

HONOURABLE SRI JUSTICE M. GANGA RAO

WRIT PETITION No.14622 of 2001

ORDER:

The petitioner, Coupling Porter Grade-I in the 1st respondent Organization, filed this Writ Petition being aggrieved by the orders of the Traffic Manager and Disciplinary authority in proceedings No.TRE/PC/CMJP/GSR, dated:18-4-2001, where under the petitioner was imposed punishment of reversion to the post of Railway Khallasi for a period of two years with cumulative effect with effect from 16.4.2001, as being illegal and arbitrary.

2. The case of the petitioner is that while he was working as Coupling Porter Grade-I in Railway Operating Section of Visakhapatnam Port Trust, on 23-10-1999 he was posted to work at reception-cum-dispatch yard during the shift 16.00 hours to 00.00 hours on 23.10.1999. The petitioner was issued Articles of charge on 22.11.1999 alleging that the petitioner-G. Srinivasa Reddy, Coupling Porter Gr.I refused to detach the vaccum pipe of incoming trains which is a part of his day-to-day legitimate duty. He instigated the other loyal workers not to work. The petitioner submitted his explanation on 01-12-1999, denying the charges. The disciplinary authority, not satisfied with the said explanation of the petitioner, got conducted enquiry into the charges. The enquiry officer submitted his report on 02.02.2001 holding that the charges are proved against the petitioner. A show cause notice was issued to the petitioner along with enquiry officer's report calling his explanation and objections. He had submitted his objections and explanation dated:16-2-2001 to the said

show cause notice. The disciplinary authority, having considered the enquiry officer's report and objections and explanation of the petitioner passed order dated:18-4-2001, imposing punishment of reverting the petitioner to the post of Railway Khallasi for a period of two years with cumulative effect w.e.f. 16.4.2001. Against which, he preferred an appeal dated:17-5-2001. The appeal was rejected vide orders dated:07-06-2001. The petitioner being aggrieved by the orders passed by the appellate authority in confirming the punishment order passed by the Traffic Manager and Disciplinary Authority, filed this Writ Petition.

3. Smt. Udai Sree, appearing for the petitioner would contend that the enquiry officer submitted enquiry report holding that the charges are proved without properly considering the evidence of the witnesses and cross examination. Further, the disciplinary authority without considering the explanation and objections submitted to the enquiry officer's report and to the show cause notice and without independent application of mind, erroneously came to the conclusion that the petitioner had committed serious misconduct by refusing to do his legitimate duties besides instigating the other workers not to work with a mala fide intention of disrupting the public work and imposed severe punishment of reversion to the post of Railway Khallasi for a period of two years with cumulative effect with effect from 16-4-2001 which is severe punishment and disproportionate to the proved misconduct. She would further contend that the appellate authority without considering the appeal grounds in its proper perspective and without any reasoned order, rejected the same. She further contends that the other ten employees who were also charge sheeted with him were imposed minor penalty of Censure. Whereas, petitioner was imposed

major penalty of reversion and thereby the petitioner was discriminated.

4. The learned Counsel for the petitioner relied on the judgment in the case of S.N. MUKHERJEE V.UNION OF INDIA¹, in support of her contention that, every administrative authority while discharging quasi-judicial functions is required to record the reasons for its decisions. The Apex Court at para Nos.34 and 38 held as under:

"34. The decisions of this Court referred to above indicate that with regard to the requirement to record reasons the approach of this Court is more in line with that of the American Courts. An important consideration which has weighed with the Court for holding that an administrative authority exercising quasi-judicial functions must record the reasons for its decision, is that such a decision is subject to the appellate jurisdiction of this Court under [Article 136](#) of the Constitution as well as the supervisory jurisdiction of the High Courts under [Article 227](#) of the Constitution and that the reasons, if recorded, would enable this Court or the High Courts to effectively exercise the appellate or supervisory power. But this is not the sole consideration. The other considerations which have also weighed with the Court in taking this view are that the requirement of recording reasons would (i) guarantee consideration by the authority; (ii) introduce clarity in the decisions; and (iii) minimise chances of arbitrariness in decision making. In this regard a distinction has been drawn between ordinary Courts of law and tribunals and authorities exercising judicial functions on the ground that a Judge is trained to look at things objectively uninfluenced by considerations of policy or expediency whereas an executive officer generally looks at things from the standpoint of policy and expediency.

38. The object underlying the rules of natural justice "is to prevent miscarriage of justice" and secure "fair play in action." As pointed out earlier the requirement about recording of reasons for its decision by an administrative authority exercising quasi-judicial functions achieves this object by excluding chances of arbitrariness and ensuring a degree of fairness in the process of decision-making. Keeping in view the expanding horizon of the principles of natural justice, we are of the opinion, that the requirement to record reason can be regarded as one of the principles of natural justice which govern exercise of power by administrative authorities. The rules of natural justice are not embodied rules. The extent of their application depends upon the particular statutory framework where under jurisdiction has been conferred on the administrative authority. With regard to the exercise of a particular power by an administrative authority including exercise of judicial or quasi-judicial functions the legislature, while conferring the said power, may feel that it would not be in the larger public interest that the reasons for the order passed by the administrative authority be recorded in the order and be communicated to the aggrieved party and it may dispense with such a requirement. It may do so by making an express provision to that effect as those contained in the [Administrative Procedure Act](#),

¹ AIR 1990 SUPREME COURT 1984

1946 of U.S.A. and the Administrative Decisions (Judicial Review) Act, 1977 of Australia whereby the orders passed by certain specified authorities are excluded from the ambit of the enactment. Such an exclusion can also arise by necessary implication from the nature of the subject matter, the scheme and the provisions of the enactment. The public interest underlying such a provision would out weight the salutary purpose served by the requirement to record the reasons. The said requirement cannot, therefore, be insisted upon in such a case.”

The learned Counsel for the petitioner also relied upon the judgement in the case of ROOP SINGH NEGI V. PUBJAB NATIONAL BANK AND OTHERS², wherein the Apex Court held that, departmental enquiry-documentary evidence-manner in which required to be proved-held, mere production of documents is not enough-contents of documentary evidence has to be proved by examining witnesses-further held, FIR in itself is not an evidence without actual proof of facts stated therein-Criminal Procedure Code, 1973, S.154.

The Honourable Supreme Court at para No.23 held as under:

“23. Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the Criminal Court on the basis of self-same evidence should not have been taken into consideration. The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the [Evidence Act](#) may not be applicable in a departmental proceeding but the principles of natural justice are. As the report of the Enquiry Officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the Enquiry Officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof. “

The learned Counsel for the petitioner further relied upon the judgment in the case of DIVISIONAL FOREST OFFICER, KOTHAGUDEM AND OTHERS V. MADHUSUDHAN RAO³, in support of her contention that the appellate and revisional authorities are

² (2009) 2 Supreme Court Cases 570

³ (2008) 3 Supreme Court Cases 469

required to give reasons, albeit brief reasons, while confirming views of the disciplinary authority-This is because charged employee is entitled to know the mind of the authorities why his appeal/revision has been rejected and held at para No.20 as under:

“20. It is no doubt also true that an appellate or revisional authority is not required to give detailed reasons for agreeing and confirming an order passed by the lower forum but, in our view, in the interests of justice, the delinquent officer is entitled to know at least the mind of the appellate or revisional authority in dismissing his appeal and/or revision. It is true that no detailed reasons are required to be given, but some brief reasons should be indicated even in an order affirming the views of the lower forum.”

The learned Counsel for the petitioner further relied upon the judgment in the case of *MESSRS. MAHABIR PRASAD SANTOSH KUMAR V. STATE OF U.P. AND OTHERS*⁴, in dismissing the statutory appeal and held as under:

“The power of the District Magistrate was quasi-judicial; exercise of the power of the State Government was subject to the supervisory power of the High Court under Article 227 of the Constitution and of the appellate power of this Court under Article 136 of the Constitution. The High Court and this Court would be placed under a great disadvantage if no reasons are given and the appeal is dismissed without recording and communicating any reasons.”

Thus, the said orders passed by the disciplinary authority which was confirmed by the appellate authority is liable to be set aside on the ground that they are not passed on any legal evidence and no reasons are recorded.

5. *Per Contra*, Sri B. Arvind Reddy, Advocate, on behalf of Sri P. Raghu Ram, appearing for the respondents while reiterating the contents of counter as well as the orders of the appellate authority would contend that the petitioner refused to detach the vacuum pipe of incoming trains which is a part of his day-to-day legitimate duties and instigated the other loyal workers not to work with a mala fide

⁴(1) Supreme Court Cases 764

intention of disrupting public work. So, he has committed misconduct enumerated under Regulation 3(i) of Visakhapatnam Port Employees' (conduct) Regulations, 1964. Not satisfied with the explanation to the charge memo, enquiry officer was appointed to conduct enquiry into the charges. The enquiry was conducted as per rules and regulations of the Corporation with strict adherence to the principles of natural justice. He was given liberty to cross examine the witnesses. The presenting officer was also appointed under sub-Regulation 5 (C) of Regulation 10 of Visakhapatnam Port Employees' (Classification, Control and Appeal) Regulations, 1968. The enquiry officer submitted report considering the evidence and holding that the charges against the petitioner are proved. The Traffic Manager, Visakhapatnam Port Trust-disciplinary authority, independently, considered the evidence before him and came to the conclusion that charges are proved against the petitioner and imposed punishment of reversion to the post of Railway Khallasi for a period of two years with cumulative effect with effect from 16-4-2001. Subsequent to this, an appeal was preferred by the petitioner dated:17-5-2001 which was considered and rejected by the appellate authority stating that there is no illegality in imposing punishment and confirmed the punishment awarded by the Traffic Manager (Disciplinary Authority). Hence, there is no illegality or irregularity in passing the said order by the appellate authority-Deputy Chairman, Visakhapatnam Port Trust.

6. As it is a simple case of misconduct of disobedience of refusing to discharge of day-to-day duties and instigating other employees/workers, the enquiry officer conducted enquiry by examining the witnesses and he was given opportunity to cross examine the witnesses and considering the same by giving necessary reasons for

such misconduct, the primary authority as well as the appellate authority passed orders. But the enquiry officer not considered the entire evidence on record in its proper perspective and held that the charges are proved. No reasons were given by the enquiry officer and the disciplinary authority, basing on the report of enquiry officer, the disciplinary authority passed orders of reversion without proper and sufficient reasons, which was confirmed by the appellate authority. Hence, the Writ Petition is liable to be dismissed.

7. In the facts and circumstances of the case, the petitioner worked for a period of nine years and got promotion to the post of Coupling Porter Grade-I. For the charge of refusing to detach the vacuum pipe of incoming trains which is a part of his day-to-day legitimate duties and instigating the other loyal workers not to work, a charge memo was issued on 22.11.1999 under Regulation 3 (i) of Visakhapatnam Port Employees' (Conduct) Regulations, 1964. The petitioner submitted his explanation to the charge memo denying the charges. The disciplinary authority not satisfied with the explanation, appointed an enquiry officer to conduct enquiry into the charges. Enquiry was conducted by cross examining the witnesses. But the enquiry officer by not considering the entire evidence on record in its proper perspective held that the charges are proved when there are only two persons on the spot, the instigation of other workers did not arise. However, the enquiry officer submitted his report holding that the charges are proved. But the disciplinary authority without independent application of mind to the enquiry officer's report and the material placed before him, erroneously came to the conclusion that the petitioner had committed serious misconduct by refusing to do his legitimate duties besides instigated the other workers not to work with

a mala fide intention of disrupting the public work and imposed severe punishment of reversion to the post of Railway Khallasi for a period of two years with cumulative effect with effect from 16-4-2001 which is severe punishment and disproportionate to the proved misconduct. However, the appellate authority confirmed the same without giving any reasons.

8. The contention of the learned Counsel for the petitioner is that the enquiry officer without properly considering the evidence of the witnesses and cross examination, submitted report holding that the charges are proved. Further, the disciplinary authority without considering the explanation and objections submitted to the enquiry officer's report and show cause notice and also without independent application of mind, imposed severe punishment of reversion to the post of Railway Khallasi for a period of two years with cumulative effect from 16-4-2001 which is severe punishment. Whereas, in respect of other workers who were issued charge sheets for similar charges, minor penalty of Censure was imposed.

9. Thus, in the opinion of this Court, imposition of punishment of reversion to the post of Railway Khallasi for a period of two years with cumulative effect with effect from 16.4.2001 is a major punishment disproportionate to the proved misconduct and the petitioner was discriminated. In these circumstances, the impugned orders of reversion issued in proceedings No.TRE/PC/CMJP/GSR, dated:18.4.2001 which was confirmed by the appellate authority vide orders dated:7.6.2001 are liable to be set aside and are accordingly set aside. However, the matter is remitted back to the appellate authority to re-consider the penalty of reversion to the post of Railway Khallasi

for a period of two years with cumulative effect 16-4-2001 for the charge of refusing to detach the vacuum pipe of incoming trains which is a part of his day-to-day legitimate duties and instigating the other loyal workers not to work and impose lesser punishment commensurate with the proved misconduct as was imposed to other workers. The entire exercise shall be completed by the respondent authorities within a period of two months from the date of receipt of a copy of this Order.

10. The Writ Petition is accordingly allowed. No costs.

Pending Miscellaneous Petitions, if any, shall stand closed.

Dated: 16-7-2018

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JUSTICE M. GANGA R RAO

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