

**THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO**

**WRIT PETITION No.2285 of 2012**

**ORDER:**

Heard the learned counsel for petitioner and Sri A.Ravi Babu, learned Standing Counsel appearing for 1<sup>st</sup> respondent.

2. This Writ Petition is filed by petitioner assailing the award dt.26-11-2007 in I.D.No.53 of 2005 of the Industrial Tribunal-cum-Labour Court, Godavarikhani (for short “the Tribunal”).

3. The petitioner was employed as Conductor in the Andhra Pradesh State Road Transport Corporation. On 24-09-2004, he was on duty on the road Vemulawada to Mumbai. A check was exercised by the TTIs at stage No.43/45 on 25-09-2004 at 2.45 a.m. The check revealed that for two passengers, who boarded at Kamareddy to Mumbai, instead of collecting fare of Rs.349/- each, the petitioner collected Rs.80/- less. Therefore a charge memo was issued to the petitioner stating that he had defrauded the Corporation for an amount of Rs.80/- by issuing lower denomination tickets to the said two passengers.

4. Petitioner gave explanation to the same saying that previous day he suffered low Blood Pressure and he actually wanted to take leave, but he was forced to perform the duty on that day and because of confusion caused by low Blood Pressure, the mistake occurred by over sight. He stated that he did not

collect the total fare and collected less fare unintentionally and there was no *mala fide* intention on his part.

5. Enquiry was conducted and punishment of removal from service was imposed on petitioner by order dt.26-02-2005. Petitioner questioned the same by way of appeal to the Divisional Manager, but the appeal was rejected on 08-04-2005. Review petition was also filed, which was rejected by the Regional Manager on 13-06-2005.

6. Then petitioner filed application under Section 2-A(2) of the Industrial Disputes Act, 1947 (for short “the Act”) before the 2<sup>nd</sup> respondent-Tribunal challenging the punishment of removal imposed on him and seeking reinstatement into service with continuity of service, all other consequential attendant benefits and full back-wages.

7. Before the Tribunal, though no oral evidence was adduced, petitioner marked Exs.W-1 to W-3 and Corporation marked Exs.M-1 to M-22.

8. By award dt.26-11-2007, the Tribunal set aside the punishment of removal imposed on petitioner and directed the Corporation to appoint the petitioner as a fresh conductor on sympathetic grounds with a condition that the petitioner must improve his discipline in the performance of duty since he was

removed twice and reinstated and the present incident was the third incident of removal.

9. The Tribunal recorded in its order that the petitioner had filed a memo stating that he is not contesting the procedural aspect of enquiry and its findings and he prayed the Court to hear the arguments under Section 11-A of the Act only with regard to lesser punishment. It therefore considered only the aspect of punishment and took a lenient view and passed the above award.

10. Learned counsel for petitioner contends that petitioner only filed a memo stating that he is not contesting the procedural aspect of enquiry proceedings and did not admit that the findings in the enquiry were correct. Admittedly, petitioner has not placed before this Court certified copy of the memo filed by him before the Tribunal to verify whether his contention is correct or not. Therefore, advance inference is drawn against petitioner that if the said memo is produced it would not support his contention. Therefore, it has to be taken that the petitioner did file a memo stating that he was not contesting the procedural aspect of the enquiry proceedings as well as findings of the enquiry and that he confined himself only to the aspect of punishment. Therefore petitioner cannot be allowed to raise any fresh contention on merits of the case as to whether or not he actually committed the misconduct in question.

11. Coming to the aspect of punishment, learned counsel for petitioner contends that the Tribunal should have also granted continuity of service, attendance benefits and all back-wages.

12. Admittedly, the misconduct alleged against petitioner is that he caused loss of revenue to the Corporation by collecting lesser fare than what was actually to be collected. Petitioner did not even dispute the findings in the enquiry report about his guilt regarding the misconduct. In these circumstances, when the Tribunal took a lenient view of the matter and directed his fresh appointment, he cannot seek continuity of service, attendant benefits and all back-wages as if he is exonerated of the misconduct altogether by the Tribunal. If the said relief is also granted to the petitioner, it would practically result in ignoring findings in the disciplinary enquiry, which the petitioner himself did not dispute in the Tribunal. Therefore, I hold that the petitioner is not entitled to continuity of service, attendant benefits or back-wages as sought by him.

13. I see no merit in the Writ Petition and it is accordingly dismissed. No costs.

14. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

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**JUSTICE M.S.RAMACHANDRA RAO**

Date: 29-06-2017

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