

HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No. 2193 OF 2017

ORDER:

In this writ petition, the petitioner, who is a driver in respondent – Corporation, challenges the charge sheet as well as the suspension order, dated 19.12.2016, issued by the 4th respondent.

Heard learned counsel for the petitioner and the learned Standing counsel for the respondents.

It is alleged in the charge sheet as well as the suspension order that on 08.12.2016, when the petitioner was taking out the bus, Breath Analyzer Test was conducted on him and according to the disciplinary authority the colour changed into pink and there was beep sound also. On the basis of the breath analyzer report, petitioner was alleged as consuming alcohol while on duty and by proceedings, dated 19.12.2016, he was placed under suspension and a charge sheet was served on him on the same day. Questioning the charge sheet as well as the suspension order, the petitioner filed the present writ petition.

Learned counsel for the petitioner submits that the petitioner filed his explanation on 28.12.2016 and contends that what is alleged against the petitioner is consumption of alcohol while on duty and what is indicated in the charge sheet as well as suspension order is that the colour of the alcohol has been changed into pink. He submits that the percentage of alcohol consumed is not shown and therefore what is alleged against the petitioner is not true and that the petitioner was not subjected to medical examination and therefore the disciplinary proceedings are not maintainable and the suspension is not valid. In support of his

contention, he relied on a decision of the Supreme Court in **Munnalal v. Union of India**¹.

It appears from the reading of the charge sheet and the suspension order that the Breath Analyzer Test was conducted while the petitioner was on duty and the colour changed into pink with beep sound and thereby the petitioner was found to have consumed alcohol. Whether the petitioner actually consumed alcohol, whether the petitioner was not subjected to medical examination and whether disciplinary action can be continued against the petitioner are the matters, which require consideration during the course of enquiry and at this stage the Court cannot go into those issues.

It is not the case of the petitioner that order of suspension as well as initiation of disciplinary proceedings are not made by the competent authority. Based on prima facie assessment of material on record an allegation of misconduct is made and at this stage the Court cannot go into the merits of the allegations leveled against the petitioner and record findings. In disciplinary matters the jurisdiction of the writ Court is limited and can test the legality of a decision in exercise of its power under Article 226 of the Constitution of India only after the final order passed by the disciplinary authority.

In the decision relied by the learned counsel for the petitioner, it was a case arising after disciplinary action was taken. The Supreme Court came to the conclusion based on facts on record that there was no satisfactory evidence to prove that the person therein was found consumed alcohol and that he was not taken to hospital to examine him, as suggested by the first doctor. Thus, contentions touching upon merits of the issue can be gone into only after the conclusion of the disciplinary proceedings and if the disciplinary authority

¹ 2010 (15) SCC 399

imposes some punishment. Thus, I am not inclined to entertain the writ petition at this stage.

The writ petition is accordingly dismissed. However, it is needless to observe that if any explanation is filed by the petitioner and if the disciplinary authority intends to conduct enquiry, it shall conduct enquiry and complete the same as early as possible, preferably within a period of two months from the date of receipt of a copy of this order. The petitioner should cooperate the authorities till completion of enquiry.

Miscellaneous petitions, if any, shall stand dismissed. No order as to costs.

Date: 25.01.2017
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P. NAVEEN RAO, J