

HONOURABLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No.13962 of 2010

ORDER:

1. The petitioner was appointed as a driver in the respondent corporation in the year 1989. While he was performing his duty on 09.02.2008 on bus bearing No.A.P.10 Z 2252 from Kothagudem to Hyderabad, he was forced to operate TIM machine and after reaching Suryapet bus station, some passengers boarded the bus. After the bus started from Suryapet, a check was conducted and it was noticed that though he received an amount of Rs.118/- from two passengers, he issued only one ticket and he did not issue ticket to another lady passenger. In view of the same, charges were framed and the matter was enquired into. Pursuant to the charge sheet dated 26.02.2008, the petitioner submitted his explanation on 12.03.2008 denying the charges. An Enquiry Officer was appointed and he submitted his report on 26.05.2008 holding that the charges were proved. The petitioner was issued a show cause notice of removal from service on 07.06.2008 and he submitted an explanation to the said show cause notice. Thereafter, the petitioner was removed from service by proceedings dated 19.06.2008. The appeal filed by the petitioner to the appellate authority was rejected on 22.07.2008. Thereafter, the petitioner preferred a review petition to the 1st respondent and the same was allowed on 16.10.2008 by setting aside the order of removal and imposing the punishment of deferment of annual increments for a period of two years with cumulative effect and also not treating the period of suspension till the date of reinstatement as on duty for the purpose of leaves and increments. Challenging the said order dated 16.10.2008 passed by the reviewing authority, 1st respondent, the present writ petition was filed.

2. Learned Counsel for the petitioner submits that though the punishment imposed was postponement of two annual increments with cumulative effect and also not treating the period of suspension till the date of reinstatement as on duty, the petitioner suffered postponement of one more increment permanently. He further submits that the reviewing authority, 1st respondent, accepted the explanation of the petitioner and took a lenient view only after coming to the conclusion that the petitioner did not indulge any irregularity.

3. Learned Standing Counsel appearing for the respondents, on the other hand, submitted that the reviewing authority, 1st respondent, justified the action taken by the 3rd respondent as well as the 2nd respondent, but took a lenient view and hence it cannot be said that he accepted the explanation submitted by the petitioner.

4. The charges framed against the petitioner read as follows:-

“(i) For having received an amount of Rs.118/- from two passengers, who boarded the bus at Suryapet to Hyderabad, (ex-stages 3 to 4) (59.00 + 59.00) instead of issuing two tickets, you have issued one ticket value of Rs.59.00 of TNA.No.29660 which constitutes misconduct in terms of Regulation 28 (vi) (a) & (x) of APSRTC Employees (Conduct) Regulations, 1963.

(ii) For having collected Rs.59.00 from a lady passenger who boarded the bus at Suryapet to Hyderabad (ex stages 3 to 4) and not issued ticket to the lady passenger, which constitutes misconduct in terms of Regulation 28 (vi) (a) & (x) of the APSRTC Employees (Conduct) Regulations, 1963.

(iii) For having seen the TTIs, you are trying to issue ticket TNA.No.29668, worth of Rs.118.00 to the lady passenger, the same was seized from you and report was given to that extent, which constitutes misconduct in terms of Regulation 28 (xxvii) of the

APSRTC Employees (Conduct) Regulations, 1963.”

5. The 1st respondent passed an order on 16.10.2008 holding as follows:

”The review petition preferred by the Ex-driver Sri B.Ramdass is perused together with the entire evidence available on record. This is a case of C & T irregularity committed by the driver while performing TIMS duty by way of not issuing tickets to two individual passengers of Rs.59/-. The TTIs stated that the driver issued those two tickets in one TNA No. by seeing them. The driver in his explanation stated that he did not issue the tickets on seeing the TTIs, but he issued those tickets only on verification duly stopping the bus and in the meanwhile the TTIs came and checked his bus. On perusal of the entire case, it is clear that the driver had already issued tickets to the passengers before the TTIs entered into his bus. The passengers confirmed that the driver did not issue tickets to them at the boarding point itself, but he issued tickets to them at Kattangur. Though the action taken by the D.M and Dy.CTM are quite justified, by taking into consideration of the explanation of the driver and his illiteracy a lenient view is taken. Further, the TTIs could not prove the sighting punch of the driver by the passengers in their statements. Hence, the review petition is considered as stated below:

1. Reinstated into service and posted to Bhadrachalam depot.
2. His annual increment is postponed for a period of two (2) years with cumulative effect.
3. The period from suspension to reinstatement is treated as ‘not on duty’ for the purpose of leaves and increments.
4. The security deposit is forfeited and DM/BCM advised to collect S.D. afresh and to send him for medical examination for fitness check up before reinstatement.
5. He shall not be booked to express charge for a

period of two (2) years.

6. He should report to the DM/BCM within 7 days of the receipt of this order.”

6. There is no dispute that the Enquiry Officer conducted an enquiry and held that the charges were proved. The reviewing authority took into consideration the first irregularity, considered the explanation submitted by the petitioner and also the statements of the passengers and came to the conclusion that the action taken by the Depot Manager and Deputy Chief Traffic Manager was justified. However, he took into consideration the explanation of the petitioner and his illiteracy and accordingly modified the punishment of removal from service. The reviewing authority did not apply his mind with regard to the second irregularity which was also held to be proved by the Enquiry Officer. In any event, the reviewing authority, 1st respondent, did not differ from the report submitted by the Enquiry Officer with regard to the proved charges. He exercised the power of discretion and imposed a lesser punishment. The discretionary power exercised by the 1st respondent cannot be interfered with by this Court by further modifying it in exercise of its power under Article 226 of the Constitution of India.

7. The Writ Petition is accordingly dismissed. No order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

A.RAMALINGESWARA RAO, J

06-04-2016
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