

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

WRIT PETITION No.13900 OF 2005

ORDER:

1 This Writ Petition is filed under Article 226 of the Constitution of India, seeking a writ of Certiorari, call for the records pertaining to the Proceedings No.01/2(14)/1994-TDP dated 18.05.2005 in ordering that the increment next fall due be postponed for a period of two years with cumulative effect on future increments as arbitrary and illegal and consequently to direct the respondents to restore the deferred increments along with all consequential benefits to the petitioner.

2 The facts germane to the filing of the present Writ Petition are as follows:

3 The petitioner joined the first respondent organization as driver on 20.12.1978. On 18.06.1994 the petitioner, while driving the bus bearing No.AP 9 Z 5864 of Tadipatri depot caused accident in between Pebbair and Kothapet resulting in death of a passenger who was crossing the road after alighting RTC bus of Kadapa depot. On 30.03.1995 the second respondent issued a charge memo stating that the accident occurred due to the negligence of the petitioner only. Basing on the charge memo a preliminary enquiry was conducted on 20.04.1995. On 29.01.1996 the second respondent imposed punishment of deferment of two annual increments with cumulative effect, aggrieved of which, the petitioner filed Writ Petition No.21210 of 2000 and the same was allowed on 19.07.2002, directing the second respondent to conduct a regular departmental enquiry. The Assistant Manager (Traffic), Tadipatri conducted enquiry and submitted a report stating that the petitioner was responsible for the accident. Basing on the enquiry report, the second respondent imposed the same punishment of deferment of two annual increments with cumulative effect on the petitioner by order dated 22.04.2003. Aggrieved by the said order, again the petitioner filed Writ Petition No.2876 of 2005 and

the same was allowed on 17.03.2005. On 30.04.2005 the second respondent issued a show cause notice to the petitioner calling for his explanation as to why punishment of deferment of two annual increments with cumulative effect should not be imposed on him. The petitioner submitted his explanation to the said show cause notice on 16.05.2005. Being not satisfied with the explanation submitted by the petitioner, the second respondent issued the impugned proceedings.

4 The learned counsel for the petitioner submitted that the findings recorded by the enquiry officer are perverse for the reason that the same are not based on any evidence, much less legally admissible evidence and hence the report of the enquiry officer has no legal sanctity. He further submitted that the impugned order is not sustainable under law as the second respondent imposed punishment to wreck vengeance against the petitioner without considering the explanation submitted by him. It is his predominant contention that the second respondent showed discrimination against the petitioner while imposing the punishment.

5 *Per contra*, the learned standing counsel for APSRTC submitted that the scope of this Court is very limited to interfere with the findings recorded by the enquiry officer while exercising jurisdiction under Article 226 of the Constitution of India. He further submitted that the High Court should not act as an appellate authority over the disciplinary authority. He further submitted that the second respondent imposed punishment on the petitioner basing on the nature of the accident.

6 Let me consider whether the findings recorded by the enquiry officer are perverse, as contended by the learned counsel for the petitioner.

7 Before advertng to the findings of the enquiry officer, I feel it apposite to refer to the case law on this aspect.

i) ***State of A.P. Vs. Sree Srirama Rao***^[1] wherein the Hon'ble apex Court held at Para No.7 as under:

7. There is no warrant for the view expressed by the High Court that in considering whether a public officer is guilty of the misconduct charged against him, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court, must be applied, and if that rule be not applied, the High Court in a petition I ... under Article 226 of the Constitution is competent to declare the order of the authorities holding a departmental enquiry invalid. The High Court is not constituted in a proceeding under Article 226 of the Constitution a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant: it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226 of the Constitution.

The above principle was reiterated in ***State of A.P. Vs. Chitra Venkata Rao***^[2].

ii) In ***Railway Board V. Niranjan Singh***^[3] the Hon'ble apex Court held that "The High Court does not interfere with the conclusion of the disciplinary authority unless the finding is not supported by any evidence or it can be said that no reasonable person could have reached such a finding"

iii) In ***Syed Yakoob V. K.S. Radhakrishnan***^[4] the Hon'ble apex

Court observed as follows:

23. The first respondent has a fundamental right to carry on business in transport. The Motor Vehicles Act is a law imposing reasonable restrictions in public interests on such right. Under Section 47 of the said Act the Regional Transport Authority shall, in considering an application for a stage carriage permit, have regard, inter alia to the interests of the public generally. The fact that the first respondent has a separate workshop or at any rate has the necessary repair and maintenance facilities at one of the terminii of the route viz at Chidambaram, is certainly a consideration germane to the question of public interests. Indeed, the scheme of marking system suggested by the Government also recognizes the importance of such facilities at either of the terminii of the route. If the first respondent had placed before the authorities concerned the said circumstance in support of his claim for a permit and if that was ignored or not investigated into by the said authorities, the High Court would certainly have jurisdiction under Article 226 of the Constitution to quash the order of the authorities and direct them to ascertain whether the claim of the first respondent was true and if it was true to take that into consideration before issuing the permit to one or other of the claimants before them. In such an event the High Court would not be interfering with the finding of fact arrived at by the Appellate Tribunal based on the material placed before it, but would only be quashing the order on the ground that an important and material circumstance was ignored or not investigated into by the Tribunal. If a Tribunal ignores or fails to investigate a material circumstance put forward by a claimant and gives a finding against him, the said finding can certainly be said to be vitiated by an error of law apparent on the face of the record.

iv) In ***State of Haryana V. Rattan Singh***^[5] observed as follows:

4. It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and Administrative Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through case-law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fairplay is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good. However, the courts below misdirected themselves, perhaps, in insisting that passengers who had come in and gone out should be chased and brought before the tribunal before a valid finding could be recorded. The 'residuum' rule to which counsel for the respondent referred, based upon certain passages from American Jurisprudence does not go to that extent nor does the passage from Halsbury insist on such rigid requirement. The simple point is, was there *some* evidence or was there *no* evidence — not in the sense of the technical rules governing regular court proceedings but in a fair commonsense way as men of understanding and worldly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. Absence

of *any evidence* in support of a finding is certainly available for the court to look into because it amounts to an error of law apparent on the record. We find, in this case, that the evidence of Chamanlal, Inspector of the Flying Squad, is *some* evidence which has relevance to the charge levelled against the respondent. Therefore, we are unable to hold that the order is invalid on that ground.

v) In ***Union of India Vs. P. Gunasekaran***^[6] the Hon'ble apex Court held as under:

12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:

- (a) the enquiry is held by a competent authority;
- (b) the enquiry is held according to the procedure prescribed in that behalf;
- (c) there is violation of the principles of natural justice in conducting the proceedings;
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
- (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;
- (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;
- (g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;
- (h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;
- (i) the finding of fact is based on no evidence.

13. Under Articles 226/227 of the Constitution of India, the High Court shall not:

- (i) reappreciate the evidence;
- (ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;
- (iii) go into the adequacy of the evidence;
- (iv) go into the reliability of the evidence;

(v) interfere, if there be some legal evidence on which findings can be based.

(vi) correct the error of fact however grave it may appear to be;

(vii) go into the proportionality of punishment unless it shocks its conscience.

8 A perusal of the record reveals that the Assistant Manager (Traffic) Tadipatri was appointed as enquiry officer to enquire into whether there was any negligence on the part of the petitioner to cause the accident on 18.06.1994. It is needless to say that while conducting enquiry, the disciplinary authority as well as the enquiry officer has to afford fair and reasonable opportunity to the delinquent officer in all respects. To put it in a different way, the procedure being adopted by the second respondent while conducting the enquiry should not give an impression to an ordinary prudent man that the same was conducted in violation of principles of natural justice which may likely to cause prejudice to the delinquent officer. It is not the case of the petitioner that the enquiry officer has not given any opportunity to him to put forth his defence. The factum of accident is not being disputed by the petitioner, however, he disowns any negligence on his part. A perusal of the record reveals that during the course of enquiry, the enquiry officer examined the petitioner, conductor of the bus and one Venkata Swamy who conducted preliminary enquiry. Basing on the statements of the witnesses, the enquiry officer gave a specific finding. The finding recorded by the enquiry officer is supported by the material available on record. In order to arrive at such a finding, the enquiry officer has followed the principle how an ordinary prudent man will drive the bus at the relevant point of time. The enquiry officer has considered the entire material available on record to come to a conclusion that the petitioner has not acted as an ordinary prudent man while driving the bus at the relevant point of time. As per the principle enunciated in the cases cited supra, this Court cannot act as an appellate authority over the enquiry officer in order to upset the findings recorded by him on the sole ground that

there is a possibility of arriving at a different conclusion. At every point of time, the enquiry officer has given an opportunity to the petitioner to put forth his stand of defence.

9 The second respondent has issued show cause notice calling for an explanation from the petitioner why punishment of deferment of two annual increments with cumulative effect should not be imposed. This also clearly indicates that the second respondent had given a reasonable opportunity to the petitioner to explain the mitigating circumstances thereby not to impose any punishment. The second respondent being not satisfied with the explanation offered by the petitioner passed the impugned order. Basing on the material available on record, I am of the considered view that there is no procedural irregularity in conducting the enquiry. In view of the above, I am unable to accede to the contention of the learned counsel for the petitioner that the findings recorded by the enquiry officer are perverse. Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, I am of the considered view that there are no grounds much less valid grounds to interfere with the findings recorded by the enquiry officer.

10 The predominant contention of the learned counsel for the petitioner is that the second respondent has shown discrimination while imposing punishment on the petitioner. The fact remains that the second respondent imposed punishment of deferment of two annual increments with cumulative effect on the petitioner by order dated 29.01.1996 giving a go bye to the Andhra Pradesh State road Transport Corporation Employees (Classification, Control & Appeal) Regulations, 1967 which deals with the procedure to be followed before imposing punishment on the employees. For one reason or the other, the second respondent has not followed the above said procedure and imposed punishment. The petitioner filed Writ Petition No.21210 of 2000 challenging the order dated 29.01.1996. This Court

allowed the said Writ Petition directing the second respondent to conduct regular departmental enquiry as per the procedure.

11 Again after conducting a regular departmental enquiry also, the second respondent, without issuing a copy of the enquiry report and issuing show cause notice, straight away imposed punishment of deferment of two annual increments with cumulative effect. Having no other alternative, once again the petitioner approached this Court and filed Writ Petition No.2876 of 2005 and the same was allowed on 17.6.2005 with the following observations:

“The impugned proceedings dated 22.04.2003 are set aside and the matter is remitted to the second respondent to issue a show cause notice to the petitioner proposing the punishment to be imposed. After receiving explanation to the said show cause notice, the second respondent shall take appropriate decision in accordance with law.”

12 Thereafter the second respondent issued a show cause notice to the petitioner on 30.04.2005 for which the petitioner submitted his explanation on 16.5.2005. Being not satisfied with the explanation offered by the petitioner, the second respondent issued the impugned proceedings. The fact remains that the second respondent imposed punishment of deferment of two annual increments with cumulative effect on three occasions i.e. first time without conducting departmental enquiry, second time after conducting the regular departmental enquiry without issuing any show cause notice calling for his explanation and third time after following the procedure. This clearly indicates that the 2nd respondent made up his mind to impose the same punishment on the petitioner after every round of litigation.

13 It is not out of place to extract the relevant portion of the show cause notice.

“Further it is also discriminatory as in the case of A.Ramulu E.No.400942, was imposed with minor punishment, vide order dt.1.4.03, who caused fatal accident in day time.”

14 The factum of imposing minor penalty in case of one A.Ramulu

is not denied by the second respondent in their counter. There is no explanation in the counter as to what made the second respondent to impose such minor punishment on said Ramulu who caused accident in day time. In the instant case the accident occurred during mid night. One should not feel that the employer is showing discrimination while imposing punishment. In the instant case, the petitioner was forced to approach this court twice for not following the procedure as contemplated under APSRTC Employees (Classification, Control & Appeal) Regulations 1967 as well as violation of principles of natural justice. It is not the case of the second respondent that the petitioner involved in number of fatal accidents. The second respondent failed to show that the petitioner involved in any other accident in addition to the present accident on 18.06.1994. The petitioner retired from service after attaining the age of superannuation. This Court is very much conscious that it should not lightly interfere with the quantum of punishment imposed by the disciplinary authority. However, taking into consideration the peculiar facts and circumstances of the case, I am of the considered view that it is a fit case to interfere with the punishment order passed by the second respondent by modifying the punishment imposed on the petitioner.

15 For the foregoing discussion, this Writ Petition is allowed in part by modifying the quantum of punishment imposed against the petitioner from deferment of two annual increments with cumulative effect to that of without cumulative effect. The respondents are hereby directed to pay the monetary benefits, if any to which the petitioner may be entitled to, in view of the modification of the punishment. There shall be no order as to costs. As a sequel, miscellaneous petitions if any pending this Writ Petition, shall stand closed.

T. SUNIL CHOWDARY, J

Date:18th March, 2016

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[\[1\]](#) AIR 1963 SC 1723

[\[2\]](#) AIR 1975 SC 2151

[\[3\]](#) (1969) 1 SCC 502

[\[4\]](#) AIR 1964 SC 477

[\[5\]](#) (1977) 2 SCC 491

[\[6\]](#) (2015) 2 SCC 610