

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

WRIT PETITION No.3231 of 2007

ORDER:

This writ petition, under Article 226 of the Constitution of India, by the unsuccessful petitioner-workman-driver is directed against the proceedings, dated 15.10.2004, of the 3rd respondent-the Depot Manager, APSRTC, Manuguru.

2. I have heard the submissions of *Sri G. Ravi Mohan*, learned counsel appearing for the writ petitioner, and of *Sri B. Mayur Reddy*, learned Standing Counsel representing the respondents. I have perused the material record.

3. The facts, which are necessary to be stated as a prelude to this order, in brief, are as follows:

The petitioner was appointed as a driver in the respondent-Corporation, on 01.01.1993. While he was working in Manuguru Bus Depot and was driving a Bus bearing registration no.AP 11 Z 2932, on 09.04.2004, on route, Manuguru to Tirupati, at around 05:10 hrs., at Forest Range Office, Kothagudem, the Bus was involved in an accident. In the said accident 11 passengers received grievous injuries and were shifted to Government hospital for treatment. The said Bus was badly damaged in the said accident. TI-II of Manuguru depot visited the accident spot and submitted his report to the Depot Manager. Based on the said report, a charge sheet was issued to the petitioner and he was suspended from service. Thereafter, an enquiry officer was nominated for conducting a detailed enquiry. The enquiry officer, after duly conducting enquiry, gave a report, dated, 06.07.2004, holding that the charge is proved. Thereafter, a show cause notice was served on the

petitioner. The petitioner submitted his explanation on 05.10.2004. As his explanation was found not convincing and satisfactory, the Depot Manager, in his orders, dated 15.10.2004, while agreeing with the findings of the enquiry officer that the charge is proved, imposed a penalty of postponement of annual increment of the petitioner for a period of two (02) years with cumulative effect besides treating the suspension period as 'not on duty' for all purposes. The petitioner's appeal was rejected by the Divisional Manager *vide* orders, dated 07.02.2005. Therefore, the petitioner-workman is before this Court.

4. Learned counsel for the petitioner would submit as follows:

The petitioner gave a detailed explanation to the charge. The same was not considered properly and in the correct perspective. Though a fellow driver gave a statement allegedly against the petitioner at the earliest opportunity, the said driver stated before the enquiry officer that while the petitioner was driving the bus an auto came from the opposite direction at a high speed and that the petitioner swerved the bus to the left side to avoid hitting the auto and that the petitioner at that time noticed one uprooted tree which was lying on the road and, therefore, drove the bus to further left and that in that process the bus went off the road towards left side and hit another tree and came to a halt. Even in the explanation, the petitioner stated that an auto came in the opposite direction at a high speed and that when the auto reached near the bus, the auto driver suddenly swerved it towards the bus; and, that on noticing the same, the petitioner swerved the bus completely onto the left side of the road and applied brakes in order to avoid being hit by the auto; but, he lost the control; and, when one wrecked tree branch came in the way, the bus halted. In the accident, the petitioner also sustained injuries, which are minor. The front

portion of the bus was damaged. Thus, the accident occurred in avoiding an accident, that is, head on collision with an auto and in attempting to save human lives. However, the enquiry officer erroneously concluded that there was no evidence of an auto coming in the opposite direction and there was no necessity for the driver of the bus to go off the double road and dash a tree. The enquiry officer wrongly held that the petitioner would have averted a big accident had he taken timely action and that the petitioner drove the bus off the double road and uprooted a tree by dashing it and that later the bus stopped on hitting against another tree. The enquiry officer ought not to have relied upon the first statement of the fellow driver when he resiled from his earlier statement and gave true facts about the manner of accident at the time of enquiry. The learned enquiry officer wrongly relied upon extraneous circumstances like sketch map and was carried away by the fact that about 10 passengers in the bus sustained grievous injuries and heavy damage was caused to the bus. The Disciplinary authority did not discuss the facts and evidence, in detail, and passed a cryptic order; the said order is liable to be set aside. The appellate authority did not consider the grounds of appeal in an objective manner and mechanically confirmed the findings of the lower authority. The petitioner was having a very clean record and the same was not considered at the time of imposing penalty. In any view of the matter, the penalty imposed is highly and shockingly disproportionate to the proved misconduct.

5. Per contra, learned Standing Counsel for the Corporation while supporting the findings of the enquiry officer, the disciplinary authority and the appellate authority would contend as follows: - 'The accident occurred due to the rash and negligent acts of the petitioner. The

fellow driver and the passengers in their spot statements stated that the accident occurred due to the rash and negligent acts of the petitioner. The road at the accident spot is a double road. The enquiry officer after careful assessment of the evidence found that no auto was involved in the incident and that the evidence does not suggest that an auto came from the opposite direction before or at the time of accident. The fellow driver gave inconsistent statements. The driver drove the bus rashly and beyond the double road and ploughed the mud road and did not apply brakes even when the bus was going off road and hence, there are no skid marks on the road and that the petitioner first dashed a tree and that the tree was uprooted and that the bus came to a halt after dashing another tree. The enquiry officer considered the evidence on record including that of the officer, who made the spot inspection immediately after the accident, the scene of offence rough sketch and also the manner of accident including the way the bus went off the double road and the damage that was caused to the bus before concluding that the petitioner lacked anticipation and was responsible for the accident by his rash and negligent driving. The disciplinary authority noted in the show cause notice and also in his proceedings, dated 15.10.2004, that he carefully perused the record including the available evidence and also the gravity of the matter; yet has taken a lenient view and imposed a lesser penalty; his approach reflects application of mind. As the grounds of appeal are devoid of merit the appeal was dismissed. The writ petition which is devoid of merit may be dismissed.'

6. I have noted the facts and submissions. I have gone through the evidence carefully. The manner of accident was spoken to by the fellow

driver of the petitioner and some of the passengers including the injured passengers who were hospitalised. The officer who inspected the spot immediately after the accident carefully examined the scene of accident and prepared a rough sketch and then examined both the drivers and also the passengers at the spot and the injured passengers at the hospital and obtained their statements. His observations and interactions revealed that the bus went off the road towards the left side for 120" and dashed a tree which was uprooted and further ploughed into the field for another 560" and that the place at the field where the bus came to a halt is at a distance of 255" from the left road margin from rear tyres and of 320" from the front right tyre. He noted that the absence of skid marks confirmed that the driver did not apply brakes; and stated that though the driver stated that an auto came from opposite directions none of the witnesses confirmed it. The co-driver of the petitioner stated that he was issuing tickets at the time of accident and that at forest check post, suddenly an auto came from the opposite direction and that it came in line with the bus and that on noticing the same the petitioner swerved the bus completely to the left side but there was a fallen tree on the left side of the road and hence, the driver/petitioner took the bus to the further left side and therefore the bus went off the road to the further left side of the road and dashed a tree and hit another tree and halted. He further stated that the auto, which came in line with the bus, quickly went off towards the right side of the bus and escaped unhurt and that about 10 passengers in the bus sustained injuries and that the accident occurred because of the auto all of a sudden coming in the way of the bus near the forest check post. The officer who inspected the spot opined that no vehicle came in the opposite direction and that the absence of skid marks on the road

indicate that brakes were not applied by the petitioner and that the way the bus went off the road to such a long distance after uprooting a tree in the field clearly reflect that the bus was going at a high speed and that the bus driver lacked anticipation and caused the accident. On scrutiny of evidence, the enquiry officer came to a conclusion that there was no evidence of the auto coming in the opposite direction but there is evidence to show that the bus went off the road and uprooted a tree by hitting against it and ploughed into the land and came to a stop. There is nothing wrong in the enquiry officer relying upon the sketch map in a domestic enquiry to which strict rules of evidence enshrined in the Indian Evidence Act are not applicable. Further, the required standard of proof is preponderance of probability. In a case of this nature, the circumstances and the manner of accident itself are redolent of the fact that the driver of the bus was responsible for the accident. The absence of the skid marks coupled with the circumstances that the bus completely went off the double road towards the left side and uprooted one tree by hitting against it and further dragged the trunk of the tree with the differential of the bus and that the tree branches crushed the front roof of the bus and that the wind screen glasses were broken and the foot board of the bus was completely damaged in the accident clearly indicate that the driver had not applied brakes and that the driver drove the bus without anticipation and at a high speed and in a rash and negligent manner and that therefore the bus driver, who lost control over the bus, was responsible for the cause of accident. Even accepting for a moment that an auto came from the opposite direction is true, yet the manner of the accident does not support version of the driver that he was not rash & negligent and that he did not lack anticipation; and it is not at all totally justifying or adequate

explanatory circumstance. The principle enshrined in the doctrine of *res ipsa loquitur* can be applied in a case of this nature.

7. The decision in *K.David Willson v. Secretary to Government, Law Department, Hyderabad*¹ was relied upon by the learned counsel for the petitioner in support of the propositions that a departmental enquiry conducted for the purpose of disciplinary action against a public servant is not a empty formality and it is well settled that the disciplinary authority cannot make use of any material or evidence collected by it in the course of preliminary enquiry against the charged workman unless those materials and evidence are produced and proved in accordance with law in regular departmental enquiry and the charged employee is given a fair opportunity to meet those adverse material and evidence and that the departmental enquiry is a serious proceeding intended to give the delinquent a chance to meet the charge and to prove his innocence and that therefore, it is necessary to record the examinations in chief in the presence of the charged officer and afford him a right to cross examine the witnesses who give evidence against his interests and that the departmental enquiry shall be conducted in accordance with regulations/ Rules governing the same and the principles of natural justice. The legal propositions are not disputed by the respondent. Learned Standing Counsel for the Corporation would submit that in the case on hand, two witnesses were examined in the presence of the petitioner and a right to cross examine them was afforded to him and that the passengers need not be examined as per the precedential guidance in the decisions in *Divisional Controller, N.E.K.R.T.C v.*

¹ 2001 (5) ALT 65 (DB)

H. Amaresh² and Karnataka State Road Transport Corpn. Vs. B.S. Hullikatti³. Be it noted that in the case on hand, even if the legally acceptable evidence is considered and scrutinised, the conclusions and findings arrived at by the Enquiry Officer are possible and therefore, the decision relied upon by the petitioner is not helpful to the petitioner to advance his case. In the decision in Union of India v. P. Gunasekaran⁴, the Supreme Court dealt with the scope of interference of this Court under Articles 226 or 227 of the Constitution of India and held, *inter alia*, as under:

“In disciplinary proceedings High Court is not and cannot act as a second court of first appeal and that the High Court, in exercise of its powers Under Article 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence and that the High Court can only see whether:

- (a) the enquiry is held by a competent authority;
- (b) the enquiry is held according to the procedure prescribed in that behalf;
- (c) there is violation of the principles of natural justice in conducting the proceedings;
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
- (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;
- (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;
- (g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;
- (h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;
- (i) the finding of fact is based on no evidence.”

8. On the above analysis of evidence and keeping in view the legal position obtaining, this Court finds that there is sufficient material to

² (2006) 6 SCC 187

³ (2001) 2 SCC 574

⁴ (2015) 2 SCC 610

accept that the petitioner was responsible for the accident and hence, it can safely be held that the charge is proved.

9. Therefore, having regard to the facts and the settled legal position, this Court holds that the contention that the charge is not proved needs no countenance.

10. Coming to the quantum of punishment, it is to be noted that a lenient view was already taken and a penalty of withholding of annual increment for a period of two (02) years with cumulative effect besides treating the suspension period as 'not on duty' for all purposes was only imposed. Having regard to the misconduct held proved, this Court does not find that the penalty imposed either shocks the conscience or is shockingly disproportionate to the gravity of the charge proved.

11. Viewed thus, this Court finds that the contentions of the petitioner do not merit consideration and that the writ petition, which is devoid of merit, is liable for dismissal.

12. In the result, the writ petition is dismissed.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed. There shall be no order as to costs.

M. SEETHARAMA MURTI, J

24.03.2017
Vjl