

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.No.21665 of 2017

ORDER:

Heard the learned Standing Counsel for the petitioner and the learned Government Pleader for Labour appearing for 2nd respondent.

2. This Writ Petition has been filed by the AP State Road Transport Corporation challenging the Award dt.26-09-2016 in I.D.No.9 of 2010 of 2nd respondent-Industrial Tribunal.

3. The 1st respondent was employed as a driver in the said Corporation. On 27-02-1996, an incident occurred at 1315 hours when the bus being driven by him was involved in a fatal accident at Madhira Bus Station platform, resulting the death of two persons.

4. A charge was leveled against the petitioner that he had driven the bus in a rash and negligent manner causing the accident in question.

5. The 1st respondent gave an explanation stating that there were mechanical defects in the bus.

6. Enquiry officer was appointed. The enquiry officer gave a report holding the 1st respondent guilty of the charge.

7. On the basis of the said report, initially show cause notice of removal from service was issued.

8. The 1st respondent submitted an explanation to the said show cause notice and when that was not considered, he filed W.P.No.19724 of 1996 before this Court.

9. The said Writ Petition was allowed on 05-08-2004 and a direction was given to the Corporation to consider 1st respondent's explanation and the Corporation was also directed to record reasons on the aspects pointed out in the explanation and take further action.

10. It is also not in dispute that the petitioner was acquitted by the Criminal Court in C.C.No.208 of 1996.

11. On 30-11-2004, the Depot Manager, Madhira, passed an order for postponement of annual increment by two years and also directed treating the suspension period from 13-03-1996 to 25-09-2001 was 'not on duty'.

12. The 1st respondent filed an appeal against it to the Regional Manager, Khammam. The Regional Manager further modified the punishment to deferment of one annual increment for a period of one year with cumulative effect.

13. The 1st respondent raised industrial dispute before the Joint Commissioner of Labour, Warangal, who referred the matter to the Industrial Tribunal and the reference was "whether the Deputy Chief Traffic Manager, APSRTC, Khammam Region, Khammam is justified to modify the deferment of annual grade increment to one year with cumulative effect by the proceedings dt.04-09-2007?"

14. In the claim petition, 1st respondent contended that in the domestic enquiry, Corporation examined eight witnesses but none of them spoke of rash and negligent driving; that though the witnesses admitted mechanical defects in the bus and there was documentary evidence of mechanical defects in the bus, the enquiry officer submitted the report holding that the charge was proved against 1st respondent and that his findings were perverse and biased. He contended that High Court in W.P.No.19724 of 1996 directed the Corporation officials to consider the 1st respondent's explanation dt.09-09-2004 to the show cause notice as well as his acquittal in the criminal case, but this was not considered and the punishment was imposed on him. He asserted that there was plenty of evidence to show that he was not responsible for the accident and that the accident was caused by mechanical defects in the bus.

15. Counter affidavit was filed by the Corporation contending that fair and proper enquiry was conducted and the enquiry officer, on the basis of evidence, rightly held that the charge was proved. It is contended that the petitioner's conduct had resulted the loss of two lives and injuries to nine others and so the punishment imposed on the 1st respondent was just and proper.

16. By Award dt.26-09-2016, 2nd respondent held that the Corporation did not record any reasons on the aspects pointed out in the explanation submitted by 1st respondent to the show cause notice or the fact that he was acquitted in the criminal case before imposing

the impugned orders and that therefore the 1st respondent ought to succeed.

17. Assailing the same, this Writ Petition is filed.

18. It is contended by Sri B. Mayur Reddy, learned Standing Counsel for the Corporation that 2nd respondent-Tribunal acted in an illegal and arbitrary manner in holding that the explanation of 1st respondent was not recorded and considered before passing the impugned order for the punishment. It is pointed out that though initially punishment of removal was proposed to be given to the 1st respondent, on sympathetic grounds, the punishment was reduced to deferment of annual increments to two years with cumulative effect by the Depot Manager, Madhira and in appeal, filed by 1st respondent, it was further reduced to deferment of annual increment to one year with cumulative effect.

19. It is not in dispute that the incident in question took place in 1996. The defence of the 1st respondent was that there were mechanical defects in the bus and that he did not cause the accident by his rash and negligent driving. According to him, the Corporation examined eight witnesses but none of them spoke on rash and negligent driving by him and there was ample documentary evidence about mechanical defects in the bus. It is also his case that he was acquitted by criminal Court in C.C.No.208 of 1996 by judgment dt.29-08-2000.

20. It is not in dispute that this Court had specifically directed the respondents to consider the explanation given by 1st respondent to the show cause notice in the order dt.15-08-2004 in W.P.No.19724 of 1996.

21. However, neither the order of the Depot Manager, Madhira dt.30-11-2004 nor the Regional Manager, Khamma/Deputy Chief Traffic Manager, Khammam in his order dt.04-09-2007 advert to the explanation given by the 1st respondent to the show cause notice and merely record that they have perused the explanation and then passed the orders in question.

22. No attempt has been made by both these officials to record reasons as to why the explanation submitted by 1st respondent to the show cause notice cannot be accepted. If the contention of the 1st respondent is that he was not negligent in the driving of the bus, and there is evidence to show that there were mechanical defects, merely because two people died and some others were injured, the 1st respondent cannot be punished. The disciplinary authority is expected to record reasons why he is not accepting the explanation of the delinquent employee to the charge of the misconduct by applying his mind and giving reasons.

23. In this case neither the disciplinary authority nor the appellate authority have thought it fit to record any reasons for their conclusion that 1st respondent deserves to be punished.

24. In this view of the matter, I do not find any error of jurisdiction in the Award passed by 2nd respondent Tribunal warranting interference by this Court under Article 226 of the Constitution of India.

25. Accordingly, the Writ Petition is dismissed at the admission stage. No costs.

26. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 03-07-2017
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