

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.5638 OF 2015

ORDER:

This Writ Petition under Article 226 of the Constitution of India is filed seeking to declare the order passed by the respondent in proceedings No.EC/114(09)/2013-PD dated 19.02.2015, as illegal and arbitrary.

The case of the petitioner, as seen from the affidavit filed in support of the Writ Petition, is that the petitioner joined the service of the Respondent-Corporation in the year 1988 as an Officer under Trainee. Thereafter, he was appointed as Depot Manager and then promoted as Principal, Zonal Staff Training College, Warangal, in October, 2002. While the petitioner was working at Kurnool, a suspension order along with Charge Sheet was issued on 07.12.2013 basing on the complaint lodged by Smt.D.Sridevi, Trainee contract Conductor, Anantapur Region. The petitioner submitted his explanation denying the allegations made therein. An enquiry was conducted and Memory Card of the Security Head Guard, Zonal Staff Training College, Kurnool, was sent to Truth Laboratory to find out the genuineness of the same. After due examination, the Truth Laboratory submitted its report stating that it is a manipulated record. Considering all the circumstances, the Enquiry Officer submitted a report on 17.09.2014 holding that the charges levelled against the petitioner were not proved. In spite of the same, the respondent issued show cause notice dated 08.10.2014, differing with the findings of the Enquiry Officer stating that there is clear evidence of making calls to the complainant. Pursuant thereto, the petitioner submitted an

application to the respondent to furnish a copy of Truth Laboratory report dated 28.08.2014. Without furnishing the same, the respondent passed orders on 19.02.2015 imposing punishment of reduction in pay by two incremental stages, which shall have permanent effect on future increments, besides treating the suspension period as 'not on duty' for the purpose of leave, increments, gratuity and other service benefits. Challenging the same, present Writ Petition is filed.

By an order dated 13.03.2015, this Court while admitting the Writ Petition granted interim suspension of the order dated 19.02.2015. Seeking to vacate the said order, WVMP No.474 of 2017 came to be filed by the respondent-Corporation along with a counter affidavit mainly contending that though the show cause notice was issued on 08.10.2014 and the petitioner was given ample time of 4 months and 11 days for submitting his explanation, failed to do so which lead to passing of the impugned order on 19.02.2015 setting out the reasons for differing with the opinion of the Enquiry Officer. It is further contended that the Corporation has scrupulously followed the regulations laid down in APSRTC Employees (CC&A) Regulations 1967 and as such the impugned order warrants no interference.

Heard the learned counsel for the petitioner and the learned Standing Counsel appearing for the respondent-Corporation.

Learned counsel for the petitioner mainly submits that the order under challenge is illegal for the reason that no notice was given to the petitioner before passing of the impugned order.

Learned Standing Counsel for the respondent-Corporation while referring to the averments made in the counter would contend that show cause notice dated 08.10.2014 was issued to the petitioner and *in spite* of giving sufficient time, the petitioner failed to submit his explanation.

A perusal of the material on record would show that though the show cause notice was said to have been issued to the petitioner, the record is silent as to when said notice was served on the petitioner. Therefore, the argument of the learned counsel for the petitioner that the impugned order came to be passed without hearing the petitioner cannot be brushed aside.

On 13.03.2015 while granting interim suspension, this Court made the following observations:

“ Reasons are the essential links, which reflect upon the lines on which the decision-making authority has applied his mind. Sans reasons, no one will be able to understand as to what compelled the authority to arrive at a particular conclusion. These reasons would bring about not only transparency to the entire action but truthfully reflect upon the lines on which and the material on which reliance has been placed for recording the disagreement, if any. It is altogether a different thing to put the employee on a prior notice before any such intended disagreement from the findings of the Enquiry Officer is recorded. Providing an opportunity of hearing is an essential ingredient of the fundamental principle of natural justice, namely no man should be condemned unheard. For sheer failure to adhere to the principles of natural justice by the Vice-Chairman and Managing Director of the Corporation, before his intended disagreement with the findings of the Enquiry Officer which are in favour of the petitioner, is recorded, the order of punishment imposed by the vice-Chairman and Managing Director

of the Corporation on 19.02.2015 cannot be sustained. Any order passed in derogation of the principles of natural justice cannot be permitted to bring out the effect which is otherwise intended.”

In ***Gorkha Security Services vs. Govt. of Nct of Delhi & others*** [Civil Appeal Nos.7167-7168 of 2014 dated 04.08.2014] the Apex Court held as follows:

“31. At the same time, however, effect of violation of the rule of audi alteram partem has to be considered. Even if hearing is not afforded to the person who is sought to be affected or penalised, can it not be argued that “notice would have served no purpose” or “hearing could not have made difference” or “the person could not have offered any defence whatsoever”. In this connection, it is interesting to note that under the English law, it was held few years before that non-compliance with principles of natural justice would make the order null and void and no further inquiry was necessary.

Having regard to the above, more particularly the observations made by this Court while passing interim order on 13.03.2015, the ratio laid down by the Supreme Court referred to above and since there is clear violation of principles of natural justice, this Writ Petition is allowed setting aside the impugned order and remanding the matter to the respondent directing him to pass appropriate orders afresh after following the procedure established under law.

Miscellaneous Petitions pending in this Writ Petition, if any, shall stand closed. There shall be no order as to costs.

JUSTICE C. PRAVEEN KUMAR

12.04.2017
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