

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No. 12551 OF 2009

ORDER:

The petitioner, who was employed as the driver of the Andhra Pradesh State Road Transport Corporation in the year 1987, while working at its Palamaner Depot, Chittoor District, was served with a charge-sheet dated 13.06.2003 alleging the following charge:-

“For having driven the vehicle bearing No.AP10Z5482 on 24.05.2003 with lack of anticipation and rash and negligent driving which resulted in death of a passenger in the private auto at Dodda Bandahalli gate at the distance of 3.5 KMs from Mulbagal town at about 17.15 hrs., on route Palaaner to Kolar besides damages caused to our vehicle to a tune of Rs.75.00 which constitutes misconduct under Regulation Reg.28(ix-a) of APSRTC Employees (Conduct) Reg.1963.”

The above charge was held proved and hence, *vide* order dated 23.10.2003, the disciplinary authority removed the petitioner from service. The Appeal and the Review preferred there against were also come to be rejected on 30.11.2003 and 10.06.2004 respectively. Thereafter, the petitioner preferred Industrial Dispute No. 51 of 2005 before the Industrial Tribunal cum Labour Court, Anantapur (in short “the Tribunal”), which was dismissed through Award dated 25.03.2009 impugned in this Writ Petition.

On the other hand respondent No.1 filed a counter affidavit denying the allegations mentioned in the writ affidavit and submitted that the petitioner was previously censured on three occasions, penalty was imposed by way of recovery of cost of damages in seven cases and he was once removed from service and was reinstated by an award in I.D.No.63/97 prior to his

involvement in the present case. It is further submitted that while plying the bus bearing Registration No. AP 10 Z 5482 belonging to the Corporation from Palamaner to Kolar, *en route* near Dodla Bandahalli, at about 71-15 hrs., he drove the vehicle in rash and negligent manner with lack of anticipation and dashed against an Auto bearing No. MEU 3563 coming in the opposite direction, resulting in injuries to two passengers, one among them succumbed to injuries at the Hospital and also caused damages to the service bus. Thereafter a domestic enquiry was conducted, wherein all reasonable opportunities were given to the petitioner, and the charge framed against him was held proved and the petitioner was therefore, removed from service on 23.10.2003. It is further submitted that aggrieved by the orders of removal, the petitioner raised the I.D.No.51 of 2005 before the Tribunal and the same was also dismissed with n observation that the petitioner could not point out effectively any illegalities or irregularities in conducting the domestic enquiry, therefore, it cannot be said that the finding of the Tribunal is perverse. It is further submitted that though the petitioner saw the auto coming in the opposite direction he did not control the bus and dashed against the auto, thereby a precious life lost. Hence, prayed for dismissal of the Writ Petition.

Learned counsel for the petitioner attacks the Award of the Industrial Tribunal contending that the Tribunal failed to see that the auto hit the bus on the right side portion near Diesel Tank even though enough space is available on the right side of the bus, which makes it clear that the driver of the auto is responsible for the accident; that the Tribunal failed to see that the 1st Additional Sessions Judge at Kolar of Karnataka State gave a finding in

Criminal Appeal No.112 of 2006 that due to negligent driving of the Auto driver the accident was occurred; that the Tribunal failed to see the circumstances of the case to exercise the discretion under II A of Industrial Disputes Act and that the Tribunal failed to appreciate the evidence of the Management that there are no skid marks at the alleged accident spot and also failed to see that the damage caused to the vehicle is only to a tune of Rs.75/-, which makes it clear that the auto driver is responsible for accident.

On the other hand, learned Standing Counsel for the A.P.S.R.T.C. in order to support his contention that the acquittal of the delinquent in a criminal proceeding does not bind on the Departmental Inquiry, the learned Standing Counsel for the respondent No.2 relied on a judgment in **Regional Manager, APSRTC, Hyderabad and others V. Mohd. Tajuddin and another**¹, wherein it was held that if the misconduct is grave and the punishment is proportionate to such misconduct, the fact that on a similar charge the criminal Court had acquitted some officer on application of a different standard of proof, would not be a relevant factor to guide the discretion of the disciplinary authority. Learned counsel also relied on a judgments in **Divisional Controller, Karnataka State Road Transport Corporation Vs. M.G. Vittal Rao**², **Union of India and others V. P. Gunasekaran**³, **V. Srinivas Vs. Superintendent of Police, Medak District, Sangareddy, Medak and others**⁴, **A.P.SRTC V. Raghuda Siva Sankar Prasad**⁵ and **Noida Entrepreneurs Association V.**

¹ 2007 (6) ALD 597

² (2012) 1 Supreme Court Cases 442

³ (2015) 2 Supreme Court Cases 610

⁴ 2001 (2) ALD 44 (DB)

⁵ (2007) 1 Supreme Court Cases 222

Noida and Others⁶, wherein it was held that even if a person stands acquitted by a criminal Court, domestic enquiry can be held, since standard of proof required in a domestic enquiry and that in a criminal case are different and further held that once the delinquent employee was found guilty of charges and there was due adherence to natural justice while conducting domestic enquiry, punishment of dismissal was proportionate to delinquency. Therefore, he submits that the Award does not warrant any interference.

Considering the respective submissions and having perused the entire record, it reveals that while passing the impugned order the Tribunal has considered the following points:

- 1) Whether the petitioner drove the vehicle with lack of anticipation causing accident which resulted in death of a passenger travelling the private auto as stated in the charge sheet?
- 2) Whether there is any irregularity or illegality in the domestic enquiry conducted against the petitioner?
- 3) Whether the punishment of removal of the petitioner by the Depot Manager and confirmed by Appellate and Review authority is disproportionate to the charge proved?
- 4) To what relief the petitioner is entitled.

Having discussed the above points, the Tribunal held that since the place of accident is a straight road and the width of the road is 12 feet with 5 feet margin on either side of the road, the petitioner being an experienced driver could have left nothing chance by

⁶ (2007) 10 Supreme Court Cases 385

driving the bus slowly and carefully to avoid the accident, but he drove the vehicle with lack of anticipation and caused the accident. It was further held that during the domestic enquiry, the petitioner was provided with an opportunity to cross-examine the Preliminary Enquiry Officer, but he did not cross-examine him, and further held that in order to prove that he has slow down the bus at the accident spot, he did not choose to produce any evidence nor marked any documents on his behalf to show that at request of one passenger, who purchased the ticket upto the stage where the bus was stopped near the place of accident. Upon perusing the material produced before it, the Tribunal further held that Ex.M-13 (List of Punishments) shows that the petitioner was once removed from service for causing similar fatal accident earlier and also shows that seven times the cost of damages were recovered from the petitioner for causing damages to the bus in accidents. It is also further held that the petitioner could not point out effectively any illegalities or irregularities in conducting domestic enquiry and he did not choose to cross-examine the witness of the Management during the enquiry, therefore, there was no irregularity or illegality in the departmental enquiry and thereby passed the impugned order.

It is the contention of the learned counsel for the petitioner that the Conductor was examined by the Enquiry Officer. Likewise, one other person who was examined on behalf of the Management is one Sri Raja Reddy, Assistant Manager who has submitted his preliminary report. The disciplinary authority based on the preliminary report and the deposition of the Preliminary Enquiry Officer had totally ignored the deposition and the evidence

of the Conductor who was the sole witness to the proceedings. The Conductor in his deposition had stated as follows:

“When the service bus passed two kilometres from Mulbagal, the passengers of the service bus shouted that one of the Auto coming in the opposite direction on to the service bus and on observing the same service driver turned his vehicle to the left side and stopped on the left side of the road margin, but the said Auto driver suddenly turned to his right side and made a hit to the service bus at the diesel tank portion. I got down from the bus and observed that the driver of the said Auto fled away. Further observation that two persons travelling in the said Auto had sustained severe injuries. The driver of the said Auto was driving with overload of nine passengers in the said Auto.”

As a matter of fact, when the witness was offered for cross-examination, there was no cross-examination and the deposition on behalf of the Conductor was not discredited in any manner. This crucial aspect of the matter was not considered by the disciplinary authority. Even before the Labour Court, the said aspect was raised and the Labour Court also failed to consider the same.

In those circumstances, it can fairly be said that the finding of the negligent driving was based on no evidence. In that view of the matter, the removal of the petitioner from service was not sustainable. Petitioner was aged 52 years when he filed the writ petition in 2009. Even in normal circumstances, petitioner would have retired from service by this time and further considering the fact that the accident had occurred some where in the year 2002 and the petitioner was removed from service in the year 2003, no useful purpose would be served by remanding the matter back to the Labour Court at this point of time. Taking overall situation

into consideration and considering the fact that on earlier occasion also the petitioner was involved in fatal accident, though that may not be the relevant factor with respect to the punishment imposed, in the interest of justice, the impugned order of removal is liable to be set aside. The petitioner is out of employment from 2003 and there is no material before this Court that the petitioner was not gainfully employed during the entire period. In those circumstances, this Court is not inclined to grant back wages. For all other purposes, petitioner shall be entitled to the orders on account of this Court holding the removal from service as unsustainable.

Accordingly, the writ petition is allowed setting aside the order of the disciplinary authority as confirmed by the Industrial Tribunal-cum-Labour Court, Anantapur in I.D.No.51 of 2005 by an Award dated 25.03.2009. No orders as to costs.

Consequently, the Miscellaneous Petitions, if any shall also stand dismissed.

CHALLA KODANDA RAM, J.

Date:30.09.2016
Ssv/Gk