

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

Writ Petition No.10643 of 2005

ORDER:

This Writ Petition is filed by the petitioner challenging the Award dated 09.12.2004 in I.D.No.112 of 2001 passed by the Chairman, Industrial Tribunal-I, Hyderabad (for short "the Tribunal"), whereunder the Tribunal dismissed the I.D. upholding the domestic enquiry proceedings and consequent punishment of removing the petitioner from service imposed by the second respondent.

2) The factual matrix of the case is thus:

a) The petitioner's case is that he was appointed as driver in the 2nd respondent/Corporation on 01.03.1991. On 12.04.1999, he was driving the bus bearing No.AEZ 5141 on Route No.15 from Kushaiguda to Secunderabad and at about 3:45 PM, he stopped the bus at Lalapet near Ram Theatre stage and started moving slowly and when the passengers shouted to stop the bus, he immediately stopped the bus and found that a lady was lying on the road. His further case is that he saw both sides of the road through the side mirrors of the bus and proceeded and that he was not aware as to how the lady came into contact with the bus and died. He reported the incident to police and criminal case was registered as Cr.No.98 of 1999 under Section 304A IPC and he was issued a charge sheet and suspension order dated 01.06.1999 for which he submitted a detailed explanation stating that when lady passenger attempted to board

the bus from front side, she herself slipped from the bus losing the balance and there is no negligence on his part.

b) Thereafter, the 2nd respondent nominated an Enquiry Officer who in turn without giving a reasonable opportunity to the petitioner held that he was responsible for the accident. Basing on which 2nd respondent issued show cause notice dt.09.02.2000, for which the petitioner had submitted his explanation. The 2nd respondent without considering the explanation offered by the petitioner issued removal order dated 19.02.2000. Aggrieved, the petitioner filed I.D.No.112 of 2001 before the Industrial Tribunal, Hyderabad. The learned Tribunal by order dated 09.12.2004 dismissed the I.D holding that petitioner is not entitled for reinstatement.

c) Hence, the petitioner filed the instant writ petition contending that as he was acquitted by a competent Criminal Court, the Tribunal instead of dismissing the I.D ought to have reinstated him into service. He also contended that the punishment imposed by the Tribunal is disproportionate to the gravity of offence and thus prayed to allow the writ petition.

3) Heard arguments of Sri Ch.Madhava Raman, learned counsel for petitioner and learned G.P. for Labour for 1st respondent and Sri N.Vasudeva Reddy, learned Standing Counsel for TSRTC for 2nd respondent.

4) The point for determination is:

“Whether the award passed by the Industrial Tribunal confirming the findings of the departmental enquiry held against the petitioner is factually and legally sustainable?”

5) **POINT:** The petitioner filed I.D.No.112 of 2001 challenging the departmental proceedings and consequent removal from service. The Industrial Tribunal confirmed the departmental proceedings in its award and dismissed the I.D. The cardinal principle is that unless departmental enquiry suffers the vice of perversity, arbitrariness and capriciousness and the punishment imposed by the disciplinary authority is shockingly disproportionate to the charges proved, the Courts and Tribunals, shall not interfere with the same in the judicial review. Vide:

1) *State Bank of Bikaner and Jaipur vs. Nemi Chand Nalwaya*¹

2) *V. Ramana vs. A.P.S.R.T.C. and others*²

3) *Union of India vs. P.Gunasekaran*³

In *Gunasekaran*'s case (3 supra) the Apex Court observed that the High Court can only see whether:

“Para-12:

(a) the enquiry is held by a competent authority;

(b) the enquiry is held according to the procedure prescribed in that behalf;

(c) there is violation of the principles of natural justice in conducting the proceedings;

¹ (2011) 4 SCC 584

² (2005) 7 SCC 338

³ (2015) 2 SCC 610

- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;*
- (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;*
- (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;*
- (g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;*
- (h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;*
- (i) the finding of fact is based on no evidence.”*

Therefore, keeping the above guidelines in mind, the case on hand has to be scrutinized.

6) Admitted facts are that the petitioner was driver of KG depot and on 12.04.1999 he was driving the bus bearing AEZ 5141 of Route No.15 from Kushaiguda to Secunderabad. At about 15.45 hours, when the bus started at Lalapet (Ram Talkies), the bus caused accident to a lady viz. Lakshmi aged about 45 years who was found lying dead on the rear side of the body of the bus.

7) A preliminary enquiry was conducted by Sri J.S.Prasad, Chief Inspector of KG depot who recorded the statements of the conductor and the bus driver and submitted his preliminary enquiry report. The explanation of the driver is that on 12.04.1999 he was proceeding from Kushaiguda to Secunderabad and at 15.25 hours he stopped the bus at

Lalapet bus stop and the ladies boarded the bus through the front door and gents through rear entrance and some passengers also alighted there. He observed through the left and right side view mirror and not found any body attempting to board or alight the bus and moved the bus. At that time, some passengers of the bus shouted to stop the bus and he immediately stopped the bus and observed through left side view mirror and found one lady lying behind near rear side body portion and he got down from the bus and went to police station and reported the matter. The petitioner thus stated that the deceased has not attempted to board the bus either through the front door or rear entrance. He stated that the rear side tyre did not run over the deceased but the outer part of the rear tyre slightly pressed to the head portion of her body. He further stated that one lady pulled the deceased by catching her hand telling that the bus was not the route No.3 bus and in that course the deceased might have fallen down when she was pulled back by another lady. This was the explanation of the driver during the preliminary enquiry.

8) The service conductor—Sri Gangaiah of KG depot stated during the course of preliminary enquiry that bus was stopped at Ram talkies bus stop and passengers alighted and nearly 10 passengers boarded the bus and he gave signal to move the bus from the stop. Then the bus was slowly moving and in the meanwhile, some passengers and public shouted for stopping the bus and he came down and observed that one lady was lying behind the rear side corner of the bus. At that time he was issuing tickets to the passengers and there were 50 to 55 passengers in the

bus and at the same time he heard shouts to stop the bus. According to him, he did not observe as to how the accident was occurred but he observed that one lady was lying behind the rear side corner of the bus which he has observed only after getting down from the bus.

9) Basing on their statements and rough sketch, he opined that the bus driver has not observed the lady who attempted to board the bus resulted in her falling down and dying on the spot. He observed that as per the rough sketch of the accident, the dead body was found lying on the left side rear body portion of the bus which meant that the bus moved some distance even after the lady fell down after losing balance. Had the driver observed the lady who attempted to board the bus through front entrance, the accident would not have occurred. He accordingly submitted the preliminary enquiry report.

10) Basing on the above preliminary enquiry report, the Depot Manager issued charge sheet. Two charges were framed. They are:

***Charge No.1:** For having driven the Vehicle No.AEZ-5141 on 12.04.1999 at Lalapet (Ram talkies) bus stop at about 15.45 hrs. negligently and caused Fatal accident with an intending lady passenger to board the bus resulting in the death of the passenger on the spot due to crush injury, which constitutes misconduct under Regulation 28, sub-clause ix (a) of APSRTC Employees (Conduct) Reg. 1963.*

***Charge No.2:** For having tarnished the image of APSRTC in public eyes by causing fatal accident with a lady - passenger and subjecting irrecoverable loss and grief to the family members of the deceased besides necessitating to pay*

huge compensation, which constitutes misconduct under Regulation 28, sub-clause xiii of APSRTC Employees (Conduct) Reg. 1963”.

11) The Chief Inspector (Enquiries) Secunderabad Division conducted a detailed enquiry on the charges levelled against the petitioner. During the detailed enquiry, Sri J.S.Prasad, Chief Inspector, KG Depot was examined who spoke in terms of preliminary enquiry report. The petitioner cross-examined him.

12) The Enquiry Officer agreed with the finding in preliminary enquiry report questioning as to when the bus was not involved in an accident, how the lady died and her body laid down on the road behind the bus. He observed, as per the rough sketch, the dead body found lying on the left side rear body portion of the bus which means that the bus moved some distance even after the lady fell down after losing the balance. Had the driver observed the lady who attempted to board the bus through the front entrance the accident would not have occurred and thus it is proved that the delinquent had driven the vehicle negligently and caused fatal accident while lady passenger was boarding the bus.

13) The Presiding Officer of the Industrial Tribunal in his award agreed with the findings in the enquiry report. He held that the Enquiry Officer has gone through in detail and found both the charges proved and therefore, he did not find any cogent reason to differ with it.

On a close scrutiny of the entire material on record, I am unable to accept the verdict in the award for the following reasons.

The record would show both the Enquiry Officer as well as the Tribunal have recorded the following conclusions:

1. The deceased tried to board the bus from the left front entrance.
2. It was the duty of service driver to carefully observe from the front left view mirror to notice whether any passengers were boarding or alighting the bus and he has also to observe from the right front view mirror to notice any vehicles or persons were proceeding towards right side of the bus. In the instant case, the driver was not careful in viewing from the left side mirror to notice the deceased boarding the bus. Had he taken care, the accident could have been averted.
3. The rough sketch showed that the deceased fell on the left rear side of the body of the bus at a distance of 10 feet. It infers that the driver was negligent and rash in moving the bus upto a distance of 10 feet even after hearing the shouts.

14) Now, the crucial aspect for consideration at this juncture is, whether from the statements of driver, conductor and the rough sketch, the above findings could inevitably be arrived at or atleast a preponderance of probability can be drawn holding the petitioner wholly responsible for the accident. In my considered view, the material on record, will not allow to draw even a preponderant view of rashness and negligence on the part of the driver.

15) Admittedly, in this case the department has not examined any eye-witnesses such as passengers of the bus or passersby. It appears even during the preliminary enquiry also, the Enquiry Officer did not record the statements of such eye-witnesses and no reason was assigned for

missing such crucial and independent witnesses. It must not be forgotten that as per the statement of the conductor, there were about 50 to 55 passengers in the bus apart from members of public on the road. Despite it, the Court had no advantage of the version of independent eye-witnesses. Unfortunately, the Industrial Tribunal has given little importance to this costly mistake and made a casual observation that merely because there are no eye-witnesses or eye-witnesses resiling from the earlier statement that is not a criterion. In my view, this is the basic flaw in the case of the department. Be that it may, it has to be seen whether the other material available would probablize the guilt of petitioner.

16) The crucial statement is that of the conductor Sri Gangaiah. His version is that the bus was stopped at Ram talkies bus stop and the passengers were alighted and nearly ten passengers boarded the bus and he gave signal to move the bus and then the bus was slowly moving. Meanwhile, some passengers and public shouted to stop the bus and he came down and observed that one lady found lying behind the rear side corner of the bus. According to him, he has not observed as to how the accident was occurred.

17) So, his statement is not projecting that the deceased fell down while boarding from the left front or rear entrance and the driver rashly moved the bus. Then what is left is rough sketch which no doubt shows that the dead body of the deceased found about 10 feet away from left rear side of the bus. From the rough sketch no inevitable inference can be

drawn that while boarding the bus from left front entrance, she fell down due to rash movement of the bus. Therefore, the material on record does not give an inferential conclusion that it was only while the deceased boarding the bus through left front entrance, the driver moved the bus rashly and thereby she fell down. From the statement of the conductor which was believed by both the Enquiry Officers what is evident is that just prior to the incident the bus was stopped at Ram Talkies bus stop and after alighting of and boarding of the passengers, the conductor gave the signal and thereafter only the driver moved the bus and at the time of accident the bus was moving slowly. This is an established fact. If that is the case, even if the deceased tried to board the bus from the left front entrance and even if the driver did not observe her from the front view mirror, still the chances of her falling down when the bus was moving slowly were very meagre. Even assuming she fell down, the chances of the bus crushing any part of her head and moving 10 feet ahead of her are very bleak. Therefore, the version of driver that the deceased did not board the bus from the left front or rear side and when she was about to board the bus from rear side some other lady pulled her back since it was not route No.3 bus and in that process, she fell down and the outer part of the left rear tyre slightly ran over her head appear to be probable. Unfortunately, the two enquiry officers and the Tribunal did not logically appreciate the factual scenario projected by the material on record. On the other hand, they gave perverse finding as if the deceased while boarding the bus from the front side, the driver without observing her, moved the bus rashly and caused her death. Hence, the award of the

Tribunal which confirmed the order passed by disciplinary authority is liable to be set aside.

18) In the result, this Writ Petition is allowed and the Award in I.D.No.112 of 2001 passed by the Industrial Tribunal-I, Hyderabad is set aside and the second respondent is directed reinstate the petitioner into service with all service benefits. No costs.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

Date: 04.06.2018
Murthy



U. DURGA PRASAD RAO, J