THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Writ Petition No.5629 of 2006

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, by the petitioner/Driver is directed against the order, dated 29.12.2003, of the reviewing authority, the Regional Manager, APSRTC, Chittoor District, whereby the said authority while upholding the findings of the Enquiry Officer and the appellate authority that the charges leveled against the petitioner/Driver are proved, had set aside the punishment of removal from service passed by the Disciplinary Authority against the petitioner and imposed a reduced penalty of reinstatement into service by directing to treat the intervening period from the date of removal from service till the date of reporting to duty on reinstatement as 'not on duty' and further ordered for withholding of two annual increments for a period of two years with cumulative effect.

2. I have heard the submissions of *Sri P.Govindarajulu*, learned counsel appearing for the petitioner and of *Sri Aravala Rama Rao*, learned Standing Counsel for the respondent-APSRTC (hereinafter referred to as 'the Corporation'). I have perused the material record.

3. The facts of the case, in a nutshell, are as follows:

On 13.10.2002, while the petitioner was discharging the duties on the Corporation bus bearing no.AP 10 Z 8733 plying on the route, Piler to Hyderabad, a check was exercised at Stage No.8, i.e., Nandyal. The service is 'TIMS' service. During the course of check, it was noticed that the petitioner violated the rule 'issue and start' while he was conducting the said service and that he had collected the requisite fare of Rs.233/- from a passenger, who boarded the bus at Piler and bound for Hyderabad, ex. Stages 1 to 11, and failed to issue ticket at the boarding point, but issued ticket No.7557 for Rs.128/- only at Nunepalli (near Nandyal) valid from Nandyal to Hyderabad ex. Stages 8 to 11. Thus, he issued a lower denomination ticket and defrauded the Corporation in a sum of Rs.105/- and caused loss of legitimate revenue to the Corporation and further gave unconnected ticket Nos.7512 and 7513 to the above passenger at Nunepalle (outskirts of Nandyal). Therefore, the Divisional Manager, Piler, while duly placing the petitioner under suspension issued a charge sheet, with the following charges, calling upon him to submit his explanation, if any, to the said charges.

Charges:

i) Violated the rule 'Issue and Start'.

ii) You have collected the requisite fare of Rs.233/- (Rupees two hundred and thirty three only) from a passenger at the boarding point itself who boarded the bus at Piler and bound for Hyderabad ex. Stages 1 to 11 and failed to issue ticket at the boarding point but you have issued ticket no.7557 for Rs.128/- only at Nunepalle (near Nandyal) valid from Nandyal to Hyderabad ex. Stages 8 to 11, thus you have issued lower denomination ticket and defrauded Rs.105/- the legitimate revenues of the Corporation.

iii) You have also given un-connected ticket Nos.7512 and 7513 to the above passenger at Nunepalle (near Nandyal)."

As his objections and explanation are not satisfactory and convincing, an enquiry officer was appointed to conduct an enquiry. On such enquiry, the enquiry officer recorded a finding that the charges are proved. The petitioner was served with a show-cause notice. As his explanation to the show-cause notice was unsatisfactory and unconvincing, an order of removal from service was passed by the Disciplinary Authority and his suspension period was treated as 'not on duty' for all purposes and his security deposit outstanding to his credit was forfeited. The appellate authority rejected the petitioner's appeal by an order, dated 30.05.2003. The petitioner, therefore, preferred a review petition before the Regional Manager, Tirupati. The said authority having concurred with the findings of the Enquiry Officer and the appellate authority that the charges formulated against the petitioner are proved, however, considered the explanation of the petitioner that he rendered 16 years of service, took a lenient view and had set aside the orders of removal from service and imposed a lesser penalty. The revisional authority while imposing the following modified penalty, further held as follows:

> "The punishment of removal from service passed against Sri P.Govindaiah, E.503182, Ex-Driver of Piler Depot vide ref.1 by DM/Piler and the orders of DVM/Chitoor rejecting the appeal passed under reference 2 are hereby set aside, and he be reinstated into service with immediate effect.
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> The intervening period from the date of removal till the date of reporting for duty is treated as not on duty.
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> The annual increment of the petitioner is withheld for a period two years with cumulative effect.
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> He should be directed for Medical Examination.
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> He should be directed for Fifteen days training at ZSTC/Nellore at his own cost.
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> He has to pay all terminal benefits if any received by him before re-instatement.
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> On reinstatement into service the petitioner is directed to the Depot Manager, Kuppam Depot."

Aggrieved thereof, the petitioner filed this writ petition.

4. The learned counsel for the petitioner would contend as follows:

Denying the charges formulated against the petitioner, he had offered an explanation, dated 25.10.2012. Without proper appreciation of the facts and without properly considering the explanation, a domestic enquiry was ordered. During the domestic enquiry, the passenger concerned was examined. He categorically stated that he boarded the bus at Piler to go to Hyderabad and paid Rs.105/- at boarding point for Nandyal and obtained ticket at Piler and again paid Rs.128/- at Nandyal for Hyderabad and obtained a ticket. The said passenger also stated that both the tickets were shown to the checking officials and that the checking officials obtained his signature on a blank paper. Thus, the passenger's statement was concocted by the checking officials. There was no negligence on the part of the petitioner. Without any legal evidence and legal basis, the Enquiry Officer submitted a report stating that the charges are proved. The findings of the Enquiry Officer are arbitrary. The Divisional Manager issued a show-cause notice, dated 31.03.2003, for removal, and, finally issued proceedings, dated 16.04.2003, removing the petitioner from service. The said proceedings were issued on untenable grounds. The appeal preferred by the petitioner was erroneously rejected by the appellate authority. The review petition was partly allowed and the punishment was modified, instead of allowing the review petition in its entirety. The petitioner was reinstated into service in Kuppam Depot in the month of January, 2004, and from that time onwards he is working as Driver at Kuppam Depot continuously without any blemish or complaint from any quarter. The revisional authority erroneously denied two annual increments with cumulative effect and also continuity of service from the date of suspension till reinstatement and other benefits. The revisional authority ought to have held that the charges are not proved in view of the evidence of the passenger. In any view of the matter, the penalty imposed is highly disproportionate to the gravity of the charge held allegedly proved. The tickets which were shown to the checking officials were not unconnected as alleged by the checking officials and the authorities. None of the charges are proved by valid evidence. Regarding the allegation related to defrauding the Corporation and causing loss to the legitimate revenue of the Corporation, it is to be noted that no amount was recovered from the cash bag of the petitioner by the TTI. The statement of the Co-Driver and passenger though not denied by the Enquiry Officer were not considered. Because of the disproportionate and major punishment, the salary of the petitioner considerably decreased and he suffered financial loss and problems.

5. Per contra, the learned Standing Counsel appearing for the respondents while supporting the findings of the Enquiry Officer, Appellate Authority and reviewing authority contended as follows:

The petitioner while discharging his duties on TIMS service indulged in cash and ticketing irregularities. The same was noticed at the time when the checking was exercised. Accordingly, charges were formulated and an enquiry was duly held according to the procedure. After the charges are held proved, the petitioner was given an opportunity to submit his objections and offer explanation to the show-cause notice. As his objections and explanation are not satisfactory, an order of removal from service was passed. The appeal filed by him was rejected. The revisional authority considering the long service of 16 years put in by the petitioner and the submission that the punishment of removal was imposed against him for the first time after he has put in a long period of service, out of mercy and generosity imposed a lesser punishment, though such course is not warranted. In fact, the reviewing authority ought not to have interfered with the punishment in view of the fact that the petitioner indulged in cash and ticket irregularities while conducting TIMS service. However, the Corporation did not assail the orders of the reviewing authority. The punishment imposed is itself not an adequate punishment in view of the gravity of the charge proved against the petitioner. None of the contentions of the writ petitioner merit consideration. When once concurrent findings are recorded by three Departmental authorities holding that the charges are proved, this Court while exercising power under Article 226 of the Constitution of India would not generally interfere with the factual findings or the penalty imposed against the petitioner by the Disciplinary Authority in view of the settled legal position. Hence, the Writ Petition may be dismissed.

6. I have bestowed my attention to the facts and I have given earnest consideration to the submissions.

7. Be it noted that the first charge relates to violation of the rule 'Issue and Start'. The gravamen of the second charge is that the petitioner having collected the requisite fare of Rs.233/- at the Boarding point itself from a passenger, who boarded the bus at Piler and bound for Hyderabad ex. stages 1 to 11, had failed to issue ticket at the boarding point, but, issued a ticket no.7557 for Rs.128/- only at Nunepalle (near Nandyal) valid from Nandyal to Hyderabad ex. Stages 8 to 11 and thus issued lower denomination ticket and defrauded the corporation and caused loss of legitimate revenue in a sum of Rs.105/- and further issued the above ticket only at Nunepalle (near Nandyal) valid from Nandyal to Hyderabad, which he was not supposed to issue. The third charge relates to giving unconnected ticket nos.7512 and 7513 to the above passenger at Nunepalle (near Nandyal).

7.1 To the said charges, the explanation offered by the petitioner is as follows: 'After issuing tickets to all other passengers at the bus station, Piler, he approached the remaining group of four passengers. A boy of the group asked him to issue two tickets for Nandyal and one CAT card ticket for Nandyal. Hence, the petitioner took out ticket No.7512 worth Rs.210/- (i.e., at the rate of Rs.105/- each) for normal tickets to Nandyal and 7513 worth of Rs.95/- towards CAT card ticket from Piler to Nandyal. He, then, demanded them to tender total ticket fare of Rs.305/-. Then, they replied that they required only two tickets from Piler to Nandyal, i.e., one ticket on normal fare of Rs.105/- and another CAT card concession ticket of Rs.95/-. The remaining persons got down from the bus. The petitioner told them that if any passenger boards the bus en-route, he would adjust the ticket otherwise they have to bear the extra ticket fare. Thereafter, when the bus started from Piler bus station, a passenger boarded the bus at Piler to travel to Hyderabad. He informed the said passenger about the extra ticket and regarding the adjustment. At Nunepalle, before alighting, two lady passengers handed over their tickets to the said passenger. Further, the petitioner collected Rs.128/- from the said passenger bound for Hyderabad and issued to the said passenger, the ticket bearing No.7557 valid from Nandyal to Hyderabad at Nunepalle.' Thus he stated that there is no *mala fide* intention behind the irregularities and requested to consider his case sympathetically.

8. It is to be noted that such an explanation was offered at a later point of time, but not at the spot, while making the statement. Therefore, the explanation that was offered appears to be an after-thought. The petitioner himself stated that he collected Rs.128/- from the said passenger bound for Hyderabad and issued to him, the ticket bearing No.7557 valid from Nandyal to Hyderabad at Nunepalle, since he has closed the stage upto Nandyal in view of change of his duty as Steering duty at Nandyal. Thus, he pleaded that he was not at fault. But, during the course of enquiry, he has given a contradictory statement stating that he never collected Rs.233/-. From the statement of the passenger, it is clear that the petitioner collected the fare of Rs.233/- from the passenger at the boarding point itself who boarded the bus at Piler and bound for Hyderabad, ex stages 1 to 11, but not issued the ticket to the said passenger at the boarding point itself, i.e., Piler, but issued the ticket No.7557 for Rs.128/- only at Nunepalle (outskirts of Nandyal), before the bus reached Nandyal bus station, which is valid from Nandyal to Hyderabad, ex-stages 8 to 11 and thus issued lower denomination ticket and allowed the passenger to travel without ticket from Piler to Nandyal. Further, to cover up the guilt of non-issue of ticket to the said passenger at the boarding point itself, he had issued ticket Nos.7512 and 7513 at Nunepalle outskirts of Nandyal town before the bus reaching Nandyal bus station. Thus, he had issued ticket Nos.7512, 7513 to the said passenger though they are not connected to the passenger. Therefore, based on the evidence, the Enquiry officer found that the charges are proved and further observed that if the checking had not been conducted, the petitioner would have pocketed Rs.105/- without issuing tickets to the said

passenger and would have caused legitimate loss of revenue to the Corporation to a tune of Rs.105/-. Above all, the failure on the part of the petitioner to give an explanation as to why he had issued a ticket for Rs.128/- to the said passenger from Nandyal to Hyderabad at Nunepalle even before the bus reached Nandyal, though it is not his duty to issue ticket from Nandyal onwards clinches the issue against the petitioner and in favour of the Corporation.

9. A perusal of the entire material including the final proceedings of the reviewing authority, which are impugned in this writ petition, would reflect that after necessary examination of the facts and the evidence in proper perspective, the Enquiry Officer and the appellate authority, as well as, the reviewing authority arrived at concurrent conclusions and findings that the charges are proved. Accordingly, the appellate authority and the reviewing authority confirmed the findings of the Enquiry officer. This Court, in the facts and circumstances, and on the analysis of the facts and evidence, does not find any grounds much less valid grounds calling for interference with the concurrent findings of fact recorded by the Officers. When the conclusions arrived at by the Enquiry officer, the appellate authority and the reviewing authority are found to be sustainable on facts, this Court will not substitute its opinion in place of such findings 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;

[1] (2015) 2 SCC 610

> (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."

Having regard to the facts and the legal position, this Court holds that the contentions of the petitioner that the charges are not proved need no countenance.

11. Coming to the quantum of punishment, in the case on hand, the Reviewing Authority after taking a lenient view purely on grounds of mercy and generosity had set aside the punishment of removal from service and imposed a reduced penalty, which is already stated supra. When the charge proved related to cash & ticketing irregularities and loss of revenue to the Corporation and resultantly there is loss of trust and faith even punishment of removal from service would have been appropriate. However, a responsible officer of the Corporation imposed a lesser penalty and the Corporation did not assail the said aspect of the matter before this Court. Considering the gravity of the charges proved, it is manifest that the petitioner has not acted *bona fide* and therefore, the punishment imposed by the reviewing authority, in the facts and circumstances of the case, is not disproportionate to the misconduct held proved. On the above analysis this Court holds that the penalty imposed needs no interference.

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

No costs.

Pending miscellaneous petitions, if any, shall stand closed.

M. SEETHARAMA MURTI, J

22nd March, 2017
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