

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

WRIT PETITION No.6970 OF 2015

ORDER:

The petitioner herein who is working as a conductor with the A.P.S.R.T.C. was adversely reported by the Assistant Manager (Traffic) Bhadrachalam that on 02.03.2015 at 17.25 hours at Bhadrachalam Bus Stand where the petitioner was performing duties when tested for breath analyzer, he was found to have been intoxicated. The breath analyzer has showed glowing red light with beep sound. In fact, it could not even record the percentage of alcohol contained in his blood, but nonetheless based upon this adverse report of the Assistant Manager (Traffic), the Depot Manager, Kamareddy, the disciplinary authority passed orders on 12.03.2015 placing the writ petitioner under suspension for having consumed alcohol while he was on duty and thus breached conduct regulation No.18 (i) (a) of APSRTC Employees (CC & A) Regulations 1967. This order was challenged in this writ petition.

Sri A.Jagan, learned counsel for the petitioner, would contend that it is absolutely improper for the respondents to construe that the writ petitioner was intoxicated, for no medical test was conducted to draw his blood sample and analyze the same. The petitioner was also not subjected to examination by any physician. Further if the breath analyzer machine flashes its read bulb and also gives a beep sound that does not necessarily infer that the person whose breath is sought to be analyzed has been intoxicated. The breath analyzer test is required to detect the presence of alcohol in the blood and also disclose the quantification. In the instant case, the breath analyzer machine could not quantify the presence of alcohol in the blood of the writ petitioner. Hence, the respondents are grossly in error in construing the petitioner to be intoxicated. Whatever be the allegation, the petitioner is only a conductor of the bus and hence there is absolutely no necessity for him to be placed under suspension. At the end Sri A.Jagan would submit that the petitioner, for whatever be the reason, is agreeable to suffer an appropriate and suitable minor punishment such as censure/ stoppage of one increment without cumulative effect for a period of one year/ reduction of pay by one stage for a period of one year without cumulative effect etc. instead of dragging on the proceedings too long. He,

therefore, submits that the respondents should be directed to reinstate the petitioner and consider imposing at best an appropriate minor punishment.

Sri N. Vasudeva Reddy, learned standing counsel, on the other hand, would submit that an enquiry officer has already been appointed and it is the responsibility of the enquiry officer to ascertain and disclose as to whether the petitioner is intoxicated or not.

In the instant case except flashing red bulb and producing beep sound the breath analyzer machine could not measure the presence of alcohol in the blood of the writ petitioner. It is, therefore, clear that even if there was presence of alcohol in the blood of the writ petitioner, it was in too insignificant a quantity, which is not capable of precisely measured by the machine even. The contention canvassed by Sri A.Jagan, learned counsel for the petitioner, that depending upon the food habits of some people, some of the beverages consumed by them may contain significant quantity of east therein. The presence of east component is likely to produce the smell akin to that of an alcohol beverage. That could be the reason why the machine could give the beep sound and also flashed red bulb but failed to exactly measure the quantum of alcohol available in the blood of the writ petitioner. If the respondents have really suspected that the petitioner has consumed alcoholic beverage and was in intoxicated condition, in all fairness, they ought to have subjected him to medical examination by a physician, who alone would have examined him and would have reported as to whether he was under the influence of alcoholic beverage or not. There are several tests such as reaction to the light, reflex actions etc to know and ascertain as to whether one is under the influence of alcohol or not. As the same having not been done by the respondents, the submission of the learned counsel for the petitioner that the fact situation prevailing in the case would call for imposition of minor punishment, for which there was no necessity to conduct a detailed enquiry, deserves utmost consideration. When once the Regulations have provided for imposition of minor punishments, it presupposes, the availability of discretion in the hands of the disciplinary authority which has to be exercised carefully. Therefore, liberty is preserved to the writ petitioner to submit a detailed representation to the Depot Manager expressing his willingness to undergo an appropriate minor punishment such as censure, withholding of one annual increment without cumulative effect for a period of one year and/or reduction of pay by one stage without cumulative effect for a period of one year and the same may be taken into

account and an appropriate punishment be inflicted, so that the petitioner would be more careful in future. However, the petitioner shall be reinstated to duty as soon as the representation of the writ petitioner expressing his desire and willingness to undergo minor punishment is received, as there would be no necessity any longer for holding an elaborate enquiry.

With this, the writ petition stands disposed of. No order as to costs.

All the miscellaneous petitions pending in this writ petition shall stand closed.

JUSTICE NOOTY RAMAMOHANA RAO

01.04.2015

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