

HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO.22304 OF 2018

DATE: 31.07.2018

Between:

Sri S Rajeshwar Rao S/o Venkata Narsaiah
57 years Asst Depot Clerk/ Controller,
Karimnagar Depot II
Karimnagar district

..... petitioners

And

Telangana State Road Transport Corporation
Rep by its VC & MD
Bus Bhavan, Musheerabad, Hyderabad and others

..... Respondents



HON'BLE SRI JUSTICE P.NAVEEN RAO
WRIT PETITION NO.22304 OF 2018

ORDER:

Heard Sri A.K. Jaya Prakash Rao, learned counsel for petitioner and Sri A.Ravi, learned standing counsel for TSRTC for respondents.

2. Facts as stated in the affidavit filed in support of the writ petition would disclose that Petitioner was selected for the post of bus conductor on daily wages on 25.04.1987. The Vigilance department after due verification submitted a report on 15.04.1987 stating that documents submitted by the petitioner at the time of joining are genuine. Services of the petitioner were regularized from 24.11.1987. A charge sheet dated 01.08.2000 was issued to the petitioner basing on a complaint filed by a press reporter alleging that the SSC certificate submitted by the petitioner at the time of joining service is fake. Respondent No.2 being satisfied with the explanation submitted by petitioner, by order dated 30.08.2000 dropped further action against the Petitioner.

2.1 Respondent No 3 issued charge sheet and called upon the petitioner to attend the enquiry by order dated 15.05.2002. Petitioner challenged the above notice in WP No.20217 of 2002. This court granted interim stay. The Writ Petition was dismissed on 22.06.2016 with a direction to the respondents to conduct enquiry and maintain Status Quo while the enquiry is pending. Writ Appeal No. 718 of 2016 filed by the Petitioner against the order of learned single judge was also dismissed by order dated 16.08.2016. Charge sheet dated 30.08.2016 was issued by Respondent No. 3 for which a detailed explanation was given by the petitioner. Present Writ Petition is filed challenging show cause notice dated 18.06.2018 calling upon petitioner to show cause against proposed punishment of removal from service as illegal, unjust and contrary to law.

3. Learned counsel for petitioner contended that disciplinary action was initiated based on anonymous complaint. As per the information obtained by petitioner, there is no person, by name, Sri Ashok Reddy as Eenadu Daily Newspaper Reporter of Bejjanki. By obtaining Government instructions, Managing Director of respondent-corporation also issued circular directing the competent authorities not to entertain anonymous complaints/ petitions. As there is no person, by name, Ashok Reddy, obviously it was a false complaint generated to harass and humiliate the petitioner. According to learned counsel, similar complaint was made earlier. Based on the said complaint, matter was examined, information was obtained from the School Education Department and having found that certificate produced by petitioner was genuine, further action was dropped and, therefore, the present disciplinary action is not maintainable.

3.1. According to learned counsel, at the time of joining service, original certificates of petitioner were submitted to the respondent corporation. Original certificates and antecedents of petitioner were verified and on due satisfaction of eligibility and suitability, petitioner was selected and appointed. Therefore, at this distance of time, it is not open to respondent Corporation to make allegation of submitting false educational certificate at the time of joining into service and to penalizing him on that ground. He would submit that as original certificate was submitted to the respondent Corporation, he does not have any other material to produce before the authority.

3.2. Learned counsel would further submit that since Regional Manager has already taken decision to drop the disciplinary action, Depot Manager being subordinate to the Regional Manager is not competent to

initiate disciplinary action on the very same issue and on that ground alone entire disciplinary action is liable to be set aside.

3.3. Oral evidence is crucial to substantiate the allegation of submitting false certificate. According to learned counsel, the complainant was not produced and was not examined. The authority, who has given certificate based on which disciplinary action was initiated is not examined, more particularly the Head Master of the School, where petitioner studied and who claimed to have given certificate that petitioner failed in 10th class, being crucial witness ought to have been examined and non-examination of crucial witness vitiate the entire disciplinary action.

3.4. There is no legal evidence brought on record to substantiate the allegations that petitioner has produced bogus eligibility certificate at the time of securing employment and, therefore, the finding of enquiry officer is *per se* not valid and acceptance of said finding by the disciplinary authority would vitiate the disciplinary proceedings. The disciplinary authority is expected to apply his mind independently, consider the explanation offered by petitioner objectively and then only come to a provisional conclusion of the guilt of petitioner. Disciplinary authority has not applied his mind independently. Decisions relied, and the explanation submitted by the petitioner to the show-cause notice after the enquiry report were not even considered and mechanically came to conclusion holding petitioner guilt and called upon the petitioner to submit his explanation on the proposed punishment.

3.5. He would submit that burden of proof cannot be shifted to delinquent employee. Burden is on Disciplinary authority to prove the charges levelled against petitioner with cogent evidence. As stated above, none of the witnesses were examined and no proof of competent

authority issuing certificate holding that petitioner has failed. More so, when the issue is raked after long lapse of time and when petitioner is on the verge of retirement.

3.6. According to learned counsel, as disciplinary action is vitiated on many counts as contended above, present show-cause notice is not maintainable and unless this Court interferes at this stage, grave prejudice and irreparable hardship would be caused to the petitioner. The tone and tenor of show-cause notice would clearly indicate that disciplinary authority has already made his mind to remove the petitioner from service. As petitioner has rendered unblemished service of about 29 years and is on the verge of retirement, it is not just and equitable to remove the petitioner from services at this distance of time on the allegation of submitting bogus certificate when he joined service in the year 1987.

3.7. In support of his contention, learned counsel placed reliance on the following decisions.

- i) **Hardwari Lal vs. State of U.P. and others**¹;
- ii) **Roop Singh Negi vs. Punjab National Bank and others**²;
- iii) **Divisional Electrical Engineer (Operations), A.P. TRANSCO Ltd, Guntur and another v. Labour Court, Guntur and another**³; and
- iv) **Commissioner of Police, Delhi and others v. Jai Bhagwan**⁴

4. *Per contra*, according to learned standing counsel, the material on record would disclose that at the time of joining service, petitioner made false statement about his eligibility to be appointed as Conductor. As per the Service Regulations, a person is eligible to be appointed as Conductor only if he has passed 10th class. To show himself as eligible, petitioner

¹ (1999) 8 SCC 1582

² (2009) 2 SCC 570

³ 2011 (3) ALD 536

⁴ (2011) 6 SCC 376

has made false statement. Based on a complaint, when the matter was enquired into the School Head Master and Government officials clarified that petitioner has not passed 10th class and the school leaving certificate clearly disclose that he failed in 10th class. He would submit that in view of decision of this Court in W.P.No.20217 of 2002, as affirmed by the Division Bench in W.A.No.718 of 2016, it is no more permissible to assail disciplinary action. Ample opportunity was afforded to the petitioner. The enquiry officer conducted detailed enquiry and submitted his report. After the report was submitted by enquiry officer, petitioner was called upon to submit his explanation. The explanation submitted by petitioner was duly examined and on consideration of entire issue, the disciplinary authority did not find merit in the submissions made by the petitioner. Accordingly, rejected the explanation and having come to a provisional conclusion, the impugned show-cause notice was issued. According to learned standing counsel, as it was only show-cause notice, it is not permissible to petitioner to challenge the same without submitting his explanation and, therefore, writ petition is not maintainable on this ground also.

5. Initiation of disciplinary proceedings about passing SSC was challenged before this Court in W.P.No.20217 of 2002 primarily contending that successive disciplinary actions on same issue is not maintainable. By order dated 10.10.2002, learned single Judge of this Court stayed all further proceedings. However, said writ petition was dismissed by order dated 22.06.2016. The relevant portion of order reads as under:

“Heard the learned counsel for parties.

The fact remains that the petitioner was asked to submit original S.S.C. certificate, however, he failed to do so and stated that he does not have original certificate as he already submitted at the time of the appointment. Thereafter, the respondents asked the petitioner to submit duplicate of the same. In response to that, the petitioner stated that he does not have the photocopy of the same and also he does not have the roll number, therefore, he could not get duplicate certificate from the Board.

The fact remains that some material is with the respondents and the respondents want to initiate enquiry. If some material is found against the petitioner in the enquiry, the action would be taken accordingly, otherwise, no harm would be caused to the petitioner.

I find force in the submission of the learned counsel for respondents that as per the settled law the enquiry initiated by the respondents cannot be stopped at the initial stage. The enquiry could only establish whether any misconduct has been committed by the petitioner.

In view of the above, I find no merits in the writ petition and the same is accordingly dismissed. Consequently, the stay granted by this Court by order, dated 10-10-2002 in W.P.M.P.No.25366 of 2002 is hereby vacated.

Consequently, the respondents are at liberty to initiate enquiry. However, I made it clear that since the petitioner is in service from the year 1987, the respondents shall maintain status quo as far as his employment is concerned. After conducting the enquiry if it is established that certificate submitted by the petitioner was fake, the respondents are at liberty to take action as per the law. Needless to state that the petitioner shall participate in the enquiry and the respondents shall adopt the procedure of enquiry as per law.”

6. Aggrieved thereby petitioner preferred W.A.No.718 of 2016. The Division Bench upheld the decision of learned single Judge. Division Bench observed that when allegation against the appellant is that he does not possess SSC qualification, the Corporation cannot be prevented from holding proper enquiry into the same.

7. Thus, it is clear from the directions of learned single Judge, affirmed by the Division Bench, that respondent Corporation is competent to initiate disciplinary proceedings and to take further disciplinary action based on the allegation of bogus SSC. Consequently, fresh charge sheet was drawn, enquiry was conducted, based on report of enquiry officer show cause notice was served, his reply was considered and further notice impugned herein was issued to show cause why punishment of removal cannot be imposed.

8. Disciplinary action against employees working in TSRTC is governed by the ‘Telangana State Road Transport Corporation Employees (Classification Control and Appeal) Regulations, 1967’ (hereinafter referred to as Regulations). Regulation 8 prescribes penalties that can be imposed. Regulation 12 prescribes procedure for imposing penalties. On

a combined reading of sub-regulation (12) & (13) of Regulation 12, it is clear that after receipt of enquiry report, the competent authority is required to record his findings on each of the charges, determine what penalty can be imposed and if penalties proposed to be imposed is a major penalty the employee should be given opportunity to show cause why such penalty cannot be imposed. Though regulations do not envisage notice after the report of enquiry officer, but petitioner was put on notice, considered his explanation and on recording detailed reasons, his objections were overruled and he was called upon to explain why he should not be removed. Thus, present stage is about quantum of punishment.

9. Ordinarily, writ Court do not entertain writ petition against show-cause notice. Unless such show cause is issued by incompetent authority or same was made in *mala fide* exercise of power or there is no scope for initiation of disciplinary action or imposing of punishment, and therefore, petitioner need not be subjected to rigmarole by allowing him to participate in illegal proceedings. As noted above, initiation and taking disciplinary action by the disciplinary authority is no more open for consideration in view of the Division Bench decision in W.A.No.718 of 2016. It is also not in dispute that Depot Manager is competent to take disciplinary action against conductor. Thus, show-cause notice is not vitiated on those grounds.

10. However, learned counsel for petitioner sought to contend that no witness was examined to substantiate the allegation against petitioner and, therefore, the report of enquiry officer and consequential show cause notice issued by disciplinary authority are liable to be set aside on that ground alone and therefore writ petition is maintainable.

11. According to learned counsel an anonymous complaint was entertained contrary to circular instructions of the corporation; that complainant is not traceable and is not examined, therefore proceedings are vitiated, on that ground alone. He would further submit that Head Master ought to have been examined and non examination of the Head Master is fatal to the disciplinary action.

12. At this stage, it is expedient to refer to the decisions relied by learned counsel for petitioner.

12.1. In **Hardwari Lal** a Police Constable was found to be under the influence of liquor, hurled abuses in the police station at Constable Prakash Chandra Pandey. Mr Prakash Chandra Pandey complained the said incident to Mr. Virender Singh; departmental proceedings were initiated on the said allegation. The plea raised on behalf of the employee was that non-examination of Virender Singh, to whom the complainant made a statement and Jagdish Ram who was supposed to have witnessed the incident was rejected by the Tribunal holding that examination of Virender Singh was only formal and no prejudice was caused to the defence of the appellant. The High Court affirmed the decision. Before the Supreme, it was contended that the action of respondents in not examining the complainant and witnesses, amounted to violation of the principles of natural justice. The Supreme Court held that the Tribunal and High Court erred in not attaching importance to the said contention. Supreme Court held that there was no proper enquiry and accordingly quashed the order of dismissal.

12.1.1. In **Hardwari Lal** what was required to be proved was whether employee was under the influence of alcohol and abused another employee. Thus, evidence of the persons mentioned therein is crucial to establish the charge.

“ Before us the sole ground urged is as to the non-observance of the principles of natural justice in not examining the complainant, Shri Virender Singh, and the witness, Jagdish Ram. The Tribunal as well as the High Court have brushed aside the grievance made by the appellant that the non-examination of those two persons has prejudiced his case. Examination of these two witnesses would have revealed as to whether the complaint made by Virender Singh was correct or not and to establish that he was the best person to speak to its veracity. So also, Jagdish Ram, who had accompanied the appellant to the hospital for medical examination, would have been an important witness to prove the state or the condition of the appellant. We do not think the Tribunal and the High Court were justified in thinking that non-examination of these two persons could not be material. In these circumstances, we are of the view that the High Court and the Tribunal erred in not attaching importance to this contention of the appellant.”

12.2. In **Roop Singh Negi**, appellant was working as Peon in the respondent bank. A complaint was lodged by the Manager of the bank alleging that some drafts which were presented for encashment purported to have been issued from Mall Road branch were in fact not been issued there-from. Crime was also registered based on the said complaint. Five years later, disciplinary proceedings were initiated alleging that appellant had taken away one blank draft issue book. In domestic enquiry, reliance was placed on the contention of the appellant before the police authorities. Supreme Court noticed that forms and other important books and documents belonging to bank never remain in the custody of peon. Documentary evidence was collected by the police officer. Thus, documents were simply produced; they were not proved. The purported contention of the appellant was also not proved. Supreme Court observed as under:

“14. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. *The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence.*

15..... Some evidence should have been brought on record to show that he had indulged in stealing the bank draft book. Admittedly, there was no direct evidence. Even there was no indirect evidence. The tenor of the report demonstrates that the enquiry officer had made up his mind to find him guilty as otherwise he would not have proceeded on the basis that the offence was committed in such a manner that no evidence was left.

.....

23.....***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.”
(Emphasis supplied)

12.3.1. In **Divisional Electrical Engineer (Operations)** second respondent-workman worked as Village Electricity Worker. On subjecting him to selection process, he was offered appointment as Junior Lineman on 28.4.1998, he accepted and joined the service. While so, Transco received a complaint against one other individual similarly selected and appointed that he produced bogus educational certificate. The Transco directed the second respondent to produce his educational qualifications. Transco obtained information from the Head Master, Zilla Parishad High School on the educational qualifications of second respondent. The Head Master of the School, vide his letter dated 24.7.1998 informed that there was no record in the school in proof of issuing the certificate in favour of second respondent, which was produced by him. Based on the said letter, disciplinary proceedings were initiated. Enquiry authority opined that second respondent admitted that there was some mistake that crept into the matter and solicited to be pardoned. Based on the alleged confession, enquiry was concluded holding him guilty and imposed punishment of dismissal from service by proceedings dated 18.8.1999. He raised Industrial Dispute against his dismissal. He contended before the Labour Court that the enquiry was not conducted properly and that principles of natural justice were violated. The Labour Court, held that statement given by the second respondent did not amount to admission

of guilt of producing a false or bogus certificate and therefore held that the disciplinary enquiry vitiated for non examination of any witness on behalf of Transco.

12.3.2. Learned single Judge of this Court observed that TRANSCO failed to discharge the initial burden to bring home guilt of the workman. This Court further observed that unless Head Master was examined and workman was provided an opportunity of cross- examination, workman could not have established his defence properly and could not have brought home his defence that he is not guilty of producing false educational certificates. This Court therefore held that non examination of the Head Master of the School amounts to denying a fair and reasonable opportunity of enabling him to establish his defence.

12.3.3. It is expedient to note the observations of learned single Judge in **Divisional Electrical Engineer (Operations), A.P. TRANSCO Ltd. (supra)** in paragraph-4. It reads as under:

4. the Labour Court has clearly understood that the 2nd respondent workman has only admitted of some error on his part in the matter and sought for pardon, but he has not specifically admitted the misconduct of producing a false or bogus educational certificate. Therefore, the Labour Court returned a finding of fact that there was no admission made by the workman of his guilt of the charges framed against him. This is one probable view. In such an event, there is, absolutely, no contra material on record of this case to call this finding of fact recorded by the Labour Court to be a perverse finding. If the workman has not admitted the guilt of charges laid against him, it is the fundamental obligation of the TRANSCO to bring home his guilt by bringing, on record of the disciplinary inquiry, such material in the form of evidence as it would establish the guilt of the workman. It is not in dispute that no witnesses were examined by the Domestic Tribunal. It straightaway proceeded to examine the workman and concluded the inquiry. Therefore, the TRANSCO had failed to discharge the initial burden lying on it to bring home the guilt of the workman by leading specific evidence in respect of the charge laid against him. Until and unless this primary onus is discharged by the employer, no obligation to prove his defence shifts on to the shoulders of the employee. It is one thing to say about the sufficiency

of the material, but it is altogether a different thing to say that the initial burden of establishing the charge itself has been not discharged.

12.4. In **Commissioner of Police, Delhi and others** the allegation against the respondent was that while working as Constable posted at X-Ray machine belt at IGI Airport, New Delhi, he extorted 100/- from a passenger by way of illegal gratification during the security check of a passenger. Passenger lodged a complaint. It was alleged that complainant identified the respondent who returned the aforesaid sum of 100/- to the complainant in presence of Mr O P Yadav, Inspector and Mr Arjun Singh, Sub Inspector who were present at that time. Disciplinary proceedings were initiated on the said incident resulting in dismissal from service by order dated 15.11.1995. Central Administrative Tribunal dismissed the Original Application, on a challenge before the High Court of Delhi, High Court allowed the writ petition. Aggrieved thereby, Commissioner of Police preferred appeal before the Supreme Court. On the issue of allegation leveled against the petitioner on demand and acceptance of Rs.100/- from a passenger, Supreme Court observed as under:

“15. In the present case, although there is some evidence that an amount of Rs. 100 was returned by the respondent to the complainant but there is no such direct and reliable evidence produced by the appellants in the departmental proceedings which could clearly prove and establish that the respondent demanded and received an illegal gratification of the said denomination. It seems that the proof of taking such illegal gratification has been drawn from the evidence of returning of Rs. 100 to the complainant by way of a link-up.

16. It also seems quite impracticable to presume that in the presence of so many passengers, the respondent could have extorted money. The allegation of receiving Rs. 100 as illegal gratification is framed on suspicions and possibilities while trying to link it up with the instance of returning back of Rs. 100 by the respondent to the complainant. There are many other shortcomings in the entire investigation and the enquiry like the statement of Mrs Ranjana Kapoor was not recorded by the Inspector and the Inspector also did not take down in writing and also attest the complaint made by her. The statement of S.P. Narang was also not recorded by the Inspector nor did the Inspector seize Rs. 100 note nor noted down its number. Mr Narang was also not examined during the course of departmental proceedings. Non-examination of the complainant and P.S. Narang during the departmental

proceeding has denied the respondent of his right of cross-examination and thus caused violation of Rule 16(iii) of the Delhi Police (F&A) Rules, 1980.”

13. By relying on above decisions, learned counsel for petitioner would contend that as the Head Master of the School and official of the Board of Secondary Education in the State Government who reported that petitioner did not pass SSC and complainant were not examined during the course of enquiry, the disciplinary action is vitiated and therefore the present show cause notice is liable to be set aside.

14. To appreciate the said contention, it is necessary to notice the charges leveled against petitioner. They read as under:

1) “For having submitted fake SSC certificate at the time of recruitment of conductors in the year 1986 with Roll No.397367 of March, 1980 and got appointment as Conductor in A.P.S.R.T.C. during the year 1987 duly cheating the Corporation by concealing the facts willfully which constitutes a serious misconduct in terms of Reg.28(xv) & (xxii) of TSRTC Employees (Conduct) Reg.1963”.

2) “For having failed to obtain a duplicate SSC Memo from the Board of Secondary Education, Hyderabad, inspite of acknowledging letter dt.27.04.2000 together with blank proforma for verification in regard to proof of documentary evidence in your case, which constitutes misconduct in terms of Reg.28 (viii) & (xxii) of TSRTC Employees (Conduct) Reg.1963”.

15. In substance, the allegations against petitioner are that he has submitted fake SSC certificate at the time of recruitment as Conductor and got appointment by cheating the Corporation, and though sufficient time was granted he failed to produce duplicate SSC certificate from the Board of Secondary Education.

16. The trigger for initiating disciplinary action on the above allegation was a complaint lodged by a person, by name, Sri Ashok Reddy, stated to be Eenadu Newspaper Reporter of Bejjanki. As seen from the show cause notice impugned in the writ petition, the contention of anonymous

complaint was considered by the disciplinary authority at internal page 7 of the impugned notice. It appears that complainant disclosed his identity. Mr Ashok Reddy was correspondent of a newspaper. Mr Ashok Reddy expired on 28.1.2001 in a road accident near Renikunta Sub Station and crime was registered in Police Station LMD/Thimmapur evidencing his death. This fact was informed to the disciplinary authority by his brother Mr Sudharshan Reddy, Correspondent of Geethashram Patashala, Bejjanki. Thus, it cannot be said that it was an anonymous complaint. Complainant could not be examined as he is no more. However, non examination of complainant is not fatal, as noticed in this order, as the issue is based on the official records of the Board of Secondary Education and School where petitioner prosecuted his course of study and not based only on the complainant.

17. The material on record, particularly the show cause notice under challenge disclose, on receiving the complaint from the correspondent by name Ashok Reddy, personal records of the petitioner were verified and having found that the original or photo copy of the SSC stated to have been produced by the petitioner at the time of joining service was not available in the records, several times he was asked to secure copy and file it so that the record can be updated. It was impressed upon him that SSC certificate is an essential document and should form part of the service record. He was also furnished with proforma of application to secure duplicate SSC. It appears, despite repeated requests, he did not produce the certificate. As petitioner failed to furnish a duplicate copy of SSC certificate, claimed to have been obtained by him on passing 10th class, correspondence was made with the Head Master of the school where petitioner studied and also with the Board of Secondary Education. By letter dated 17.5.2002, the Secretary, Board of Secondary Education informed that 'No pass certificate was issued by their office

with Roll No. 397367 of March-1980'. Head Master of the Government High School (Old) Karimnagar has informed vide his letter dated 21.3.2000 that petitioner was admitted on 16.6.1977 in 10th class "B" section and appeared for SSC annual examination held in the year 1978 with Hall Ticket No. 163954; that he failed in SSC and vide TC No. 426101 dated 27.6.1978 same was recorded. The Additional Joint Secretary, Board of Secondary Education has also informed vide his letter dated--Nil in September 2000 that petitioner failed SSC with Hall Ticket No.163954 and original memorandum of marks No. 018871 dated 11.9.2000 was also enclosed in which petitioner failed in 5 subjects in the examination held in April, 1978. Additional Joint Secretary of Board of Secondary Education vide letter dated 17.5.2002 informed that no pass certificate was issued by their office with Roll No. 397367 of March, 1980.

18. Further, though disciplinary action was initiated in the year 2002 petitioner filed W P 20217 of 2002 and said writ petition was pending till 22.6.2016 and after disposal of the writ petition, disciplinary proceedings commenced. The two officials viz., Head Master of the concerned school and the Additional Joint Secretary/Joint Secretary of the Board of Secondary Education furnished information on the status of the petitioner in the years 2000 and 2002. The concerned officials must have given the information based on the school records/records of the Board of Secondary Education. No official would permanently work at same place. More over by the time disciplinary proceedings commenced, those officials may have retired from service. As the issue concerns the verification of school records/records of the secondary education and having regard to the fact that the enquiry commenced after 14/16 years of furnishing information, it cannot be expected that those officials would be available and in the facts as noticed in this order, merely because

those officers are not examined, proceedings do not automatically vitiate on that ground.

19. Disciplinary proceedings were not initiated merely acting on a complaint. The charges leveled against petitioner are based on material collected by the disciplinary authority from the School, where he has prosecuted his SSC and from the Board of Secondary Education. What was required to be seen in the domestic enquiry was whether information furnished by the School authorities and the Board of Secondary Education was correct and whether petitioner has any other material to show that information furnished by the School authorities was not correct and that he possessed valid certificate of pass in 10th class. In other words, the issue of alleged submission of fake SSC certificate and securing employment by playing fraud required to be considered based on material on record and defence of delinquent employee. It is also appropriate to note from reading of second charge, in spite of directing him to secure copy of SCC showing him as passed and submit to the competent authority, he failed to do so.

20. Even now, no material is placed before this Court to show that petitioner was having requisite qualification to secure employment as Conductor and that he has produced all the material in support of his eligibility and on verification of eligibility, petitioner was provided employment. It is also not his case that during the course of enquiry, petitioner placed before the enquiring officer the certificate disclosing his pass in 10th class. The burden of song is only on non-examination of complainant and the officers who gave certificates holding that petitioner did not pass SSC to contend that disciplinary action is vitiated.

21. Thus, merely because Sri Ashok Reddy, on whose complaint disciplinary action was set in motion, the Head Master of School and

official of the Board of Secondary Education were not examined, in the facts of this case, in my considered opinion is not fatal to vitiate disciplinary action *per se* on that ground.

22. It is seen from the impugned show cause notice that disciplinary authority has considered each of the objections raised by the petitioner and has also noted decisions cited by the petitioner in his explanation, answered the objections and affirmed that charges are proved by assigning reasons in support of the decision. It is a well considered decision.

23. It is settled principle of law that the writ Court in exercise of power of judicial review cannot sit as an appellate forum and re-appreciate the evidence recorded in the domestic enquiry and to come to a different conclusion from the conclusion arrived at in the domestic enquiry. The scope of judicial review against departmental proceedings is very narrow and confined to whether procedural formalities are complied; whether delinquent employee was given reasonable opportunity to establish his defence; whether there is appreciation of material on record before holding the employee guilty or findings are arrived based on surmises and conjunctures; whether disciplinary authority considered the material on record and arrived at independent conclusion; whether the concerned authority is having bias and prejudice against the employee and acted against the interest of the employee without observing due process and with pre-determined notion of guilt.

24. In disciplinary proceedings against employee proof of allegation can be on principle of '*preponderance of probabilities*' unlike in criminal proceedings. A master can sever relationship with his servant on proving misconduct. If master is a public sector undertaking, such relationship is regulated by set of regulations. Master is required to

follow procedure envisaged in regulations before severing the relationship. The substantive requirement of the regulations is whenever misconduct is alleged employee must be told of the allegation, supply material based on which such allegation is made, give due opportunity to rebut the allegations and on due consideration and by a reasoned order shall take a decision. Indian Evidence Act is not applicable to domestic enquiries. In a given facts of the case, charge need not be proved by leading oral evidence but can be established based on documents on record.

25. The parameters of judicial review and nature of evidence that can be brought on record was considered by the Supreme Court in **General Manager (Operations) SBI Vs. R. Periyasamy**⁵. Supreme Court observed that in domestic enquiry findings of guilt is based on the principle of '*preponderance of probabilities*'. The respondent in said case was working as Permanent Cash Officer in Dharmapuri branch of SBI. Disciplinary action was initiated against him alleging that he was accountable for shortage detected in Currency Chest in his custody along with one Mr Ganesan. It was also alleged that he was not adhering to the laid down instructions regarding Currency Chest transactions and for committing lapses in maintenance of Currency Chest Register. It was also alleged that he indulged in excessive out-side borrowings in violation of the service rules. Disciplinary authority came to the conclusion that it was probable that respondent surreptitiously removed currency notes from the chest over a period of time; that he was indulging in lending money to others without a pronote. He was dismissed from service by order dated 27.7.1989; his appeal was rejected. On a challenge, the writ petition was allowed and confirmed by the Division Bench of the Madras High Court.

⁵ (2015) 3 SCC 101

26.1. Supreme Court found fault with decision of the learned single Judge in assessing the findings on merits. Supreme Court observed that permissible enquiry by the High Court was whether there was no evidence on which the enquiry officer could have arrived at the findings or whether there was any perversity in the findings. Supreme Court observed that whether the evidence was acceptable or not, was a wrong question and the writ Court was not entitled to go into the question of adequacy of evidence. By referring to the decision of the Supreme Court in **Union of India v. Sardar Bahadur**⁶, Supreme Court observed that unlike a criminal trial the standard of proof required in disciplinary proceedings is that of preponderance of probabilities and not proof beyond reasonable doubt.

26.2. The Supreme Court further observed :

14. In administrative law, it is a settled principle that the onus of proof rests upon the party alleging the invalidity of an order [*Minister of National Revenue v. Wright's Canadian Ropes Ltd.*, 1947 AC 109 at p. 122 (PC), *Associated Provincial Picture Houses Ltd. v. Wednesbury Corp.*, (1948) 1 KB 223 at p. 228 : (1947) 2 All ER 680 (CA), *Fawcett Properties Ltd. v. Buckingham County Council*, 1959 Ch 543 at p. 575, affirmed 1961 AC 636 : (1960) 3 WLR 831 : (1960) 3 All ER 503 (HL)] . In other words, there is a presumption that the decision or executive order is properly and validly made, a presumption expressed in the maxim *omnia praesumuntur rite esse acta* which means “all things are presumed to be done in due form [*Point of Ayr Collieries Ltd. v. Lloyd-George*, (1943) 2 All ER 546 (CA)] ”.

(emphasis supplied)

26.3. The Supreme Court further observed that how much evidence is required for this purpose will always depend on the nature of that particular case.

26.4. On the scope of writ jurisdiction under Article 226 of the Constitution, Supreme Court observed as under:

“16.....It bears repetition that sufficiency or adequacy of evidence is not the ground on which the findings of facts may be set aside by the High Court under Article 226 of the Constitution. The justification offered by the Division Bench that the learned Single Judge had to undertake the exercise of analysing the findings of the enquiry officer because the appellants had deprived the respondent of his livelihood is wholly untenable. A transgression of jurisdiction cannot be justified on the ground of consequences, as has been done. Moreover, the reliance by the Division Bench on *Mathura Prasad v. Union of India* [(2007) 1 SCC 437 : (2007) 1 SCC (L&S) 292] is entirely misplaced, since that case arose in an entirely different set of circumstances.”

(emphasis supplied)

⁶ (1972) 4 SCC 618

27. Further, even assuming that there are lapses in conducting the domestic enquiry, perforce writ Court would not invalidate the disciplinary action, unless the Court is satisfied that serious prejudice is caused to the petitioner by not producing the witnesses and examining them. It is settled principle of law that whenever an employee alleges that by not following a particular procedure prejudice is caused to him, he must plead and establish the prejudice caused.

28. The test of prejudice principle was considered by the Supreme Court in **State Bank of Patiala and others vs. S.K.Sharma**⁷. Supreme Court summarized principles governing procedure to conduct disciplinary proceedings. They read as under:

“33. We may summarise the principles emerging from the above discussion. (These are by no means intended to be exhaustive and are evolved keeping in view the context of disciplinary enquiries and orders of punishment imposed by an employer upon the employee):

(1) An order passed imposing a punishment on an employee consequent upon a disciplinary/departmental enquiry in violation of the rules/regulations/statutory provisions governing such enquiries should not be set aside automatically. The Court or the Tribunal should enquire whether (a) the provision violated is of a substantive nature or (b) whether it is procedural in character.

(2) A substantive provision has *normally* to be complied with as explained hereinbefore and the theory of substantial compliance or the test of prejudice would not be applicable in such a case.

(3) In the case of violation of a procedural provision, the position is this: procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under — “no notice”, “no opportunity” and “no hearing” categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of prejudice. The Court may not insist on proof of prejudice in such cases. As explained in the body of the judgment, take a case where there is a provision expressly providing that after the evidence of the employer/government is over, the employee shall be

⁷ (1996) 3 SCC 364

given an opportunity to lead defence in his evidence, and in a given case, the enquiry officer does not give that opportunity in spite of the delinquent officer/employee asking for it. The prejudice is self-evident. No proof of prejudice as such need be called for in such a case. To repeat, the test is one of prejudice, i.e., whether the person has received a fair hearing considering all things. Now, this very aspect can *also* be looked at from the point of view of directory and mandatory provisions, if one is so inclined. The principle stated under (4) herein below is only another way of looking at the same aspect as is dealt with herein and not a different or distinct principle.

(4)(a) In the case of a procedural provision which is not of a mandatory character, the complaint of violation has to be examined from the standpoint of substantial compliance. Be that as it may, the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee.

(b) In the case of violation of a procedural provision, which is of a mandatory character, it has to be ascertained whether the provision is conceived in the interest of the person proceeded against or in public interest. If it is found to be the former, then it must be seen whether the delinquent officer has waived the said requirement, either expressly or by his conduct. If he is found to have waived it, then the order of punishment cannot be set aside on the ground of the said violation. If, on the other hand, it is found that the delinquent officer/employee has not waived it *or* that the provision could not be waived by him, then the Court or Tribunal should make appropriate directions (include the setting aside of the order of punishment), keeping in mind the approach adopted by the Constitution Bench in *B. Karunakar* [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] . The ultimate test is always the same, viz., test of prejudice or the test of fair hearing, as it may be called.

(5) Where the enquiry is not governed by any rules/regulations/statutory provisions and the only obligation is to observe the principles of natural justice — or, for that matter, wherever such principles are held to be implied by the very nature and impact of the order/action — the Court or the Tribunal should make a distinction between a total violation of natural justice (rule of audi alteram partem) and violation of a facet of the said rule, as explained in the body of the judgment. In other words, a distinction must be made between “no opportunity” and no *adequate* opportunity, i.e., between “no notice”/“no hearing” and “no fair hearing”. (a) In the case of former, the order passed would undoubtedly be invalid (one may call it ‘void’ or a nullity if one chooses to). In such cases, normally, liberty will be reserved for the Authority to take proceedings afresh according to law, i.e., in accordance with the said rule (audi alteram partem). (b) But in the latter case, the effect of violation (of a facet of the rule of audi alteram partem) has to be examined from the standpoint of prejudice; in other words, what the Court or Tribunal has to see is whether in the totality of the circumstances, the delinquent officer/employee did or did not have a fair hearing and the orders to be made shall depend upon the answer to the said query. [It is made clear that this principle (No. 5) does not apply in the case of rule against bias, the test in which behalf are laid down elsewhere.]

(6) While applying the rule of audi alteram partem (the primary principle of natural justice) the Court/Tribunal/Authority must always bear in mind the ultimate and overriding objective underlying the said rule, viz., to ensure a fair hearing and to ensure that there is no failure of justice. It is this objective which should guide them in applying the rule to varying situations that arise before them.

(7) There may be situations where the interests of State or public interest may call for a curtailment of the rule of audi alteram partem. In such situations, the Court may have to balance public/State interest with the requirement of natural justice and arrive at an appropriate decision.”

29. In **State of U.P., v. Harendra Arora**⁸, Supreme Court held:

“13. The matter may be examined from another viewpoint. There may be cases where there are infractions of statutory provisions, rules and regulations. Can it be said that every such infraction would make the consequent action void and/or invalid? The statute may contain certain substantive provisions, e.g., who is the competent authority to impose a particular punishment on a particular employee. Such provision must be strictly complied with as in these cases the theory of substantial compliance may not be available. For example, where a rule specifically provides that the delinquent officer shall be given an opportunity to produce evidence in support of his case after the close of the evidence of the other side and if no such opportunity is given, it would not be possible to say that the enquiry was not vitiated. But in respect of many procedural provisions, it would be possible to apply the theory of substantial compliance or the test of prejudice, as the case may be. Even amongst procedural provisions, there may be some provisions of a fundamental nature which have to be complied with and in whose case the theory of substantial compliance may not be available, but the question of prejudice may be material. In respect of procedural provisions other than of a fundamental nature, the theory of substantial compliance would be available and in such cases objections on this score have to be judged on the touchstone of prejudice. The test would be, whether the delinquent officer had or did not have a fair hearing. In the case of *Russell v. Duke of Norfolk* [(1949) 1 All ER 109 (CA)] it was laid down by the Court of Appeal that the principle of natural justice cannot be reduced to any hard-and-fast formulae and the same cannot be put in a straitjacket as its applicability depends upon the context and the facts and circumstances of each case.

14. Even under general law i.e. the Code of Civil Procedure, there are various provisions viz. Sections 99-A and 115 besides Order 21 Rule 90 where merely because there is defect, error or irregularity in the order, the same would not be liable to be set aside unless it has prejudicially affected the decision. Likewise, in the Code of Criminal Procedure also, Section 465 lays down that no finding, sentence or order passed by a competent court shall be upset merely on account of any error, omission or irregularity unless in the opinion of the court a failure of justice has, in fact, been occasioned thereby. We do not find any reason why the principle underlying the aforesaid provisions would not apply in case of the statutory provisions like Rule 55-A of the Rules in relation to

⁸ (2001) 6 SCC 392

disciplinary proceeding. Rule 55-A referred to above embodies in it nothing but the principles of reasonable opportunity and natural justice.”

30. In **DHARAMPAL SATYAPAL LTD Vs. DEPUTY COMMISSIONER OF CENTRAL EXCISE, GAUHATI AND OTHERS**⁹, Supreme Court considered the consequences of non observance of procedural formalities. While holding that requirement of issuance of show cause notice by Deputy Commissioner before passing the order of recovery was mandatory, Supreme Court was not inclined to set aside the proceedings on that ground.

30.1. Supreme Court observed as under

39. We are not concerned with these aspects in the present case as the issue relates to giving of notice before taking action. While emphasising that the principles of natural justice cannot be applied in straitjacket formula, the aforesaid instances are given. We have highlighted the jurisprudential basis of adhering to the principles of natural justice which are grounded on the doctrine of *procedural fairness*, accuracy of outcome leading to general social goals, etc. Nevertheless, there may be situations wherein for some reason—perhaps because the evidence against the individual is thought to be utterly compelling—it is felt that a fair hearing “*would make no difference*”—meaning that a hearing would not change the ultimate conclusion reached by the decision-maker—then no legal duty to supply a hearing arises. Such an approach was endorsed by Lord Wilberforce in *Malloch v. Aberdeen Corpn.* [(1971) 1 WLR 1578 : (1971) 2 All ER 1278 (HL)] , who said that: (WLR p. 1595 : All ER p. 1294)

“... A breach of procedure ... cannot give [rise to] a remedy in the courts, unless behind it there is something of substance which has been lost by the failure. The court does not act in vain.”

Relying on these comments, Brandon L.J. opined in *Cinnamond v. British Airports Authority* [(1980) 1 WLR 582 : (1980) 2 All ER 368 (CA)] that: (WLR p. 593 : All ER p. 377)

“... no one can complain of not being given an opportunity to make representations if such an opportunity would have availed him nothing.”

In such situations, fair procedures appear to serve no purpose since the “*right*” result can be secured without according such treatment to the individual.

40. In this behalf, we need to notice one other exception which has been carved out to the aforesaid principle by the courts. Even if it is found by the court that there is a violation of principles of natural justice, the courts have held that it may not be necessary to strike down the action and refer the matter back to the authorities to take fresh decision after complying with the procedural requirement in those cases where non-grant of hearing has not caused any prejudice to the person against whom the action is taken.

⁹ (2015) 8 SCC 519

Therefore, every violation of a facet of natural justice may not lead to the conclusion that the order passed is always null and void. The validity of the order has to be decided on the touchstone of "*prejudice*". The ultimate test is always the same viz. the test of prejudice or the test of fair hearing.

30.2 Supreme Court observed that, while holding that an authority cannot dispense with the requirement of principles of natural justice but on the said ground the writ Court need not grant the relief but Court is empowered to consider whether any purpose would be served in remanding the case, keeping in mind whether any prejudice is caused to the person against whom the action is taken.

31. As noted above, the issue in this case is whether petitioner passed SSC examination and obtained valid certificate of pass when he secured employment as conductor. At this stage, it is appropriate to note that a person is eligible to participate in the selections for appointment as conductor only if he has passed SSC. Thus, petitioner ought to have proved this fact by bringing the certificate awarded to him. No such endeavor was made by the petitioner.

32. Assuming that witnesses ought to have been examined, the burden is on petitioner to show how prejudice caused to him on not examining the complainant, the School Head Master and Board of Secondary Education and how his defense is affected by their non-examination. On going through the service regulations, it is seen that there is no requirement to lead oral evidence to establish the charge. Assuming that it is required, mere infraction of a service regulation or established procedure in conducting disciplinary enquiry cannot result in setting aside disciplinary proceedings as a matter of course. Employee must plead with cogent material that prejudice is caused to him. Having regard to the issue involved in the writ petition, more particularly with reference to clearance given by this Court on initiation and continuation

of disciplinary action against petitioner, the burden lies on petitioner to establish that in the manner in which disciplinary proceedings were conducted grave prejudice is caused to him, that his defense was affected and on that ground proceedings are vitiated. No such endeavor is made.

33. Having held that petitioner is guilty of alleged misconduct, by the impugned show cause notice, petitioner is asked to explain on the proposed punishment of removal from service. It was a provisional decision by the disciplinary authority calling upon the petitioner to explain on the proposed punishment. Learned counsel for petitioner sought to contend that petitioner is on the verge of retirement and having rendered long service, on the ground that he produced a false certificate when he joined service, removal from service is not justified. So far petitioner has not filed his explanation. As noted above, it is only a show cause notice on proposed punishment. It is always open to the petitioner to persuade the disciplinary authority to impose a lesser punishment than the punishment proposed. It cannot be said at this stage that disciplinary authority has no open mind and would not appreciate the submission that may be made by the petitioner, for this Court to interject the show cause notice stage on that ground. It is needless to emphasize that show cause notice is in accordance with the procedure contemplated by the regulations and show cause notice is not vitiated on any ground. It is also settled principle of law that in matters of imposing appropriate punishment, discretion vests in the disciplinary authority. Court can examine the validity of punishment imposed and on proportionality of punishment within the parameters of judicial review, only after punishment is imposed, but cannot mandate disciplinary authority to impose a particular punishment or not to impose punishment, even before he takes a decision.

34. For all the aforesaid reasons, the writ petition is dismissed.

Pending petitions stand dismissed.

JUSTICE P.NAVEEN RAO

Date: 31.07.2018

Kkm/tvk



HON'BLE SRI JUSTICE P.NAVEEN RAO



WRIT PETITION NO.22304 OF 2018

DATE: 31.07.2018