THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.19599 of 2006

ORDER:

The unsuccessful petitioner-workman (driver) filed this writ petition, under Article 226 of the Constitution of India, assailing the Award, dated 13.10.2005, of the learned Chairman of the Industrial Tribunal-II, Hyderabad, passed in ID.no.64 of 2004 (old ID.no.53 of 2002 of LC.II, Hyd).

2. I have heard the submissions of *Sri P. Govinda Rajulu*, learned counsel for the writ petitioner, and of *Sri N. Vasudeva Reddy*, learned Standing Counsel appearing for the respondents 1 and 2.

3. The parties in this writ petition shall hereinafter be referred to as the petitioner-workman and respondent-Corporation.

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

On 03.01.2000, the petitioner-workman while performing cash receiving duty from 18.00 to 02.00 hours was said to have committed certain irregularities in feeding the information into the computers. As such, a charge sheet was issued to the petitioner. As the explanation submitted by the petitioner was unsatisfactory, a detailed enquiry was ordered by appointing an Enquiry Officer. After due enquiry, the Enquiry Officer submitted a report holding that all the charges are proved. Thereafter, a show cause notice proposing the penalty of removal from service was served ipon the petitioner. Eventually, by proceedings, dated 29.11.2000, the petitioner was removed from service. The appeal and review preferred by the petitioner were rejected respectively, on 18.09.2001 and 27.03.2002. Aggrieved thereof, the petitioner raised an Industrial Dispute before the Tribunal by filing a claim petition. The learned Chairman of the Tribunal, having found that the charges are proved and that the enquiry officer is correct in holding that the charges are proved dismissed the claim petition of the petitioner-workman. Aggrieved thereby, the petitioner preferred this writ petition.

5. The case of the petitioner-workman and the submissions made on his behalf, in brief, are as follows:

The petitioner was appointed, on 15.08.1975, as a conductor in the respondent Corporation. He was promoted, on 21.04.1988, as ADC (Assistant Depot Clerk). While so, the 2nd respondent issued a charge memo, dated 05.01.2000, to the petitioner-workman, alleging that, on 03.01.2000, while performing 18.00 to 02.00 hours cash duty he failed to feed the way bill correctly and that having accounted 7.40 HNK service way bill No.05800001 as 13.10 Narayanapet, misappropriated an amount of Rs.93.10 ps as incentive amount by feeding 7.40 HNK service way bill No.05800001 as 13.10 NRPT. The petitioner submitted his explanation, *inter alia*, stating as follows: 'He was not trained in the field of computer applications; he did his job to the best of his ability; due to rush of work he has opened the key number of 027 instead of key no.113 and that, therefore, the amount earned by the service meant for Hanumakonda was reflected on the service of Narayanapet; on account of such mistaken feeding, a sum of Rs.93.10 ps was shown by the computer as incentive payable to the crew; when he came to know about the said wrong and that the incentive was not paid to the conductor, he placed the same before the Depot Clerk (DC) earning; however, instead of appreciating the above facts, a memo was issued with oblique motive to implicate the petitioner in a false case and the petitioner was also suspended from service by orders, dated 01.02.2001, and a charge sheet, dated 15.02.2000, was issued framing the charges; in the alleged preliminary enquiry no witnesses were examined in his presence; due to a *bona fide* mistake the key number of the service of Narayanapet was opened instead of Hanumakonda-incoming service; it was only a clerical and arithmetical mistake; but, not a wrong done with any intention.' Thus the petitioner explained the inadvertent mistake and requested the DC to take the remittance of Rs.93.10 ps.; instead of taking it, a memo was issued to him. There is no misappropriation on the part of the petitioner nor was any complaint lodged by the conductor concerned against him. In-fact, the petitioner submitted his explanation stating that the allegations levelled against him are without any basis and that they were developed as an after thought to only aggravate the charges and that the everyday earnings are being scrutinized and that necessary entries were being made and that during the course of (8) months period as mentioned in charge number V there was no single complaint that the incentive amounts payable to the crew were not paid to the crew. Some other ADC had also committed mistake, but no action was taken against him. Therefore, the action taken against the petitioner is arbitrary; and, the charges framed against him are untenable under facts and in law. Inspite of the petitioner submitting his explanation, without giving any reasons, an enquiry was ordered. During the course of enquiry, without furnishing list of documents and list of witnesses to be examined in support of the charges, the enquiry officer conducted the enquiry by acting as a prosecuting officer. With great difficulty the petitioner attended the enquiry. There is no dependable evidence against him from the respondent's side in the domestic enquiry. But acting in a prejudicial manner, the enquiry officer, without giving any reasonable opportunity to the petitioner and in violation of principles of natural justice, submitted his report finding the petitioner guilty. Therefore, the enquiry report is illegal and arbitrary. When the petitioner was called upon to submit his comments on the enquiry report, he submitted his objections and comments opposing the findings of the enquiry officer as perverse and further requested that due to non payment of subsistence allowance from the month of August, 2000, the petitioner suffered even to have hand to mouth existence. Without considering his objections and comments objectively, with a predetermination, a show cause notice proposing a penalty of removal was issued against him as an empty formality. The petitioner submitted his explanation to it; however, without considering the same, the 2nd respondent imposed capital departmental punishment of removal in an arbitrary manner. The 1st respondent, appellate authority, also did not objectively and properly consider the explanation of the petitioner. Therefore, the entire action of the respondents Corporation is practically the same as an unfair labour practice. Ever since the date of removal, the petitioner remained unemployed and could not get any alternative employment inspite of his best efforts. He and his entire family members are facing very great hardship. The Tribunal also failed to see that due to lack of training in computer work and proper knowledge in operating the computer, the mistake happened; but, the act of misconduct was not intentionally done as alleged by the respondent Corporation. The Tribunal failed to see that the petitioner has not pocketed any amount due to the mistake in feeding the key in the computer. The Tribunal ought to have seen that the enquiry officer erroneously relied upon the conclusion of the preliminary enquiry officer and that the enquiry officer failed to give any finding on the responsibility of the depot clerk who is in-charge for earnings in the unit. The Tribunal ought to have seen that the work, which was allotted to the petitioner, was not connected to the work well known to the petitioner and that the alleged amount was not misappropriated by him. The Tribunal failed to give any finding on the enquiry report and on the aspect that no enquiry was conducted. The Tribunal failed to see that the Depot Manager has not given any finding on the charges and no independent findings were given charge wise. The Tribunal failed to consider the case of the petitioner-workman under Section 11A of the ID Act and no finding was given under the said provision. The Award of the Tribunal may be set aside and the writ petition may be allowed directing the respondent Corporation to reinstate the petitioner with continuity of service with all attendant benefits and back wages.

6. Per contra, the case of the respondents-Corporation and the submissions of the learned Standing Counsel for the Corporation, in brief, are as follows:

The duties assigned to the post held by the petitioner are – 'to receive cash and equipment from the conductors of the spell of duties, accounting the cash by feeding in the computer; and, if the crew of services are eligible for incentive on achieving the target amount, to pay the same on the spot, by obtaining acknowledgement of the crew of the service'. On 03.01.2000, the petitioner while performing duty of cash receiving from 18.00 hrs to 02.00 hrs committed serious irregularities while feeding the information in the computer after receiving the cash from the crew. The petitioner received cash from the crew of 7-40 hrs., Hanamkonda service wherein the service conductor, K.D. Reddi, remitted cash of Rs.2,995/-; the target for the service is Rs.4,583/-. As the crew did not achieve the target amount, he is not entitled for the incentive. But, the petitioner played fraud and entered the service way bill no.05800001 in the computer as if the crew performed 13-10 hrs., Narayanpet service. Though the petitioner collected the revenues of 18-00 Hanumakonda service, he showed the same as received cash of 13-10 hrs of Narayanpet service. The target of Narayanpet service being low, the petitioner by entering the cash received of 7-40 hrs., Hanamkonda service, showed the cash as realised from Narayanapet service by using SSP program in the computer and pocketed the incentive amount of Rs.93.10 ps. Similar irregularities and misappropriations have come to light on verification of the records maintained by the petitioner while working as ADC in cash section from June, 1999 to January, 2000. Thus, the petitioner misappropriated the Corporation revenues amounting to Rs.3,617-16 ps. The petitioner has unauthorisedly used SSP program in feeding the date in the computers. The petitioner committed serious irregularities by intentionally feeding lowest targeted services/cancelled services in the computers instead of feeding the actual services, which acts caused loss to the Corporation. The petitioner also failed to feed the cancelled KMs in respect of some of the services and taken the spot incentive of the crew though they are not eligible; due to above misappropriation the Corporation suffered loss of revenue of Rs.1,366-15 ps., during the period between June, 1999 and January, 2000 and amounts of Rs.2,185- and Rs.1,366-15 ps., accumulated in excess to the monthly incentives of the crew and depot pool amount respectively. Thus, a total sum of Rs.7,169/- was misappropriated by the petitioner by way of manipulation and improper feeding of the way bills. The enquiry officer, after a detailed enquiry found that all the charges are proved. The learned Chairman of the Tribunal having found that the charges are proved and that the enquiry officer is correct in holding that the charges are proved dismissed the claim petition of the petitioner-workman. The petitioner has not remained unemployed as alleged by him. All the documents were furnished to the petitioner, all witnesses were examined in the presence of the petitioner, reasonable opportunity was furnished to the petitioner at all stages, and the enquiry was duly conducted as per procedure by observing principles of natural justice; and, after examining the facts, evidence and all circumstances of the case, a finding of guilt was arrived at by the enquiry officer and the said findings were confirmed by the appellate authority and reviewing authority. As the petitioner has no valid explanation or objections to offer and considering the gravity of the charges levelled and proved, the penalty which is proportional to the charges proved was imposed against the petitioner. The Supreme Court time and again observed in various decisions that when once the charges are proved, the penalty imposed by the disciplinary authority shall have primacy and shall not be interfered with by the Tribunal or the High Court. The writ petition is devoid of merit and is liable for dismissal.

7. I have noted the facts, pleadings and submissions. Before proceeding further, it is apposite to refer to the charges framed against the petitioner-workman, which verbatim read as under:

> i) For having failed to make data entry of Way Bill No:050000-01 of 07-00 hrs Hanmakonda service conducted by Sri K.D. Reddy, E.290796, on service Key No:113, who remitted bus cash on 3-1-2000 after incoming of the said service while you were performing 18-00 hrs., to 02-00 Hrs., cash duty in earnings section on 3-1-2000, which constitutes misconduct under Reg.28(xvii) of APSRTC Employees (conduct) Reg.1963.
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> (ii) For having failed to feed the Way Bill No.05800001 of 07.40 Hrs., Hanmakonda service conducted by Sri K.D.Reddy, E.290796, on Key No.113, in vehicle departure programme in computer on 3-1-2000 while you were performing cash duty from 18.00 hrs to 02-00 hrs in earnings section, which constitutes misconduct under Reg.28 (xviii) of APSRTC Employees (Conduct) Reg. 1963.
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> iii) For having used SSP programme in computer unauthorizedly to feed the Way Bill No.05800001 of 7-40 Hrs. Hanmakonda service on Key No.027 on 3-1-2000, while you were performing cash duty in earning section from 18-00 hrs to 02-00 hrs in earnings section, which constitutes misconduct under Reg.28 (xxxi) of APSRTC Employees (Conduct) Reg. 1963.
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> iv) For having feed data entry of 7-40 hrs., Hanmakonda service way Bill No.05800001, conducted by Sri K.D.Reddy, E-290796 into Key No.027 of 13-10 hrs. Narayanpet service instead of actual key No.113 with a mala fide intention of fraud the corporation revenues to a tune of Rs.93.10 ps as crew spot incentive amount though the 7.40 Hrs., Hanmakonda service is not achieved the target of Rs.4,583/- by feeding to the 13-10 Hrs Narayanpet service which service target is Rs.1,320/- as the 7-40 Ps. Hrs., Hanmakonda service actual earnings realised to Rs.2,995/-, which constitutes misconduct under Reg.28(x) of APSRTC Employees (conduct) Reg.1963.
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> v) For having misappropriated Corporation revenues to a tune of Rs.3,617-16 ps during the period of June, 1999 to January, 2000 by feeding 57 way bills intentionally into lowest targeted services/cancelled services instead of feeding to the actual services with an intention to fraud the Corporation while you were performing cash duties in earnings section of Siddipet depot which resulted an amount of Rs.2,185-04 ps and Rs.1,366-15 ps excess accumulated to crew monthly incentive amount and Rs.1,366-15 ps to depot pool amount respectively during the above period which caused the Corporation lose its revenues to Rs.3,551-19 ps besides your misappropriated amount, which constitutes misconduct under Reg.28 (x)(xxxii) of APSRTC Employees (conduct) Reg.1963.

8. I have carefully perused the material record.

9. The learned chairman of the Tribunal framed the points for determination and considered the case on each point after analysing the facts and evidence on each aspect including the aspect as to whether the non payment of the subsistence allowance caused any prejudice to the petitioner, who fully participated in the enquiry and strongly resisted the charges sought to be proved against him. The Tribunal examined the various aspects including the aspect of preliminary enquiry and the manner in which it was held and it also examined the statements of the witnesses recorded during the preliminary enquiry and the documents relied upon for formulating the charges. The Tribunal then considered the charges framed and the explanation of the petitioner to the charges framed. The Tribunal then examined the validity of the procedure followed for conducting enquiry and recorded satisfaction on the said aspects; the Tribunal then went on to examine the evidence that was adduced during the course of enquiry and its sufficiency and probative value before reaching the finding that the charges are proved. The Tribunal noted that the timings of the two services are different and then evaluated the evidence of the DC besides the documentary evidence and noted from the evidence that the amount paid by the petitioner as per computer Cr. note was Rs.1,18,178.15 ps., without any alteration and that the petitioner did not give any intimation regarding any incentives paid and that the total cash submitted by him was remitted to the bank; but, on the DC verifying the incentive statements it was revealed that there was a difference of Rs.93.10ps., and that he informed of the same to the CI. On such verification by the C.I., what was found actually was this: "TNS 2 was 13-10 Narayanapet D/O service, on 03.01.2000, and that the conductor and the driver of the said service remitted ticket amount of Rs.553.50 ps., though their target amount was Rs.1,320/-; hence, no incentive was paid to the crew of the said service; the second way bill accounted for was with regard to the conductor and driver who performed

duty on 03.01.2000 at 7.40 hours HNK-SDPT service; their vehicle came to the depot at 21.30 hours; that service conductor remitted ticket amount of Rs.2,982/- though the target amount of the said service was Rs.4,583/-; hence, having remitted the said ticket amount, the said service conductor had not taken any incentive as the target was not achieved; however, on receipt of cash from the conductor, the petitioner instead of feeding on 7-40 HNK service No.HNK6, fed/entered the same into 13.00 hours Narayanapet service No. TNS 2 the target for which was only Rs.1,320/- and thus an incentive of Rs.93-10 was misappropriated." The Tribunal also noted from the evidence that on verification of previous records by the C.I some more such incentive misappropriations have come to be noticed and it was also noticed on verification of CR notes of the petitioner that he had done SSP on low target services and had drawn incentives and misappropriated the same and that on some occasions there were part cancellations of KMs and service achieved targets and that loss accumulated to the Corporation. The learned Chairman of the Tribunal also referred to, in his Award, the tabulated figures based on record. A careful perusal of the material record including the Award of the Tribunal would show that after examination of the facts correctly and the evidence in proper perspective, the learned Chairman of the Tribunal arrived at a conclusion that charges are proved and, hence, confirmed the findings of the Enquiry Officer. This Court, in the facts and circumstances of the case, does not find any grounds much less valid grounds calling for interference with the said concurrent findings of fact recorded by the enquiry officer and the Chairman of the Tribunal. When once conclusions arrived at by the enquiry officer and the Chairman of the Tribunal are found to be sustainable on facts and evidence, this Court will not normally substitute its subjective opinion in the place of the one arrived at by the said officers.

10. In the decision in Union of India v. P. Gunasekaran[1] 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:
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> (a) the enquiry is held by a competent authority;
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> (b) the enquiry is held according to the procedure prescribed in that behalf;
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> (c) there is violation of the principles of natural justice in conducting the proceedings;
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> (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
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> (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;
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> (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;
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> (g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;
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> (h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;
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> (i) the finding of fact is based on no evidence."

10.1. In Divisional Controller, N.E.K.R.T.C. Vs. H. Amaresh[2], the Supreme Court held as follows:-

> In the instant case, the mis-appropriation of the funds by the delinquent employee was only Rs. 360.95. This Court has considered the punishment that may be awarded to the delinquent employees who mis-appropriated funds of the Corporation and the factors to be considered. This Court in a catena of judgments held that the loss of confidence as the primary factor and not the amount of money mis-appropriated and that the sympathy or generosity cannot be a factor which is impermissible in law. When an employee is found guilty of pilferage or of mis-appropriating a Corporation's funds, there is nothing wrong in the Corporation losing confidence or faith in such an employee and awarding punishment of dismissal. In such cases, there is no place for generosity or misplaced sympathy on the part of the judicial forums and interfering therefore with the quantum of punishment. The judgment in Karnataka State Road Transport Corpn. Vs. B.S. Hullikatti, (2001) 2 SCC 574 was also relied on in this judgment among others. Examination of passengers of vehicle from whom the said sum was collected was also not essential. In our view, possession of the said excess sum of money on the part of the respondent, a fact proved, is itself a mis-conduct and hence the Labour Court and the learned Judges of the High Court misdirected themselves in insisting on the evidence of the passengers which is wholly not essential. This apart, the respondent did not have any explanation for having carried the said excess amount.

[1] (2015) 2 SCC 610
[2] (2006) 6 SCC 187

> This omission was sufficient to hold him guilty. This act was so grossly negligent that the respondent was not fit to be retained as a conductor because such action or inaction of his was bound to result in financial loss to the appellant irrespective of the quantum.

11. On the quantum of punishment, the Supreme Court, in Divisional Controller, KSRTC (NWKRTC) Vs. A.T.Mane[3], held as follows:-

> Coming to the question of quantum of punishment, one should bear in mind the fact that it is not the amount of money misappropriated that becomes a primary factor for awarding punishment, on the contrary, it is the loss of confidence which is the primary factor to be taken into consideration. In our opinion, when a person is found guilty of misappropriating corporation's fund, there is nothing wrong in the corporation losing confidence or faith in such a person and awarding a punishment of dismissal.

11.1 Again in U.P. State Road Transport Corporation, Dehradun Vs. Suresh Pal[4], the facts disclose that in the domestic enquiry it was found that the petitioner/workman was guilty of not issuing tickets to twenty passengers who were traveling by the time when the check was done by the Checking Official of the UPSRTC; The Corporation imposed a punishment of dismissal from service; The same was upheld by the Labour Court and the High Court; However, the learned judge of the High Court directed reinstatement of the conductor into service by substituting the punishment of dismissal with the punishment of 'one censure entry' and stoppage of two increments with cumulative effect without back wages. The Supreme Court held that after having held that the charge against respondent conductor was proved, it was not open to the High Court to interfere with the quantum of punishment.

11.2 In Karnataka State Road Transport Corporation Vs. B.S.Hullikatti[5], the Supreme Court held as follows:-

> On the facts as found by the Labour Court and the High Court, it is evident that there was a short-charging of the fare by the respondent from as many as 35 passengers. We are informed that the respondent had been in service as a Conductor for nearly 22 years. It is difficult to believe that he did not know what was the correct fare which was to be charged. Further-more, the appellant had during the disciplinary proceedings taken into account the fact that the respondent had been found guilty for as many as 36 times on different dates. Be that as it may, the principle of res ipsa loquitur, namely, the facts speak for

[3] (2005) 3 SC 254
[4] (2006 (3) LLJ 967(SC) = (2006) 8 SCC 108
[5] AIR 2001 SC 930

> themselves, is clearly applicable in the instant case. Charging 50 paise per ticket less from as many as 35 passengers could only be to get financial benefit by the Conductor. this act was either dishonest or was so grossly negligent that the respondent was not fit to be retained as a Conductor because such action or inaction of his is bound to result in financial loss to the appellant-Corporation.
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> It is misplaced sympathy by the Labour Courts in such cases when on checking it is found that the Bus Conductors have either not issued tickets to a large number of passengers, though they should have, or have issued tickets of a lower denomination knowing fully well the correct fare to be charged. It is the responsibility of the Bus Conductors to collect the correct fare from the passengers and deposit the same with the Company. They act in a fiduciary capacity and it would be a case of gross misconduct if knowingly they do not collect any fare or the correct amount of fare.
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> In our opinion, the order of dismissal should not have been set aside, but we are informed that in the meantime the respondent has already superannuated. We, therefore, on the special facts of this case, do not set aside the order of reinstatement, but direct that the respondent would not be entitled to any back wages at all but he would be entitled to the retrial benefits.

12. Reverting to the facts of the case on hand this Court held that the finding that the charges are proved does not call for interference. Coming to the quantum of punishment in the case on hand, the learned Chairman of the Tribunal having considered the proportionality of penalty confirmed the penalty of removal from service. Considering the graveman of the charges proved, it is manifest that the petitioner-workman has not acted *bona fide* and that his acts of misconduct are of such nature warranting the penalty imposed by the disciplinary authority and confirmed by the Tribunal. In the facts and circumstances of the case and the legal position obtaining, this Court finds that the penalty imposed is not disproportionate to the acts of the misconduct held proved and that, therefore, the writ petition is devoid of merit and is liable to be dismissed.

13. In the result, the Writ Petition is dismissed.

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

JUSTICE M. SEETHARAMA MURTI

13.03.2017
Vjl