

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD

**FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

**THURSDAY, THE TWENTIETH DAY OF JULY TWO
THOUSAND AND SIXTEEN**

–
Present

HON'BLE SRI JUSTICE P.NAVEEN RAO

–
WRIT PETITION No.2998 of 2011

Between:

The Regional Secretary, APSRTC Employees Union, Cuddapah,
rep. by MVS. Reddy E.405631 Driver, s/o.Chelama Reddy, aged
about 46 years, R/o. Kadapa, Kadapa District.

.. Petitioner

AND

The Regional Manager, APSRTC., Cuddapah Region, Cuddapah
District.

.. Respondent

The Court made the following:

-
-
-

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

-

WRIT PETITION No.2998 of 2011

ORDER

Heard learned counsel for the petitioner and learned Standing Counsel for the respondent Corporation.

2. Petitioner was employed as Driver on 01.07.1990. Charge sheet dated 09.08.2001 was served on him leveling four charges. Enquiry was conducted into the allegations levelled against the petitioner which resulted in imposing the punishment of removal from service by the disciplinary committee vide order

dated 15.12.2001. The appellate authority rejected his appeal vide its order dated 20.02.2002. Aggrieved thereby, petitioner preferred a revision. The revisional authority vide its order dated 07.10.2002, nullified the punishment of removal from service and in the said place, passed orders treating the appointment of petitioner as a fresh appointee. Aggrieved by the said orders, petitioner filed I.D.No.250 of 2005 before the Industrial Tribunal-cum-Labour Court, Anantapur. The said I.D. was dismissed by order dated 29.01.2010, which is impugned in the writ petition.

3. Petitioner assails the order of the revisional authority as affirmed by the Labour Court on the ground that the order of the

revisional authority is erroneous. The revisional authority could not have imposed punishment of appointment as a fresh candidate when no such punishment is prescribed in the Regulations governing the post of Driver in the respondent Corporation. As part of the disciplinary proceedings, no punishment can be imposed which is not prescribed under Regulations. It is the contention of the learned counsel for the petitioner that this fact was not appreciated by the Labour Court. The Labour Court, on the erroneous ground that the petitioner was challenging the orders of the revisional authority after having accepted the appointment without protest in joining the service, dismissed the said I.D.

4. Learned Standing Counsel for the respondent Corporation sought to support the order of the Labour Court and contended that the Labour Court has come to right conclusion since the charges levelled against the petitioner were proved and more as a compassion, the orders were passed by the revisional authority treating his appointment as a fresh appointee and therefore, the petitioner cannot complain of the decision taken by the revisional authority. Having accepted the appointment, it was not open to the petitioner to challenge the same before the Labour Court and therefore, the writ petition is not maintainable.

5. It is not in dispute that four charges were levelled against the petitioner and all the charges were proved. The sum and substance of the allegations in the charges is that the petitioner while traveling from Cuddapah to Chennai was carrying certain prohibited forest goods and when confronted, he declared the contents of the bag belonging to him as motor parts. However,

on verification, it was found that the bag contained prohibited forest goods. Petitioner was traveling in the bus as a passenger. From his possession, these forest goods were recovered. The defence of the petitioner is that since he was not driving the vehicle and he was only a passenger, the disciplinary proceedings could not have been taken against him on the mere ground that certain prohibited goods were found in his possession. It is also contended that the petitioner was acquitted in the criminal case holding the charges as not proved and therefore, the disciplinary action is not maintainable.

6. I see no merit in the said contention. Admittedly, the petitioner was an employee of the respondent Corporation and was aware that no prohibited goods can be carried in the respondent vehicle. Thus, higher responsibility vests on him in ensuring that no prohibited goods can be carried in the vehicle even if he travels in the respondent vehicle as a passenger. On the contrary, he carried the prohibited goods and apparently gave a wrong declaration of the contents of the bag belonging to him.

7. However, on more serious issue petitioner is liable to succeed. On revision filed by the petitioner, the revisional authority, while upholding the disciplinary action, taking due note of the previous record of the petitioner, passed orders appointing him as a fresh candidate.

8. As seen from the operative portion of the order of the Labour Court, the Labour Court did not appreciate the issue agitated by the petitioner and mis-directed itself in holding that

having taken the benefits of reviewing authority order it is not permissible to the petitioner to challenge the same.

9. In this context, it is appropriate to notice that the revisional authority passed orders dated 07.10.2002 treating the appointment of petitioner as a fresh appointee. Soon thereafter petitioner instituted industrial dispute. Thus, it cannot be said that the petitioner was not diligent in prosecuting legal remedy and waived his right of challenge by accepting as a fresh appointee.

10. As per the Regulations governing the service conditions of respondent Corporation, punishments that can be imposed are prescribed which range from dismissal/removal to withholding of increments, reversion and suspension, as substantive punishment etc. But the Regulations do not prescribe imposing punishment of 'appointment as a fresh candidate'. This aspect need not detain further in view of the judgment of this Court in **K.C.Narayana v. Managing Director**^[1]. On detailed consideration of the relevant Regulations, a Single Judge of this Court held that the order of revisional authority appointing the petitioner as fresh candidate is not valid in law.

11. In the instant case also, a similar order was passed. Following the aforesaid decision, the order of revisional authority is liable to be set aside only to the extent of appointing as fresh candidate. As a consequence, the matter is remitted to the revisional authority to reconsider the issue of imposing of appropriate punishment. Such a decision shall be taken within a

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

12. The Writ Petition is, accordingly, allowed. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this writ petition, shall stand closed.

P.NAVEEN

RAO, J

20th July, 2016

sj

[\[1\]](#) (2007) 5 ALD 416