

THE HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Writ Petition No.32791 of 2016

ORDER

The petitioner was appointed as Conductor and his services were regularized with effect from 01.01.1989. Thereafter, he was promoted as Assistant Depot Clerk (ADC) in February, 2015. While so, he was issued a charge sheet on 28.05.2016 alleging that he failed to concentrate on receiving the bus cash and absconded from duties from 8.00 to 16.00 hours on 25.5.2016 without permission from STI. Pursuant to the same, he submitted his explanation on 14.6.2016 explaining the circumstances and denying the allegations. Without considering the same, the 2nd respondent appointed an Enquiry Officer, who in turn, submitted his report. Based on the said report, the 2nd respondent issued show cause notice of removal dated 6.8.2016. Challenging the same, the writ petitioner filed W.P.No.30412 of 2016 and this Court passed the following order:

“The petitioner already submitted his objections to the report of the Enquiry Officer. Normally, this Court is not inclined to interfere with the discretion of the disciplinary authority, at this stage. But, the learned Counsel for the petitioner submits that the alleged incident is trivial and the show cause notice proposing to remove the petitioner from service is a drastic step, which is disproportionate to the alleged misconduct. This Court is of the prima facie view that the submission of the learned Counsel for the petitioner is genuine.

In the circumstances, though a show cause notice for removal from service was issued by the second respondent, this Court hopes that the second respondent would take into consideration the nature of the misconduct, the enquiry report and the explanation submitted by the petitioner while imposing the punishment, which need not necessarily result in removal from service.

With the above observations, this Writ Petition is disposed of directing the second respondent to take the overall circumstances into consideration and pass appropriate orders in accordance with law”.

Pursuant to the aforesaid direction, the second respondent passed the impugned order on 10.09.2016 removing the petitioner from service. Challenging the same, the present writ petition is filed.

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

3. A perusal of the impugned order shows that it is an elaborate order, but on reading of the same, it is clear that the second respondent transcribed the charges and the enquiry up to middle of page No.4 of the order. Thereafter, he has narrated what was happened till filing of W.P.No.30412 of 2016 in the penultimate paragraph and in last paragraph, he has stated as follows:

“I, therefore hereby ordered that Sri G. Raj Kumar, E.301846 ADC, of Bodhan Depot be removed from the service of the Corporation with immediate effect, besides treating the period of suspension as ‘not on duty’ for all purposes. The entire security deposit outstanding to the credit of the employee be forfeited to the Corporation”.

This clearly shows non-application of mind of the second respondent as this Court specifically directed him to take into consideration the nature of misconduct, the enquiry report and the explanation submitted by the petitioner while imposing punishment. Those aspects have not been considered by the second respondent while passing the impugned order. The re-production of extract of the enquiry report and narration of events that have subsequently taken

place till filing of the writ petition is a matter of record and it does not involve any application of mind. However, while taking a decision in the last paragraph of the impugned order, the second respondent should have spell out any reason or ground for removing the petitioner from service. In the absence of such reasons, this Court is constrained to set aside the impugned order and remand the matter to the second respondent for reconsideration in the light of the order passed in W.P.No.30412 of 2016 dated 08.09.2016.

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

27th September, 2016
sj

A. RAMALINGESWARA RAO, J

