

THE HON'BLE SRI JUSTICE S.V. BHATT

W.P.No.315 OF 2003

ORDER:

Heard Si A.K.Jayaprakash Rao for petitioner and Mr.L.Preetham Reddy for 2nd respondent.

The petitioner prays for Certiorari to call for the record leading up to and inclusive of award of the 1st respondent in I.D.No.61 of 2000 dated 04.03.2002 whereunder backwages were denied, and quash the same as illegal and suffers from perversity.

The petitioner was working as a Conductor in 2nd respondent/ Depot. On 21.07.1998, the petitioner was conducting Mulug to Pasra route. At stage No.8, checking of the bus was undertaken by the officials of 2nd respondent. Basing on the check report and deficiencies noted by checking staff, the 2nd respondent issued charge memo dated 23.09.1998. The charge reads as follows:

“The conductor had issued tickets bearing Nos.027/790347 to 027/790362 (E.16) of Rs.12/- deno. to 16 passengers consisting of batches (3+3+3+1+2+2+2) duly collecting requisite fare of Rs.192/- at the fare of Rs.12/- each, at their boarding place of Mulugu stage No.13 who were bound for Hanamkonda stage No.3 but he had failed to account these tickets in the statistical return No.A4/8861669, up to the place of check i.e., stage No.8”.

The 2nd respondent conducted disciplinary enquiry into the charges and removed the petitioner from service through order dated 22.10.1998. The petitioner challenged the order of removal in I.D.No.61 of 2000. The 1st respondent through award dated 04.03.2002 set aside the order of removal dated 22.10.1998 and directed reinstatement of petitioner as Conductor with

continuity of service, but without backwages. The 1st respondent directed stoppage of one increment without cumulative effect after the petitioner is reinstated. Hence, the writ petition.

Sri Jayaprakash Rao contends that the check was conducted at stage No.8. It is not the case of the 2nd respondent that either in the check inspection report or in the evidence brought on record in the disciplinary proceeding that the petitioner has not issued the tickets to the passengers. But the charge against petitioner is that the issue of tickets is not reflected in the Statistical Return (SR). According to him, the petitioner did not misappropriate or embezzle the amount of the Corporation. From the beginning, the petitioner is offering explanation that the passengers have indulged in argument with petitioner on the frequent strikes in the APSRTC and, therefore, there was some delay in entering the SR. Therefore, he submits that, having regard to the findings recorded by the 1st respondent, the denial of backwages and further direction of stoppage of one increment cannot and could not be sustained. According to him, the punishment now imposed is disproportionate and shocks the conscience of anyone. In the case on hand, the Tribunal was not in agreement with the quantum of punishment imposed by the 2nd respondent, and having accepted that the quantum of punishment imposed on the petitioner, shocks the conscience, the Tribunal ought to have directed payment of backwages as well. He relies upon the decision in UP STATE ROAD TRANSPORT CORPORATION AND OTHERS v.

MAHESH KUMAR MISHRA AND OTHERS¹ for the proposition that this Court can interfere with the punishment inflicted on the delinquent employee if the punishment shocks the conscience of the Court. He prays for setting aside the award to the extent refusing to grant backwages and imposing stoppage of one increment punishment.

Sri Preetham Reddy appearing for 2nd respondent submits that the petitioner was given full and fair opportunity in the disciplinary enquiry conducted by 2nd respondent. The petitioner even from the finding recorded by the Tribunal is found to be negligent in discharge of his duty as Conductor. One of the primary duties of a Conductor is to issue tickets and record the entries before passing of next stage. According to counsel for 2nd respondent, the 1st respondent has exercised the complete discretion available under Section 11-A of the Industrial Disputes Act and no perversity in the reasoning of the 1st respondent is pointed out by petitioner. Even assuming that this Court has power to modify the punishment, still having regard to the findings recorded by the primary authority as well as the 1st respondent, the case does not attract a situation where the discretion of this Court can be exercised on the ground that the punishment now imposed shocks the conscience of the Court. He places strong reliance on the decisions reported in KARNATAKA STATE ROAD TRANSPORT CORPORATION v. B.S.HULLIKATTI² and V.RAMANA v. APSRTC AND OTHERS³ and prays for dismissing the writ petition.

¹ (2000) 1 LLJ 1113

² 2001(2) SCC 574

³ (2005) 7 SCC 338

I have perused the material available on record and carefully considered the ratio laid down by the Apex court in the decisions referred to above. On the jurisdiction of this Court to interfere with the quantum of punishment and the circumstances in which the discretion can be exercised is no more *res integra*. I do not want to burden the order with well established propositions of law. Let me examine the circumstances and the objections raised by the petitioner.

The petitioner is charged with the allegation of not entering the tickets bearing Nos.027/790347 to 027/790362 of Rs.12/- denomination to 16 passengers in the SR sheet. The 2nd respondent on the charges framed against the petitioner conducted disciplinary enquiry and removed the petitioner from service. The 1st respondent in I.D.No.61 of 2000 on the pleadings and the material available on record has framed the following three points for consideration:

1. Whether the petitioner was given fair and reasonable opportunity during domestic enquiry?
2. Whether the charge framed against the petitioner is proved, according to law and material on record?
3. Whether the punishment imposed against the petitioner in domestic enquiry is disproportionate to the charge proved against the petitioner in the given facts of the matter?

On point No.1, the Tribunal held that the petitioner was given fair and reasonable opportunity during the disciplinary enquiry. On point No.2, the Tribunal has recorded categorical finding that from the act of omission one can infer is that the omission amounts

to negligence but not misconduct to defraud the Corporation. To the extent that misconduct lead to financial loss to Corporation is not accepted, still the charge is accepted as one of negligence. The Tribunal has considered the punishment in the background of the findings recorded on point No.2. After considering the material available on record in exercise of its jurisdiction under Section 11-A of the Industrial Disputes Act, the Tribunal has modified the punishment as noted above. The submission of Mr. Jayaprakash Rao that even assuming that the finding on point No.2 is partly against the petitioner still the imposition of punishment of reinstatement without backwages ought to shock the conscience of this Court is not appealing to this Court for these two reasons – (a) the primary responsibility of a Conductor is not only to issue tickets, but also receive fare for the tickets issued and (b) as required of a Conductor make entry of all the tickets issued by him before the next stage is reached, for the tickets if not entered before the stage is completed, there is every possibility of re-issuing the tickets to the passengers who board at the next stage. These are matters to be considered and decided firstly by the 2nd respondent and within the four corners of law under Section 11-A of the Industrial Disputes Act by the 1st respondent. The petitioner was completely unsuccessful before the 2nd respondent and the Tribunal in my considered view has taken into consideration all the circumstances relevant for modifying the punishment imposed on the petitioner and once the finding of negligence stares at petitioner, the punishment imposed does not warrant interference and is commensurate.

The writ petition fails and is, accordingly, dismissed. There shall be no order as to costs.

Consequently, miscellaneous petitions, if any pending, stand closed.

14th March, 2017

Lrkm

S.V.BHATT, J

