

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No. 1317 OF 2009

ORDER:

The petitioner, who was employed as the driver of the Andhra Pradesh State Road Transport Corporation, while working at its Bodhan Depot, Nizamabad District, was served with a charge-sheet dated 17.02.1995 alleging that on 15.02.1995, he caused grievous injuries to a 14-year-old boy on account of his rash and negligent driving of the bus bearing Registration No. AP 9Z 2267 of the Corporation on his way from Banswada to Bodhan. The charges were held proved and hence, *vide* order dated 05.08.1995, the disciplinary authority imposed the penalty of reduction of his pay by two incremental stages for a period of three years with cumulative effect, besides treating the period of suspension as 'not on duty'. On Appeal, the punishment was modified to that of postponement of annual increment next falls due for a period of two years with cumulative effect, besides treating the period of suspension as 'not on duty'. The Revision preferred there against was rejected by the 3rd respondent Regional Manager. Thereafter, the petitioner preferred Industrial Dispute No. 37 of 2006, which was dismissed through Award dated 14.03.2007 impugned in this Writ Petition. The Industrial Dispute was dismissed on two grounds: 1) the punishment imposed on the petitioner is not shockingly disproportionate to the misconduct committed by him and hence, the Industrial Tribunal has no jurisdiction to interfere with the same, in exercise of its powers under Section 11-A of the Industrial Disputes Act, 1947; and

2) there is a delay of 10 years on the part of the petitioner in approaching the Tribunal.

Learned counsel for the petitioner attacks the Award of the Industrial Tribunal contending that the Tribunal can interfere when the punishment awarded is disproportionate to the proven misconduct. Insofar as the aspect of delay of 10 years in approaching the Tribunal is concerned, the learned counsel submits that there is no limitation prescribed for such purpose.

On the other hand, Sri N. Vasudeva Reddy, learned Standing Counsel for T.S.R.T.C. submits that the Award does not warrant any interference.

In view the rival submissions, it is apt to extract the provisions under Section 11-A of the Industrial Disputes Act, 1947.

Section 11-A : Power of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of Workmen:-

Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct re-instatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require:

Provided that in any proceeding under this Section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.

It is not in dispute that Section 11-A of the Act confers power on the Tribunal to consider modifying the Award, if it satisfies to that effect. A perusal of the Award dated 14.03.2007 shows that the Tribunal has not undertaken any discussion regarding the gravity of the punishment. It simply came to the conclusion that the punishment imposed on the petitioner is not shockingly disproportionate to the misconduct committed by him. Such being the position, the observations made by the Presiding Officer of the Tribunal are unsustainable.

Insofar as the second limb of the argument is concerned, the disciplinary authority imposed the penalty of reduction of the petitioner's pay by two incremental stages for a period of three years with cumulative effect, on 05.08.1995. Thereafter, the Appeal was filed. Subsequently, the review preferred was rejected on 02.08.2003. The Industrial Dispute preferred there against was dismissed on 14.03.2007. Hence, it cannot be said that there is a delay of ten years in approaching the Tribunal.

In this backdrop, this Court finds that the matter deserves to be remanded to the Industrial Tribunal for consideration afresh the limited aspect *'whether there are any grounds made out by the petitioner in a given set of facts on record calling for imposition of a lesser punishment than that was imposed by the disciplinary authority'*.

Hence, the Writ Petition stands allowed. The order dated 14.03.2007 is set aside. The Industrial Tribunal-I, Hyderabad is directed to consider and dispose of the matter afresh within a

period of six months from the date of receipt of a copy of this order.

No costs.

Consequently, the Miscellaneous Applications, if any shall stand disposed of.

CHALLA KODANDA RAM, J.

29th August 2016

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