

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.21031 OF 2008

DATED : 12.12.2017

Between :

T.V.Satyanarayana S/o.Subbanna,
Aged about 53 yrs, Conductor, APSRTC,
Giddalur Depot, Giddalur, Prakasam District.

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Petitioner

And

The Depot Manager,
APSRTC, Giddalur Depot,
Giddalur, Prakasam Distgrict & another.

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Respondents



This court made the following :

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ORDER :

Petitioner joined service as conductor in 1989. Disciplinary proceedings were initiated against him in the year 2007. On 13.03.2007 charge sheet was drawn. The charge sheet contained three charges. The sum and substance of the allegation in charge No.1 is that petitioner absented from duties from 21.07.2006 till the charge sheet was drawn. The sum and substance of the allegations in charge Nos.2 and 3 is that petitioner has not accounted for Rs.300/- with reference to Rs.12/- denomination tickets and Rs.70/- with reference to Rs.10/- denomination tickets in the way bill, though tickets were issued and entries were made in STAR and the same amounts to mis-appropriation. At the stage of issuance of this charge memo petitioner filed W.P.No.14495 of 2007. But it appears, by the time, the case was considered by this Court, enquiry was already conducted and petitioner seem to have contended that due opportunity was not afforded to him. Therefore, by way of interim order, the Court directed to conduct re-enquiry. In terms of the directions issued, re-enquiry was conducted. In the report of the enquiry officer, the enquiry officer took note of the medical history of the petitioner and held that the unauthorized absence was not wilful and deliberate and it was occasioned on account of sickness of the petitioner. The enquiry officer held charge Nos.2 and 3 as proved. Pursuant to the report of the enquiry officer, the disciplinary authority considered the matter and having not agreed with the findings of the enquiry

officer on the charge of unauthorized absence, the disciplinary authority held charge No.1 as partly proved and having come to provisional conclusion to impose punishment of removal, explanation was called for. Though petitioner submitted detailed explanation highlighting his sickness, the explanation was not found favour with the disciplinary authority and imposed the punishment of removal from service, which is under challenge in this writ petition.

2. Heard Sri V. Mallik learned counsel for the petitioner and Sri P. Durga Prasad, learned Standing counsel for the respondent-Corporation.

3. Learned counsel for the petitioner contends that during the relevant period, petitioner was suffering with ailments and he was undergoing treatment. The hospital of the respondent-Corporation was not treating the petitioner properly and no endeavour was made to identify the disease with which he was suffering. Some perfunctory examinations were made and medicines were administered. But it did not cure him and only after his persistence and threatening letters given by him, he was referred to Nizam's Institute of Medical Sciences. On examination of the petitioner thoroughly, the Nizam's Institute of Medical Sciences, issued report on 15.03.2007, certifying that the petitioner was affected by Tuberculosis. Learned counsel therefore submits that the record now discloses that petitioner was unwell for a long time and inspite of his repeated requests for proper treatment, the respondent-Corporation and their authorities have not bothered to heed to the request of the petitioner and made him to suffer.

4. According to learned counsel this ill-health also affected, even when he was attending to duty. As petitioner was unwell and was not able to stand up properly, he could not discharge his duties and in that process, appropriate entries were not made in the way bill. Therefore, it is not a case of deliberate attempt to misappropriate the money of respondent-Corporation, having collected money from the passengers. The fact that issuance of tickets was properly recorded in STAR itself, would show that there was no intention of mis-appropriation and only that it was not reflected in the way bill and the same was occasioned on account of the ailments with which petitioner was suffering.

5. Learned counsel for the petitioner further submits that the order of removal is not solely based on the findings of the enquiry officer but the disciplinary authority, independently recorded finding on first charge and the punishment is imposed on cumulative assessment of all the three charges. However, according to the law laid down by the Hon'ble Supreme Court whenever, the disciplinary authority is not in agreement with the findings recorded by the enquiry officer, he must record the dissenting note, call for the explanation and on consideration of the explanation, by a reasoned order, the decision has to be made and then only punishment can be imposed. In the instant case, such procedure was not followed and therefore, the punishment imposed is liable to be set aside on that ground alone.

6. Learned counsel also submits that though ordinarily petitioner has to avail the remedy of appeal against the decision of disciplinary authority, as the punishment imposed is without

following the due procedure as required by law, petitioner need not be relegated to avail the remedy of appeal and more so, after long lapse of time.

7. The contention of learned counsel for the petitioner with reference to independent findings recorded by Disciplinary Authority on charge No.1 is not disputed by learned Standing counsel. However, he sought to contend that punishment imposed is justified on the findings recorded on charge Nos.2 and 3.

8. With reference to the second limb of above contention of learned standing counsel, it is necessary to note that as per the explanation dated 12.04.2007 filed by the petitioner which is filed as Ex.P.3 in the writ petition paper book, there is narration of health condition of the petitioner starting from 16.07.2006 and the treatment administered to him, the unhappiness in the manner in which the medicines were administered to him and requesting for proper assessment of his health condition and that only after persistent requests made by him, he was referred to Nizam's Institute of Medical Sciences and the said institute certified that petitioner was suffering with Tuberculosis. Learned counsel for the petitioner sought to contend that, his performance which resulted in framing of charges 2 and 3 was on account of his health condition and a person suffering with Tuberculosis could not have performed his duties properly. Therefore, though the charges 2 and 3 are independent of charge No.1, the background of health condition of petitioner may have an impact on the ultimate view that the disciplinary authority can take on the allegations levelled in charge Nos.2 and 3.

9. However, the primary contention of learned counsel for the petitioner is that while disagreeing with the findings of the enquiry officer of unauthorized absence from duty from 21.07.2006, no notice was issued and only after holding that the petitioner's absence was not justified and the findings of the enquiry officer that because of his health condition, he was absent from duties was not accepted by the disciplinary authority, he has resorted to impose punishment of removal and this punishment is cumulative on the findings recorded by the disciplinary authority on all the three charges levelled against him.

10. The APSRTC Employees (Classification Control and Appeal) Regulations 1967, regulates the disciplinary action that can be taken against employees and procedure to take disciplinary action. Regulation 12 deals with procedure for imposing penalties. After submitting the report of the enquiry officer to the disciplinary authority, the disciplinary authority is required to consider the report of the enquiry officer and record his findings on the charges levelled against him. Based on the findings of the enquiry officer and once he comes to the conclusion that the findings recorded by him would require imposing punishment, call for the explanation of the employee on the quantum of punishment proposed in the show cause notice. Thus, after the report of enquiry officer, it directly falls into the hands of the disciplinary authority to record his findings and come to conclusion on the nature of punishment required to be imposed on the findings recorded by him.

11. The Regulations are silent as to whether what procedure is required to be followed by the disciplinary authority, if his findings are at variance with the findings arrived at by the enquiry officer. It

is also appropriate to note that during the enquiry, an employee has opportunity to establish his defence based on the material placed before the enquiry officer and based on the said material the enquiry officer comes to conclusion and records findings in favour of the employee. If enquiry officer records the finding on all the charges as proved, it may not be necessary for the disciplinary authority to cause notice before recording his findings, unless, he disagrees with the findings recorded by the enquiry officer. If that be so, it would be to support the stand of the petitioner to exonerate him. In such an event as no prejudice is caused to employee, he need not be put on notice. However, if the enquiry officer records findings in favour of the employee, but such finding is not acceptable to the disciplinary authority, though he is entitled to record his own finding, principles of natural justice require that before recording such finding, he must put the employee on notice and give opportunity.

12. The issue of affording due opportunity at various stages of disciplinary action has been subject matter of several decisions by the Hon'ble Supreme Court. The impact of amendment to the Constitution and dispensing with second show cause notice was considered by the Constitution Bench of the Supreme Court in ***Managing Director, ECIL Vs B. Karunakar***¹. On the necessity of affording due opportunity when the disciplinary authority disagrees with the findings of the enquiry officer, was considered by the Hon'ble Supreme Court in "***Punjab National Bank and Others Vs Kunj Behari Misra***"².

¹ (1993) 4 SCC 727

² (1998) 7 Supreme Court Cases 84

12.1. In the said case, the disciplinary authority disagrees with the findings of the enquiry officer, but did not afford due opportunity before recording his finding. Regulation 7 of the Regulations governing the services of the said Bank does not envisage affording of opportunity, if the disciplinary authority disagrees with the findings of the enquiry officer. Sub-Regulation (2) enables to record specific disagreement and to record his own findings. Thus, the provision in Regulation 7 (2) of the Regulations of the said Bank are identical to the provision in the Service Regulations of the respondent-Corporation. Both regulations do not envisage opportunity to the delinquent employee before findings are recorded in disagreement to the findings of the enquiry officer.

12.2. With reference to the right of delinquent employee for proper opportunity, more particularly when the enquiry officer finding is in favour of the delinquent employee, but no opportunity was given to the delinquent employee before disagreement is noted, the Hon'ble Supreme Court observed as under :

“These observations are clearly in tune with the observations in Bimal Kumar Pandit case quoted earlier and would be applicable at the first stage itself. The aforesaid passages clearly bring out the necessity of the authority which is to finally record an adverse finding to give a hearing to the delinquent officer. If the enquiry officer had given an adverse finding, as per Karunakar case the first stage required an opportunity to be given to the employee to represent to the disciplinary authority, even when an earlier opportunity had been granted to them by the enquiry officer. It will not stand to reason that when the finding in favour of the delinquent officers is proposed to be overturned by the disciplinary authority then no opportunity should be granted. The first stage of the enquiry is not completed till the disciplinary authority has recorded its findings. The principles of natural justice would demand that the authority which proposes to decide against the delinquent officer must give him a hearing. When the enquiring officer holds the charges to be proved, then that report has to be

given to the delinquent officer who can make a representation before the disciplinary authority takes further action which may be prejudicial to the delinquent officer. When, like in the present case, the enquiry report is in favour of the delinquent officer but the disciplinary authority proposes to differ with such conclusions, then that authority which is deciding against the delinquent officer must give him an opportunity of being heard for otherwise he would be condemned unheard. In departmental proceedings, what is of ultimate importance is the finding of the disciplinary authority.”

12.3. The Hon'ble Supreme Court further held that principles of natural justice have to be read into Regulation 7 (2) and whenever disciplinary authority disagrees with the enquiry officer on any article of charge, before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it record its findings.

13. In terms of the law laid down by the Hon'ble Supreme Court in ***Kunj Behari Misra***, principles of natural justice also have to be read into Regulation 12 of respondent-Corporation; the disciplinary authority has to record his dissent note on the findings of the enquiry officer, call for explanation of the employee and consider the explanation before taking further steps as required by Regulation 12.

14. It is further observed that the principles of natural justice require the authority which has to take final decision and impose penalty, to give opportunity to the officer charged of mis-conduct to file a representation before the disciplinary authority record his findings on the charges framed against the officer.

15. A bare look at the facts on record, it is clear that before recording the finding of guilt on first charge, though partially, the disciplinary authority did not give opportunity of hearing to the petitioner, straight away recorded the finding and based on the said finding has come to the conclusion to impose the punishment of removal and called for the explanation of the petitioner. Thus, the procedure followed is contrary to the law laid down by the Hon'ble Supreme Court and is in violation of the principles of natural justice. As the alleged absence was for very long period, when the disciplinary authority holds the absence as unauthorized, the appropriate punishment that can be imposed can be graver than in the normal circumstances.

16. A reading of the order also does not disclose that the disciplinary authority was ignoring the first charge to impose punishment and confined the scope only to charges 2 and 3.

17. Thus, the punishment imposed against the petitioner, impugned in this writ petition is not sustainable on this ground.

18. Above findings would result in setting aside the punishment and in normal circumstances to remit the matter to the disciplinary authority to the stage of recording fresh findings after affording due opportunity to the employee. As the allegation pertains to the year 2007 and petitioner was removed from service in the year 2008, that is nine years prior to hearing of the writ petition, if the order is set aside and remitted, it would result in restoring the petitioner's position as an employee to the date of removal from service with all consequential benefits. Furthermore, it would only result in further litigation. Further, petitioner attained age of superannuation, in the meanwhile.

19. Having regard to these facts, the Court intends to give finality to the issue instead of remitting the matter to the disciplinary authority.

20. At this stage learned Standing counsel points out that petitioner was earlier removed from service on the allegation of unauthorised absence in the year 1998 and he was reinstated pursuant to the Award passed by the Labour Court on 02.08.2005. Petitioner was also visited with punishment of censure and on three occasions punishment of deferment of annual increments. Thus, petitioner does not have good record even otherwise. These facts are not disputed by the learned counsel for the petitioner.

21. Having regard to these facts, the Writ Petition is partly allowed and the following order/directions are issued.

- (i) The order impugned is set aside.
- (ii) Instead of remitting the matter for fresh consideration of the issue, the Court proposes to give quietus to the litigation by imposing appropriate punishment. Since the allegations in charge Nos.2 and 3 are grave and they are held proved by the enquiry officer and accepted by the disciplinary authority, petitioner cannot have the remedy of restoration to service with all benefits. Therefore, the punishment of removal is modified to that of reduction to the lowest of the scale of pay attached to the post of conductor from the date of removal till he attained the age of superannuation.
- (iii) Petitioner is not entitled to back wages on account of setting aside the order of removal.

(iv) As a consequence to setting aside the removal order, petitioner is only entitled to determination of annual increments for the period from the date of removal till he attained the age of superannuation for the purpose of settlement of gratuity only and he is not entitled to any other benefits. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

P.NAVEEN RAO,J

12th December, 2017
Rds

