

THE HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No.8724 OF 2011

Dated:06.06.2017

Between:

M. Veerupakshaiah, S/o. Late Sharnaiah,
Aged 54 years, Occ: ADC, E.No.89332,
R/o. LIG 128, A.P.H.B. Colony,
Jedcherla, Mahaboobnagar District

.. Petitioner

AND

APSRTC, rep., by its Managing Director,
Bus Bhavan, RTC X Road, Hyderabad
and others

.. Respondents



The Court made the following:

THE HON'BLE SRI JUSTICE P. NAVEEN RAO**WRIT PETITION No.8724 OF 2011****ORDER:**

At the relevant point of time, the petitioner was working as Conductor. He was assigned duty on a bus in the route Nagarkurnool - Kollapur - Hyderabad - Nagarkurnool on 24.10.2006. On the first lap of the journey, the bus started at Nagarkurnool depot at about 1420 hours, reached Hyderabad at 2100 hours and departed to Nagarkurnool at 2130 hours. The bus ultimately reached the depot at 0030 hours on 25.10.2006. It appears, the bus was involved in an accident at Vатtem village on the way back to Nagarkurnool from Hyderabad running over three persons sleeping on the Maize. It appears that this incident happened at 2345 hours. The accident was not reported to the police and the bus was parked into the depot on the intervening night and driver went off the duty. The petitioner as conductor also performed his post journey formalities and next day attended duty from 0007 hours to 2000 hours on the bus route from Nagarkurnool to Hyderabad.

2. In the meantime, a person by name, K. Esaiah, a Member of Mandal Praja Parishad Territorial Constituency, Kalvakol, informed the competent authority about the incident in the intervening night of 24/25/10/2006, where three persons died involving the bus of the respondent - Corporation. Having come to know about the alleged incident, a preliminary enquiry was caused. Upon verification of the bus tyres and front portion of the bus, blood stains were noticed and Maize was also found leading to suspicion

of bus involved in the accident, as alleged by K. Esaiah. On verification of the spot by the police, it was also found that the accident occurred at Vатtem village resulting in death of three persons. At that stage, on further verification, it was also noticed by the competent authority that the petitioner was assigned duty on the bus travelling from Hyderabad to Nagarkurnool involved in the accident and petitioner neither made entry in the SR about the incident nor informed the In-charge of the Depot after the bus reached the depot.

3. Taking note of the incident, disciplinary proceedings were initiated against the petitioner and he was placed under suspension on 02.11.2006 and on the same day, charge sheet was drawn against him. The charge sheet contains two charges. The sum and substance of the allegation in the first charge is, petitioner concealed the fact of accident of the vehicle at Vатtem village on 24.10.2006. The sum and substance of the second charge is, the conduct of the petitioner amounts to spoiling the reputation of the respondent – Corporation, general public and the society by such concealment of the factum of accident. Domestic enquiry was conducted and the enquiry officer held the charges as proved. Based on the findings of the enquiry officer and after affording due opportunity, disciplinary authority passed orders on 22.06.2007 imposing punishment of reduction by two incremental stages, which would have effect on future increments and the period of suspension was treated as 'not on duty'. In the appeal earlier punishment was modified to that of differing annual increment for a period of two years which shall have effect on future increments, suspension period is treated as 'not on duty'.

The review filed by the petitioner was rejected. Aggrieved thereby, this Writ Petition is filed.

4. Heard Sri V. Narasimha Goud, learned counsel for the petitioner, and Sri B. Mayur Reddy, learned Standing Counsel for the TSRTC appearing for the respondent - Corporation.

5. Learned counsel for the petitioner contends that the petitioner was not aware of the accident and after performing his part of duty and closing the SR, he went to sleep. The driver also did not inform the petitioner about the accident. Thus, there was no occasion for the petitioner to report to the competent authority about the alleged accident. The petitioner came to know about the incident for the first time on 26.10.2006 when the incident was reported in the daily newspapers. Thus, the petitioner cannot be blamed for not reporting about the incident.

6. Learned counsel further contends that disciplinary proceedings were initiated based on the complaint filed by K. Esaiah. This complainant was not examined during the enquiry and the petitioner was not given opportunity to rebut the allegations made by the complainant and the same would amount to violation of principles of natural justice and denial of reasonable opportunity and on that ground alone the punishment is liable to be set aside.

7. Learned counsel further submits that the preliminary enquiry was conducted behind the back of the petitioner. As per the Standing Orders notified by the respondent - Corporation, whenever a preliminary enquiry is conducted, the enquiry report

has to be authenticated by an independent witness, whereas in the instant case, the independent witness has not authenticated and therefore no credence could have been given to the report of the preliminary enquiry. There was no other evidence on record, except the statement of the preliminary enquiry officer to hold that the petitioner was guilty of not reporting the incident.

8. Learned counsel further contends that the bus was travelling during late night and after the closure of SR, petitioner was sleeping. Therefore, the petitioner was *bona fide* not aware of the incident. When a specific plea was raised by the petitioner, the enquiry officer has not appreciated his stand and relied heavily on the statement of the preliminary enquiry officer and held the charges as proved. Learned counsel contends that the findings of the preliminary enquiry officer are perverse and based on such perverse findings, the punishment could not have been imposed.

9. In support of his contentions that the petitioner was denied reasonable opportunity, that proper and relevant material was not brought on record and that without examining the complainant, disciplinary action was taken, learned counsel placed reliance on two decisions of the Supreme Court in (i) **Kuldeep Singh v. the Commissioner of Police**¹ and (ii) **Nirmala J. Jhala v. State of Gujarat**².

10. Sri B. Mayur Reddy, learned Standing Counsel for the respondent – Corporation, contends that the only issue against the petitioner was that even though he was aware of the accident, he

¹ (1999) SCC (LS) 429

² (2013) 4 SCC 301

did not report and no entry was made in the star document and the same amounts to gross misconduct. He further submits that preliminary enquiry was conducted based on the complaint given by K. Esaiah and on verification, it was noticed that the bus met with an accident on the intervening night, blood stains were found on the bus and police have also reported registration of crime. This material would show that the bus, to which the petitioner was assigned duty as Conductor, met with accident. The petitioner failed to report the same to the depot manager. That he was in deep sleep and was not aware of the alleged incident, cannot be believed, more so, when accident resulted in death of three persons and the bus hit a tree while reversing. He further contends that after affording due opportunity to the petitioner, disciplinary proceedings were concluded and punishment was validly imposed. He further submits that jurisdiction of the writ Court in disciplinary matters is very limited and this Court cannot enter into re-appreciation of evidence.

11. Shorn of details, the crux of the issue is as to whether the petitioner committed misconduct in not reporting the accident to the bus resulting in death of three persons to which he was assigned duty as Conductor. The basic fact of bus involved in accident is not disputed. This Court repeatedly asked learned counsel for the petitioner to clarify as to whether the bus met with accident. He was candid in stating that bus met with accident on the intervening night. He was only taking the plea that as the petitioner was asleep, he was not aware of the accident and neither the passengers travelling in the bus nor the driver informed him

about the alleged incident and therefore there was no occasion for him to know about the incident and to report.

12. Once it is established that the bus met with accident, as a Conductor, travelling in the bus assigned with duty, petitioner cannot take the plea that he was in deep sleep and therefore he was not aware of the alleged incident. The concerned bus to which he was assigned duty was required to stop at various places on the way from Hyderabad to Nagarkurnool and it was not a case of bus travelling from one end to another end without any stop in between. The contention of learned counsel that the SR was closed and the petitioner went to sleep, cannot be believed. Enquiry report would disclose that petitioner deposed that he closed star document after passing Thimmajipet and went to sleep. At Vattam village also he closed the tray and bus stopped at Bijnepally. The alleged accident occurred at Vattam village. Thus, the statement of the petitioner that he was not aware of the accident and that he was sleeping is not correct. At any rate, normal presumption goes against the petitioner. When a bus involves in an accident resulting in death of three persons by running over them, the bus would definitely be subjected to jolt. It appears, in fact, after running over three persons sleeping on the road margin, the driver was reversing the bus and in that process, the bus hit a tree. Therefore, there would have been lot of disturbance in the bus more particularly when the incident occurred, may be just after the bus left the stop of Vattam village and at about that time only the petitioner closed the tray meaning thereby he was aware of the incident.

13. In departmental proceedings what is required to establish a charge is, preponderance of probabilities. In the instant case, the probability that the petitioner was aware of the incident cannot be ruled out having regard to the facts on record and on brief analysis of the issue, as noted above.

14. Further, the material on record would support the findings recorded by the enquiry officer holding the charge as proved. The preliminary enquiry officer was examined and during the enquiry he stood by whatever was noticed by him in his preliminary enquiry. According to his report, blood stains were noticed on the tyres of the bus and maize was also struck on the front portion of the bus. The finding of the enquiry officer is substantiated by the report of the police that the accident took place on the intervening night. This material is sufficient to come to conclusion that the bus in which the petitioner was assigned duty met with accident. Based on this material, the disciplinary authority imposed the punishment. What is required in the departmental proceedings is, the findings should be based on some material on record and the conclusions arrived at by the departmental authority cannot be gone into by the writ Court in exercise of power of judicial review in a Writ Petition filed under Article 226 of the Constitution of India.

15. The decisions relied upon by the learned counsel for the petitioner, in the facts of this case, as analyzed above, do not come to the aid of the petitioner.

16. Therefore, I do not see any illegality in the disciplinary action taken against the petitioner resulting in imposing punishment as upheld by the appellate and reviewing authorities. The Writ

Petition does not merit consideration and the same is liable to be dismissed.

17. The Writ Petition is accordingly dismissed. There shall be no order as to costs.

Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

P. NAVEEN RAO, J

Date:06.06.2017

KH

