

THE HON'BLE SRI JUSTICE A.V. SESA SAI

WRIT PETITION No.23953 of 2003

ORDER:

This Writ Petition, filed under Article 226 of the Constitution of India, challenges the award, dated 10-04-2003 passed by the Industrial Tribunal-I, Hyderabad (hereafter called, 'the Tribunal') in I.D.No.75 of 2001.

The petitioner herein while working as Conductor in the respondent - Road Transport Corporation was served with a charge sheet, dated 06-11-1997 framing the following charges:

"1. For having failed to observe the rule and complete ticket issues within fare stage at TIC Point while conducting vehicle No.378 on 20-10-1997 which constitutes misconduct under Regulation No.28 (vi)(a) of APSRTC Employees (Conduct) Reg., 1963.

2. For having collected the fare of Rs.2.25 each from two passengers found alighting without ticket at Langar House and traveled from Mehdipatnam, Ex.Stages 7 to 9 and failed to issue tickets even after collecting the requisite fare at their boarding point i.e., Mehdipatnam itself which constitutes to mis-conduct under Regulation 28 (vi)(a) of APSRTC Employees (Conduct) Reg. 1963.

3. For having collected the fare of Rs.2.75 Ps., each (Total Rs.16.50) from six passengers found traveling without tickets from Mehdipatnam to Golconda, Ex-stages 7 to 11 and failed to issue tickets to them even after collecting the requisite fare at their boarding

point itself which constitutes misconduct under Regulation No.28 (vi)(a) of A.P.S.R.T.C., Employees' (Conduct) Reg.1963.

4. *For having failed to close the tray numbers of all denominations in service statistical Return upto check point i.e., Stage No.9, which constitutes misconduct under Reg.28 (xxv) of APSRTC Employees (Conduct) Reg.1963."*

In response to the said charge sheet and the charges contained therein, the petitioner herein submitted an explanation on 12-11-1997. Thereafter the Disciplinary Authority appointed an Enquiry Officer who conducted enquiry and submitted a report on 19-02-1998. Enclosing a copy of the report of the Enquiry Officer, the Disciplinary Authority issued a show cause notice of removal on 12-05-1998. Subsequently, the Disciplinary Authority passed an order of removal on 30-05-1998. After un-successfully availing the remedies of appeal and review, the petitioner herein raised Industrial Dispute No.75 of 2001 on the file of the Tribunal under Section 2A(2) of the Industrial Disputes Act, 1947 (hereafter called, 'the Act'). The Tribunal passed an award on 10-04-2003, dismissing I.D.No.75 of 2001 filed by the petitioner herein.

Challenging the validity and the legal sustainability of the said award, confirming the order of removal passed by the

Disciplinary Authority, the present Writ Petition came to be filed.

Heard, Sri G. Ravi Mohan, learned counsel for the writ petitioner and Sri N. Vasudeva Reddy, learned Standing Counsel for the respondent – Road Transport Corporation.

It is contended by learned counsel for the petitioner that the questioned award is erroneous, contrary to law and opposed to the very spirit and object of the provisions of the Industrial Disputes Act, 1947. It is further submitted by learned counsel that the Tribunal failed to consider the evidence available on record from proper perspective, which resulted in dismissal of the Industrial Dispute. It is further contended that the authorities did not place any evidence on record to prove the allegations made against the petitioner herein and on the other hand, the statements of the witnesses recorded during the course of domestic enquiry would show the innocence of the petitioner. It is further submitted by learned counsel that in absence of recovery of any excess amount from the petitioner the allegations made against the petitioner herein cannot be sustained in the eye of law. It is further submitted that the Tribunal did not undertake any exercise in the direction of considering the proportionality of the punishment inflicted on the petitioner in terms of Section 11-A of the Act.

On the contrary, it is strenuously contended by learned Standing Counsel for the 2nd respondent – Road Transport Corporation that there is absolutely no illegality nor there exists any procedural infirmity in the impugned action and as the award passed by the Tribunal is supported by valid and cogent reasons, in absence of any perversity, the impugned award cannot be disturbed nor it can be meddled with, in exercise of the powers conferred under Article 226 of the Constitution of India. It is further submitted that the statements recorded on behalf of the Management would demonstrate, in clear terms, the guilt of the petitioner herein. It is also submitted by learned Standing Counsel that in absence of any evidence produced by the petitioner as regards his alleged illness, the interference of this Court with the impugned Award is un-warranted. It is further stated that since the Tribunal considered all the aspects in meticulous and through manner, the award passed by the Tribunal does not warrant any interference under Article 226 of the Constitution of India.

In the above backdrop, now the issues that emerge for consideration of this Court in present Writ Petition are:

1. *Whether the award impugned in the present Writ Petition is sustainable and tenable?*
2. *Whether the petitioner herein is entitled for any relief under Article 226 of the Constitution of India?*

A reading of the charges framed against the petitioner herein discloses clearly that out of the four (4) charges, charge Nos.2 and 3 are grave in nature. The Tribunal, basing on the material available, framed the following three (3) points for consideration:

1. *Whether the petitioner-workmen is guilty of the charges leveled against him?*
2. *Whether the order of removal of the petitioner from service is shockingly disproportionate to the charges leveled against him?*
3. *To what relief?*

During the course of domestic enquiry the Enquiry Officer recorded the statements of S/Sri R. Venkataiah, T.T.I., who checked the bus, Sri Shaik Ismail, Driver of the subject bus and Sri Mir Azam Ali Khazmi, traveling passenger. The said statements were marked as Exs.M-10, M-12 and M-13 respectively before the Tribunal. The copies of the said statements are also placed on record.

Sri R. Venkataiah, T.T.I., during the course of cross-examination stated that the signature of the service Driver was obtained on the charge Memo due to ill-ness of the service Conductor.

The Driver of the bus, Sri Shaik Ismail, also stated in his Ex.M-12 statement that since Conductor was not in a

position to acknowledge the charges he acknowledged the charge Memo as instructed by the T.T.I.

Another significant aspect, which needs mention in this context is that one of the passengers, Sri Mir Azam Ali Khazmi in Ex.M-13 statement deposed as under:

EO to Passenger: Please explain in length details of checking during the course of your journey in the bus?

Passenger: I Sri Mir Azam Ali Khazmi had boarded at Mehdipatnam to go upto Golconda meanwhile the check took place at Langerhouse and detected 4 to 5 ticketless travellers in the bus. There is a argument between passenger having paid the amount to the Conductor. But I observed the ticketless travellers have not paid fares to the conductor. The said passengers are regular travellers without ticket and as and when checking took place they simply tell to the officials for having paid fare to the conductor. The said ticketless travellers restricted me not to record any statement and some of them have got down at Langerhouse. The said passengers have got down from the bus without signing MTD 267.

EO to Passenger: Do you like to tell any more about the incident?

Passenger: The TTIs have framed the Charges using power arguing with the conductor and I have forced to record the statement as dictated by the TTIs.”

The learned Presiding Officer while considering Exs.M-2 and M-13 statements made an observation that the said co-passenger Sri Mir Azam Ali Khazmi, who recorded the

statements of the passengers was won over by the petitioner herein.

In the considered opinion of this Court the said finding recorded by the learned Presiding Officer is completely and totally bereft of any foundation. But peculiarly while holding so the learned Presiding Officer also observed that in Ex.M13 statement of Sri Mir Azam Ali Khazmi would have mentioned about the ill-health of the petitioner. It is further clear from the statement of the said co-passenger, Sri Mir Azam Ali Khazmi, that the passengers were regular travellers without tickets and that he observed that the travellers did not pay the fares to the Conductor and as and when the check takes place they would simply say to the officials that they paid the fares to the Conductor. He also stated that the said passengers got down from the bus without signing and he was forced by the officials to record the statement on dictation. It is not the case of the respondents herein that excess amount was recovered from the possession of the petitioner herein.

The statement of T.T.I., i.e., Ex.M-10 clearly demonstrates that the petitioner herein was not well at relevant point of time. But the learned Presiding Officer recorded a finding that the petitioner herein failed to produce any evidence as to his ill-ness. The said finding in view of the

above reasons is untenable and contrary to the material on record.

The learned Presiding Officer completely lost sight of the above statements of T.T.I., and the co-traveller. In the impugned award the learned Presiding Officer observed at paragraph No.19 that Ex.M-13 shows that ticketless passengers clearly stated that they paid the requisite fare at their boarding place i.e., Mehadipatnam cross-roads but the petitioner failed to issue them tickets. This finding of the learned Presiding Officer is contrary to the material available on record and in fact a perusal of Ex.M-13 clearly discloses the absence of the same. There is absolutely no valid reason for the Industrial Tribunal to discard the statement recorded vide Ex.M-13.

In the impugned order the learned Presiding Officer also observed that the contention of the petitioner that he was sick and that on account of the sickness he could not close the S.R. is not proved by cogent evidence. In the considered opinion of this Court it is unsustainable and untenable in view of the statements marked as Exs.M-10 and M-12.

This Court finds sufficient force in the submission of learned counsel for the petitioner that the charges 1 and 4 are minor in nature and their sustainability depends on the sustainability of the charges 2 and 3. Analysis of the evidence

on record clearly discloses that the learned Presiding Officer did not properly consider the evidence available on record, which eventually resulted in dismissal of Industrial Dispute.

In view of these reasons, this Court has no iota of doubt to hold that the Tribunal is not justified in dismissing the Industrial Dispute raised by the petitioner herein. The respondent authorities failed to prove the charges leveled against the petitioner herein. In absence of any evidence to prove the guilt of the petitioner, this Court finds no justification on the part of the respondent authorities in inflicting the punishment of removal from service.

For the aforesaid reasons, the writ petition is allowed, setting aside the award, dated 10-04-2003 passed by the Industrial Tribunal-I, Hyderabad in I.D.No.75 of 2001 and the respondents are directed to reinstate the petitioner into service with all consequential benefits, such as, continuity of service, attendant benefits and back wages. There shall be no order as to costs.

The Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

A.V. SETHA SAI, J

December 28, 2016

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THE HON'BLE SRI JUSTICE A.V. SESA SAI



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