

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.4590 of 2001

ORDER:

The petitioner is a workman. He filed this writ petition aggrieved by the proceedings of the 2nd respondent No.02/62(141)/1999-ACPT, dated 05.06.2000, whereby the petitioner was imposed punishment of reduction of two incremental stages in the basic pay, which shall have the effect of postponing of his future increments, besides treating his suspension period as not on duty, and prays to quash the same.

The brief facts of the case are that while the petitioner was conducting the bus No.AP9Z-1172 on the route Akkaram to Achampet on 22.11.1999 night out service, at about 06.30 a.m. a check was exercised by the checking officials and issued a charge memo for cash and ticket irregularities. The petitioner had submitted his explanation to the charge memo. Thereafter, the petitioner was issued a charge sheet, dated 20.12.1999, while keeping the petitioner under suspension pending departmental enquiry, framing the following charges:

1. For having failed to collect the requisite fare of Rs.3/- and issue ticket to a passenger found alighting without ticket at Akkaram Tanda Stage No.15/14 who boarded the bus at Akkaram Stage No.15, which constitutes misconduct under Reg.28(vi)(a) of APSRTC Employees' (Conduct) Reg.1963.
2. For having failed to collect the requisite fare of Rs.10.50 and issue ticket to one boy aged about 11 years found traveling without ticket who boarded the bus at Akkaram and bound for Achampet ex-stages Nos.15 to 1, which constitutes misconduct under Reg.28(vi)(a) of APSRTC Employees' (Conduct) Reg.1963.

3. For having failed to observe the rule 'Issue and Start', which constitutes misconduct under Reg.28(xxxii) of APSRTC Employees' (Conduct) Reg.1963.

The petitioner had submitted his explanation to the charge sheet denying the charges. The 2nd respondent having not satisfied with the explanation of the petitioner, appointed an Enquiry Officer to conduct enquiry into the charges against the petitioner. In the enquiry, the Enquiry Officer examined Ticket Traveling Inspectors (TTIs) and also the petitioner. The Enquiry Officer had submitted his report on 17.04.2000 to the 2nd respondent, holding that the charges are proved against the petitioner. Based on the Enquiry Officer's Report, a show cause notice, dated 29.05.2000 was issued to the petitioner. The petitioner had submitted his explanation to the show cause notice. The 2nd respondent, being the Disciplinary Authority, on consideration of the Enquiry Officer's report and explanation submitted by the petitioner to the show cause notice, had come to the conclusion that the charges leveled against the petitioner are proved, and passed the impugned order, dated 05.06.2000, awarding punishment of reduction in basic pay by two incremental stages, which shall have effect of postponing of future increments, besides treating the suspension period as not on duty. Questioning the same, the present writ petition is filed.

Sri P.Govindarajulu, counsel for the petitioner, would contend that at Akkaram Stage No.15 three passengers boarded the bus and as soon as the passengers entered into the bus, the door of the bus was locked. When the petitioner was in the process of issuing tickets, in fact he had given ticket to one passenger, the TTIs knocked the door of the bus and on hearing the same, he went and opened the door, then the TTIs

entered the bus, checked passengers and asked him why he did not issue tickets to passengers. The learned counsel would further contend that when the TTIs entered into the bus there were three passengers in the bus, the petitioner had given ticket to one passenger by that time, and while he was under process of collecting fare and issuing tickets, the TTIs entered into the bus and noted that one passenger is traveling without ticket, who boarded the bus at Akkaram and bound to Achampet ex-stage No.15 to 1, and also alleged that the petitioner failed to collect the requisite fare and issue ticket to a passenger who was found alighting without ticket at Akkaram Tanda stage No.15/14 from Akkaram stage No.15, Akkaram Tanda and Akkaram are one and the same village, and issued charge memo framing the charges. The learned counsel would further contend that the TTIs recorded the statement of one of the passenger under duress and they have not recorded the statements of ticket less passengers and also not collected any penalty from them. He would further contend that the checking officials have not followed due procedure and they have not issued MTD 43 R on the spot to the petitioner as per rules. He would further contend that as per Section 124 of M.V.Act, 1988, the passenger is responsible to show the ticket at the time of check, and more over, the passengers have clearly stated that after they boarded the bus, within short time the checking officials entered the bus and by that time the petitioner could not have collected the fare and issued tickets to the passengers. The learned counsel further contended that no passenger stated that they had paid ticket fare to the petitioner and the petitioner failed to issue tickets. The petitioner had given his statement to the enquiry officer, without considering the evidence before the enquiry officer in its proper perspective, the enquiry

officer submitted his report holding that the charges are proved. The 2nd respondent without considering the petitioner's explanation to the show cause notice, based on the report of the enquiry officer, imposed major punishment, which is disproportionate to the proved misconduct and hence the order impugned is liable to be set aside.

Sri B.Mayur Reddy, counsel for the respondents Corporation, per contra, would contend that the petitioner has failed to follow the rule "issue and start" and failed to collect the requisite fare from two passengers and failed to issue tickets to them who boarded the bus at starting point Akkaram Stage No.15 and failed to issue ticket to one of the passenger, who was aged about 11 years, who boarded the bus at Akkaram and bound for Achampet ex-stages 15 to 1, a charge memo issued, domestic enquiry was conducted as per rules and in strict adherence to the principles of natural justice. The learned counsel would further contend that the Enquiry Officer submitted his report, after considering the statements of TTI, Conductor and passengers and came to the conclusion that the charges are proved, and basing on the enquiry report, the disciplinary authority, having considered the explanation of the petitioner to the show cause notice, rightly imposed punishment, vide the impugned order, as stated supra. The learned standing counsel would further contend that without availing efficacious remedies of appeal and revision before the competent authority, the petitioner has directly approached this court by filing the present writ petition, which is not maintainable and liable to be dismissed.

Heard both sides and perused the record.

This court found that the night out service bus started at 6.30 a.m at stage No.15, Akkaram to go to Achampet Stage No.1, on 22.11.1999,

with three passengers, who boarded that bus at Stage No.15. The petitioner closed the door of the bus, he went to the passenger and issued ticket to one passenger. When he was in the process of issuing tickets to other passengers, the TTIs knocked the door, he went to the door to open it. When he opened the door, the TTIs entered the bus, and one passenger on seeing the TTIs went to the door to get down at Stage No.15/14, Akkaram Tanda, part of the Akkaram village. On consideration of the evidence on record and Enquiry Officer's report, it is found that the petitioner had no intention to defraud the revenue of the Corporation by indulging in cash and ticket irregularities. The checking officials have not supplied MTD 43 R to the petitioner at the spot and the same was admittedly furnished by TTIs in domestic enquiry. The 2nd respondent-Disciplinary Authority, based on the enquiry officer's report, without considering the explanation of the petitioner to the show cause notice, without independent application of mind to the evidence on record, mechanically imposed the punishment of reduction in basic pay by two incremental stages, which shall have effect of postponing of future increments, besides treating the suspension period of the petitioner as not on duty, which is a major punishment.

This court felt that the punishment has effect on his pay and future increments, which causes financial loss to the petitioner and the punishment is disproportion to the proved misconduct. Therefore, the punishment of reduction in the basic pay by two incremental stages, which shall have effect of postponing the future increments, is modified to that of reduction in the basic pay by two incremental stages, which shall not have effect on the future increments of the petitioner, while treating that the suspension period as not on duty.

The Writ Petition is accordingly allowed in part, to the extent indicated above. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed in consequence.

M.GANGA RAO,J

Date: 03.07.2018
Dsr

