

THE HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION (TR) No.187 OF 2017

Dated:06.07.2017

Between:

Mohd Abdul Mohaimin, S/o. M.A. Moinoasi,
Aged about 52 years, working as Administrator
Officer, O/o.Deputy Transport Commissioner,
Attapur, Ranga Reddy, R/o.H.No.16-8-827,
Malakpet, Hyderabad .. Petitioner

And

The Transport Commissioner,
Andhra Pradesh, Hyderabad and another .. Respondents



The Court made the following:

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!Counsel for the petitioner : Sri P. Amarender

Counsel for the Respondents : Learned Government
Pleader for Services – II

<Gist :

>Head Note:

? Cases referred: -



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ORDER:

At the relevant point of time, petitioner was working as Administrative Officer. On 05.08.2008, a charge memo was drawn against him alleging that he was responsible for issuing temporary permits to a contract carriage in a routine and regular manner in violation of provisions under Section 88 (8) of the Motor Vehicles Act. Petitioner submitted his explanation denying the allegations. However, not satisfied with the said explanation, departmental enquiry was ordered. The enquiry officer submitted his report on 09.03.2010 holding the charges levelled against the petitioner are not proved. The disciplinary authority disagreed with the finding recorded by the enquiry officer and by recording dissenting note called for the explanation from the petitioner vide Memo dated 25.07.2010. Petitioner filed detailed explanation dated 13.09.2010 to the said memo. By the order impugned, final orders are passed imposing punishment of censure. On appeal by the petitioner, the same was confirmed. Aggrieved thereby, petitioner filed O.A.No.241 of 2013, which is now transferred to this Court.

2. The first and foremost submission made by learned counsel for the petitioner is that when the enquiry officer recorded finding of not guilty and if the disciplinary authority was not agreeing with the finding recorded by the enquiry officer, dissenting note must contain detailed reasons as to why the finding is not acceptable and then call for an explanation and thereafter, the disciplinary authority should consider the validity of the explanation submitted

by the delinquent employee and pass an order dealing with those objections, assigning due reasons in support of the decision and then proceed to impose proper punishment, if the explanation is not accepted. It is therefore contended that this procedure, which is mandatory and required, is not followed in the instance case and that the disciplinary authority has not assigned reasons in support of the decision and straight away imposed the punishment and therefore the order under challenge is liable to be set aside on that ground alone.

3. Learned Government Pleader for Services – II supports the decision of the disciplinary authority. According to him, the reasons assigned in support of the dissenting note sufficiently pointed out as to why the disciplinary authority was not agreeing to the conclusion arrived at by the enquiry officer and there is no ambiguity and when once the reasons are spelt out in the dissenting note that the disciplinary authority is agreeing with the earlier reasons on rejecting the objections filed by the petitioner, it cannot be said that the order under challenge is vitiated on that ground.

4. In view of the rival contentions, it is useful to extract the provision in Rule 21 (2) and (3) of the Telangana Classification Control and Appeal Rules. The Rule reads as under:

“(2) The disciplinary authority shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by the disciplinary authority or where the disciplinary authority is not the inquiring authority a copy of the report of the inquiring authority **together with its own tentative reasons for disagreement**, if any, with the findings of inquiring authority on any article of charge to the Government servant

who shall be required to submit, if he so desires, his written representation of submission to the disciplinary authority within fifteen days, irrespective of whether the report is favourable or not to the Government servant.

(3) The disciplinary authority ***shall consider the representation, if any, submitted by the Government servant and record its findings before proceedings further in the matter as specified in the sub-rules (4) and (5) below.***

(emphasis supplied)

5. A plain reading of the Rule makes it clear that it is permissible for the disciplinary authority to dissent from the findings recorded by the enquiry officer and call for the explanation of the employee. However, the disciplinary authority is required to record his disagreement so that the delinquent employee would know the reasons for not agreeing with the findings of the enquiry officer and respond to the show cause notice. Thus, the requirement of assigning reasons for disagreement are relevant. Ordinarily, if the disciplinary authority agrees with the findings of the enquiry officer, calls for the explanation and takes a decision affirming the findings of the enquiry officer, there may not be a need to deal with the objections elaborately, unless the context of a case requires. However, when there is disagreement to the findings and conclusion arrived at by the enquiry officer, the objections filed are required to be considered objectively and each of the objections have to be dealt with in detail. A reading of sub-rule (3) extracted above would also make it clear that the rule mandates the disciplinary authority to first take a decision on the objections filed by the employee against the disagreement note before proceeding further to impose punishment under sub-rule (5)

of the Rules. Even it is assumed that Rule is not very specific on this aspect, assigning reasons has to be read into, as such reasoning is necessary to enable the employee to work out his further remedies, by way of appeal or challenge before the Court of law. As disciplinary proceedings are quasi-judicial in nature, the order must contain reasons in support of the decision. Principles of natural justice and equity also require assigning due reasons in support of the decisions, more particularly when the objections are filed against dissenting note on the findings of the enquiry officer.

6. In the case on hand, the objections are not dealt with and no reasons are assigned. In one sentence it was stated that “representation of the charged officer is not convincing” and straight away proceeded to impose punishment. Thus, the order under challenge is not sustainable on that ground alone.

7. Having regard to history of the litigation and in view of the fact that petitioner is due for retirement in September, 2017, the Court called upon the petitioner as well as learned Government Pleader to explore the possibility of resolution of dispute. However, it appears, as per the instructions furnished by the petitioner to learned counsel, petitioner is not in favour of any other manner of resolving the issue, since petitioner believes that if he succeeds in establishing that punishment is not validly imposed, he would be entitled to claim promotion from the date when his juniors were promoted whereas he was denied promotion on the ground of pending disciplinary proceedings, which resulted in imposing punishment of censure and there is scope to earn further promotion before he attains the age of superannuation and retires

from service. In view of the same, there appears to be no possibility of resolution of the dispute to give quietus to the litigation.

8. Thus, at this stage, Court is only dealing with the validity of the order impugned on the touchstone of not assigning reasons in support of decision by disciplinary authority on the explanation to the dissent note on the finding recorded by enquiry officer. Having found merit in the contention of learned counsel for the petitioner that the order is not sustainable for the reasons recorded above, the order impugned is set aside and the matter is remitted to the disciplinary authority to the stage of consideration of explanation filed by the petitioner to the show cause notice dated 25.07.2010.

9. A fresh consideration shall be made and appropriate decision shall be taken after dealing with the objections filed by the petitioner, as expeditiously as possible, preferably within a period of four weeks from the date of receipt of a copy of this order.

10. The Writ Petition (TR) is accordingly allowed. There shall be no order as to costs.

Miscellaneous Petitions, if any, pending in this Writ Petition (TR) shall stand closed.

P. NAVEEN RAO, J

Date:06.07.2017

Note:- L.R. copy to be marked.

(B/o)
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