

THE HON'BLE SRI JUSTICE S.V. BHATT

W.P.No.317 OF 2003

ORDER:

Heard Si A.K.Jayaprakash Rao for petitioner and Mr.N.Vasudeva Reddy for 2nd respondent.

The petitioner challenges award dated 12.11.2002 of the 1st respondent-Tribunal in I.D.No.214 of 1999 as illegal, perverse and contrary to the material available on record.

The 2nd respondent issued charge sheet dated 19.03.1998 with the following charges:

“For having failed to observe the Rule “Issue and Start” while performing your duty with the bus No.AP10Z2546 on the route Doulthabad to Ramayampet on 15.02.1998 which constitutes misconduct under Regulation No.28 (vi) (a) of APSRTC Employees (Conduct) Regulations, 1963.

For having failed to collect the fare of Rs.2.50/- and issued tickets to a passenger found alighting without ticket at Konaipally who boarded your bus at Doulthabad and bound for Konaipally ex-stages No.8 to 8/9 which constitutes misconduct under Regulation No.28 (vi) (a) of APSRTC Employees (Conduct) Regulations, 1963.

For having collected the requisite fare of Rs.2.50/- from a passenger and failed to issue ticket to passenger who boarded your bus at Doulthabad and bound to Konaipally and found alighting without ticket at Konaipally ex-stages No.8 to 8/9 which constitutes misconduct under Regulation No.28 (vi) (a) of APSRTC Employees (Conduct) Regulations, 1963.

For having collected requisite fare of Rs.36-00 @ Rs.3-00 each from 12 passengers who boarded your bus at Doulthabad and bound for Bonal ex-stages No.8 to 9/10 and issued unconcerned tickets bearing

Nos.399/319131, 132, 134, 136 of Rs.4-00 denomination 007/062414, 415 of Rs.4-00 denomination, 399/318979, 980 of Rs.4-00 denomination, 334/539929 to 932 of Rs.4-00 denomination to passengers which constitutes misconduct under Regulation No.28 (xxxi) of APSRTC Employees (Conduct) Regulations, 1963.

For having collected requisite fare of Rs.35-00 @ Rs.2-50 each from 14 passengers who boarded your bus at Doultabad and bound for Govindapur ex-stages No.8 to 9 and issued unconcerned tickets bearing Nos.345/537226 of Rs.4-00 denomination, 345/537237 and 238 of Rs.4/- denomination, 334/539933 of Rs.4-00 denomination, 399/318988 and 989 of Rs.4-00 denomination, 399/319185 of Rs.4/- denomination, 399/318968 of Rs.4/- denomination, 334/539974 and 975 of Rs.4-00 denomination, 409/319600 to 602 of Rs.4/- denomination, 434/121359 of Rs.2-50 denomination to the passengers which constitutes misconduct under Regulation No.28 (xxxi) of APSRTC Employees (Conduct) Regulations, 1963”.

The petitioner submitted his explanation denying the charges. The 2nd respondent decided to conduct disciplinary enquiry into the charges dated 19.03.1998. The enquiry officer submitted report dated 11.09.1998. The circumstance which is relevant for disposal of the writ petition is whether notice is served on the petitioner before the scheduled enquiry on 25.07.1998 and in spite of service of notice, the petitioner remained *ex parte*, and, therefore, the enquiry was proceeded *ex parte* and report was submitted. The report dated 11.09.1998 observes as follows:

“Accordingly, the undersigned conducted the EX PARTE enquiry hence the conductor has failed to attend the enquiry on the dates 26.05.98, 15.06.98, 24.06.98, 25.07.98 four times even though the conductor has acknowledged the above 4 letters and the acknowledgements are filed in the

case, charge wise findings of the above case is furnished hereunder”.

The petitioner raised one of the grounds before the 1st respondent that the notice dated 15.07.1998 was received by him on 04.08.1998 and without the knowledge of date of enquiry on 25.07.1998, the petitioner could not attend the enquiry. Therefore, the enquiry conducted behind the back of petitioner violates the regulations and any decision taken thereon is liable to be set aside.

The 1st respondent framed the following points for consideration:

1. Whether the findings of the enquiry officer who conducted domestic enquiry against the petitioner are perverse and if so they are liable to be set aside.
2. Whether the respondent is justified in removing the petitioner from service.
3. If not, to what relief the petitioner is entitled to?

The 1st respondent on the service of notice has recorded the following finding:

“.....Subsequently when the petitioner was given show cause notice for removal, he again submitted a letter dtd.22.2.99 in which he totally denied to have received enquiry notice fixing the date of enquiry as 25.7.98. In the petition filed by the petitioner the petitioner came up with a another new version stating that the notice of enquiry officer dtd.15.7.98 fixing the date of enquiry as 25.7.98 was received by him through RPAD on 4.8.98 at his residential address in Nalgonda District. But the petitioner did not file the RPAD received by him subsequent to the date of the enquiry. I therefore conclude that the petitioner was fully aware of the date of enquiry as 25.7.98 and intentionally avoided to attend the enquiry”.

Hence, the writ petition.

With the assistance of learned counsel appearing for the parties, I have carefully perused the evidence marked as Ex.M1 by the 2nd respondent. *Prima facie*, it appears to this Court that the 1st respondent has not framed the correct points for consideration, much less carefully and meticulously examined the documentary evidence on which the 2nd respondent is relying upon to justify that the disciplinary enquiry was conducted in a fair and objective manner. The petitioner had notice of the hearing scheduled on 25.07.1998 and still he did not attend the enquiry. The learned counsel for 2nd respondent, after perusing the record, submits that the award impugned in the writ petition can be set aside and the matter be remitted to the 1st respondent for disposal afresh in accordance with law. According to him, the Tribunal can examine the real issues and opportunity can be given to both the parties.

The award impugned in the writ petition is, accordingly, set aside. The industrial dispute is remitted to the 1st respondent for disposal in accordance with law, preferably within a period of three months from the date of receipt of a copy of this order.

The writ petition is ordered as indicated above. There shall be no order as to costs.

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

15th March, 2017

Lrkm

S.V.BHATT, J