

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

Writ Petition No.10789 of 2004

ORDER:

The challenge in this writ petition at the instance of petitioner—Andhra Pradesh State Road Transport Corporation, is the award dated 01.11.2003 in I.D.No.301 of 2003 passed by the Chairman-cum-Presiding Officer, Industrial Tribunal-cum-Labour Court, Ananthapur whereunder the Presiding Officer, Industrial Tribunal partly allowed the claim petition and set aside the order passed by the Depot Manager and directed the respondent therein to impose the punishment of deferment of two annual increments without cumulative effect.

2) The parties in the writ petition are referred as they were arrayed in the Tribunal below.

3a) The 2nd respondent herein/workman, during the relevant period was working as Conductor in Kurnool—I Depot. On 14.08.1999, while he was conducting vehicle bearing No.AP 10Z 5819 on the route Kurnool to Bangalore, the checking officials of Zonal Enforcement Squad, Kadapa exercised a check at stage No.13 and found him with an excess cash of Rs.475/- and two charges were framed against him in that regard.

b) It is his case one S.A.Saleem, ADC of Kurnool—II Depot gave him Rs.475/- with a request to hand over the same to his son at Bangalore who was studying there and with a view to help the ADC he accepted the said amount without endorsing in the SR. However, in the spot explanation he only mentioned that ADC gave him Rs.475/-, but he did not mention the name of Saleem. A regular enquiry was conducted and Enquiry Officer has examined S.A.Saleem and some others and submitted his report. Basing on the said enquiry report, the

Corporation issued show cause notice and after receiving the explanation of the workman, ordered deferment of annual grade increment for a period of two years with cumulative effect besides treating the suspension period as '*not on duty*'. Aggrieved, the workman filed I.D.No.301 of 2001.

c) The learned Industrial Tribunal-cum-Labour Court observed that admittedly the workman was found with excess cash of Rs.475/- but however, one A.Seshaiah, Conductor, Kurnool—I Depot supported his version that S.A.Saleem, ADC came to the bus and handed over a cover to the workman and at that time passengers forced the workman to move the bus and since at the earliest point of time the workman gave spot explanation that ADC gave him Rs.475/- and the said version was supported by A.Seshaiah, Conductor, on such observation, the Tribunal held that the version of the workman could be believed. It also held that the version of S.A.Saleem cannot be relied upon. It also observed Krishnaiah, driver of the bus was not examined. The Tribunal after taking into consideration of those facts and circumstances ultimately held that though the workman was found with excess cash of Rs.475/-, he was only guilty of not taking the endorsement from the Depot Supervisor with regard to the excess amount in the SR and no *mala fide* intention can be attributed against him. Accordingly, the Tribunal modified the punishment into one of deferment of two annual increments without cumulative effect.

Hence, the instant writ petition.

4) Heard arguments of Sri Aravala Rama Rao, learned standing counsel for petitioner—APSRTC and Smt. K.Udayasri, learned counsel for 2nd respondent/workman.

5) The main plank of argument of learned counsel for petitioner—Corporation is that it is an admitted case that the workman was found with excess cash of Rs.475/- which he has been not properly explained inasmuch as, though in the spot explanation he stated as if one ADC of Kurnool—II depot gave him Rs.475/-, he did not specifically mention the name of S.A.Saleem but he only mentioned his name in his detailed explanation at a later stage which shows that his explanation is an improvisation. Further, said S.A.Saleem specifically stated before the Enquiry Officer that he did not give the amount of Rs.475/- to the workman to be handed over to his son. Learned counsel would submit that the explanation offered by the workman was a false one to wriggle out of the charge. In addition to that though Sessaiah, one Conductor supported the version of the workman, his name was not mentioned at the spot explanation. Therefore, the version of Sessaiah about his witnessing Saleem handing over Rs.475/- to the workman to be handed over to his son cannot be believed. Learned counsel argued that in the light of above facts, the Industrial Tribunal ought to have accepted the finding of the Enquiry Officer and dismissed the ID. However, without proper appreciation of facts and evidence the Tribunal has modified the punishment imposed by the department against the workman. He would thus pray to set aside the award and confirm the punishment originally imposed by the disciplinary authority against the workman.

6) Per contra, learned counsel for 2nd respondent/workman while supporting the award would submit that in the spot explanation the workman has clearly mentioned as to how he was in possession of excess amount of Rs.475/-, as he clearly mentioned that ADC, Kurnool—II depot has given him the said amount. The said explanation being a spontaneous one, it had to be given due weight. Merely because he did not specifically mention the name of Saleem, by that

count alone his explanation cannot be discarded. It is an admitted fact that the son of Saleem was studying at Bangalore. Therefore, there was every possibility of Saleem handing over the amount of Rs.475/- to the workman to hand over the same to his son for his requirement. In a charged atmosphere when the higher authorities besieged the Conductor and sought explanation, it would be difficult for any employee to create some story on the spot unless some truth is there in his explanation. Therefore, learned counsel would argue, the spot explanation could be believed. Learned counsel would further submit that Saleem might be won over by the mighty organisation to prove his charge and therefore, he must not have supported the version of workman. Hence, merely his name was not specifically mentioned in the spot explanation and he did not support the version of the workman during enquiry, on that count alone his explanation cannot be discarded. Learned counsel would further submit that the version of workman was clearly supported by Sessaiah another conductor. He clearly stated, in his presence Saleem had handed over the amount to the workman to give to his son. If really the incident had not occurred, Sessaiah would not have supported the case of the workman. Therefore, the spot explanation was a truthful one which was accepted by the Industrial Tribunal. The reason for not informing the Depot Supervisor is also well explained. At the time when Saleem handing over the amount to workman, the passengers made hue and cry for starting the bus, as it was already delayed and therefore, driver was about to start the bus and in those circumstances, the workman could not get the endorsement from the Depot Supervisor. He had already obtained the endorsement from the Supervisor with respect to his own amount of Rs.150/-. That was occurred some time prior to the starting of the bus. Therefore, the explanation for not obtaining the endorsement of the Depot Supervisor was also a reasonable and truthful one. However,

learned Tribunal having not found any *mala fide* on the part of workman but only a mistake on his part in not getting the endorsement, had rightly modified his punishment from stoppage of annual grade increment for a period of two years with cumulative effect to the deferment of two annual increments without cumulative effect. Therefore, there is no need to interfere with the same.

7) The point for determination is:

“Whether there are merits in this writ petition to allow?”

8) **POINT:** It is an admitted fact on 14.08.1999 the workman was conducting vehicle bearing No.AP 10 Z 5819, Kurnool—I Depot of APSRTC which was plying from Kurnool to Bangalore. It is also an admitted fact that checking officials found excess cash of Rs.475/- when the bus cash was checked. It is also an admitted fact that the workman has offered the explanation for his having excess cash of Rs.475/- to the effect that depot ADC gave Rs.475/- requesting him to handover the same to his son who was studying at Bangalore. During the enquiry S.A.Saleem, the depot ADC ofcourse did not confirm the version of workman. It is also a fact that workman did not specifically mention the name of S.A.Saleem during the spot explanation.

a) Now, the crucial question is on that count alone the version of workman can be termed as false one. As rightly submitted by learned counsel for 2nd respondent/workman, in a charged atmosphere when higher officials found him with excess cash and demanded his spot explanation, it would be difficult to give some explanation without there being any truth in it. Therefore, if some truth is found in the explanation offered, that should be fairly given to the credit of the employee who gave such explanation.

b) In the instant case, it is not disputed S.A.Saleem is the ADC of Kurnool—II depot and it appears his son is studying in Bangalore. In that view of the matter, merely because workman has not specifically named S.A.Saleem as the person who gave the said amount, on that count alone, his explanation cannot be discarded. It is to be noted that though he did not mention the name, however, he mentioned the depot ADC gave him Rs.475/-. His version was no doubt not supported by S.A.Saleem. The possibility of his getting afraid to speak against the department cannot be ruled out. It should be noted that at the same time A.Seshaiah, another Conductor supported the version of the workman and stated that S.A.Saleem came to the workman and handed over the amount to him and at the same time, due to passengers forcing the workman to move the bus, he could not obtain the endorsement from the Depot Supervisor. When the totality of the facts are taken into consideration, the explanation of the workman cannot be discarded as a wholesome false version. The learned Industrial Tribunal has rightly accepted his explanation. However, treated him guilty of only not taking the endorsement from the Depot Supervisor and rightly modified the punishment to one of deferring two annual increments without cumulative effect. I find no illegality or perversity in the order impugned.

9) Accordingly, this writ petition is dismissed. No costs.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 08.11.2017
Murthy