learned counsel for the petitioner that withholding of two annual grade increments with cumulative effect is a major punishment, which could not have imposed without conducting an enquiry and therefore, the order of the Executive Director to this extent is liable to be interdicted.

I am afraid, that any one of these contentions canvassed at the Bar deserves serious consideration. Firstly, the petitioner has left his residential address with the Depot, to which the communication containing the charges framed against him has been sent by Registered Post acknowledgment due. Sending a communication by

Registered Post is the recognized mode of communication. Thus the Depot Manager has discharged the obligation cast on him to communicate the charge memo to the last known address of the writ petitioner. He has also taken the precaution of exhibiting the said charge memo on the notice board of the Depot, so that the petitioner would have an opportunity of coming to know of the charges framed against him through any of his colleagues or friends at the work place. It is also worthy to notice that at least on three different occasions, the Enquiry Officer has left communications posting the enquiry on 31.01.2013, 07.02.2013 and 15.02.2013 respectively. If the petitioner has not responded to the call, the Enquiry Officer is justified in setting him *ex parte* and then proceeding further in conducting the enquiry. When once an enquiry is conducted, it is futile for the petitioner to contend that no enquiry whatsoever has been conducted, which can form the basis for imposition of a major punishment against him. This apart, the petitioner has remained absent from reporting to duty from 15.10.2012. If there is any justifiable reason for his absence, such as sudden illness, at some stage or the other, either the petitioner or his immediate family member or his friends at work place must necessarily bring it to the notice of the Depot Manager about his indisposition, so that the necessary alternative arrangements can be made by the Depot Manager for carrying on the operations.

Road Transport Corporation is a man-power intensive industry. It carries on operations, so that it will be able to ferry the passengers from one destination to the other on time and also the commercial flight. The Corporation derives its income by undertaking these operations. It is a commercial establishment in that respect. If a Conductor does not report to duty on time, the Depot Manager will find it extremely difficult to utilize the remaining man-power for carrying on the scheduled operations for the day. If a Conductor continuously absents himself, making alternative arrangements with the limited human resources available would nearly cripple one service or the other resulting in cancellation of such services. If a service is

cancelled by the Corporation, inconvenience will be caused to the commuting public. In most of the rural areas, over which the Corporation carries on services, the commuting public will depend heavily upon the transportation facilities provided by the Corporation. In the absence of such service, it is the inconvenience of the general public which will come to the fore of the issue. The displeasure and the inconvenience suffered by the general public will bring an adverse publicity to the efficiency of the Corporation's services projecting it in poor light. Therefore, there is no way that a lapse of this nature, where a conductor takes it for granted to stay away from his duty, can be condoned.

I must admire the Executive Director of the Corporation, who has shown an extreme compassion towards the cause of the petitioner when he has modified the punishment of removal from service to that of withholding of two annual grade increments with cumulative effect. This act of compassion shown by the Executive Director is completely mistaken by the petitioner as an illegal act. Perhaps, the Executive Director would take a cue from this attitude of the petitioner and would realize that an employee, who has least concern for the efficacy and efficiency of the organization, should not have been shown such compassion at all.

Be that as it may, the Executive Director has also reinstated the writ petitioner and the petitioner has already joined the service of the Corporation on 22.10.2014 as a Conductor and hence, I see no reason whatsoever to interfere with the orders passed by the Executive Director of the Corporation.

Accordingly, the Writ Petition stands dismissed at the admission stage. No costs.

Consequently, the miscellaneous applications, if any shall also stand dismissed.

NOOTY RAMAMOHANA RAO, J

19th January 2015

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