

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO.23619 OF 2018

Date: 18.07.2018

Between:

P.Mallaiah, s/o. late Latchaiah, Aged 57 years,
Occu: DC (E), E.No.251370, R/o. Gandhinagar,
Devarakonda, Nalgonda district.

.....Petitioner

and

Telangana State Road Transport Corporation,
Rep.by its Managing Director, Bus Bhavan,
Musheerabad, Hyderabad and another.

..Respondents



The Court made the following:

HONOURABLE SRI JUSTICE P.NAVEEN RAO**WRIT PETITION NO.23619 OF 2018****ORDER:**

Heard learned counsel for petitioner and learned standing counsel for respondents.

2. This writ petition is filed challenging the order of suspension and charge sheet dated 02.07.2018.

3. Facts on record would disclose that petitioner is working as Depot Clerk. On 02.07.2018, he was served with charge sheet. It is alleged that he failed to observe the ticket blocks daily in his section and certain ticket blocks from his custody were missing. On 14.6.2018, audit team physically verified tray dumps and total trays under his custody and found the ticket blocks mentioned in the charge sheet were missing and not traced out anywhere. According to assessment of disciplinary authority, the total cost of missing ticket blocks comes to Rs.3,00,000/- and therefore the same amounts to gross negligence on his part. On the same day, referring to above allegation, he was placed under suspension.

4. According to learned counsel for petitioner, respondent-Corporation stopped issuing physical tickets and all Conductors are now entrusted with ticket issuing machines, which would generate tickets and thus, these tickets are not relevant any more and, therefore, the quantum of alleged loss is only imaginary. At the most, the cost of printing of lost tickets, even if proved, can be attributed to petitioner. He would submit that having rendered unblemished long service, petitioner is due for retirement on

attaining age of superannuation on 31.01.2019 and at the fag end of his service, placing him under suspension and issuing charge sheet on trivial allegation is wholly unwarranted and amounts to arbitrary exercise of power and authority. By pointing out to the report of enquiry by AM(T), he would submit that he has not found any grave illegality committed by the petitioner warranting initiation of disciplinary proceedings and placing the petitioner under suspension.

5. The issues for consideration in this writ petitions are:

1) Whether the writ petition is maintainable against charge memo? and

2) In the facts of this case, whether suspension from service is warranted?

ISSUE NO.1:

6. The scope of judicial review against suspension from service and initiation of disciplinary action was exhaustively considered by this Court in **G.Govindu v. Telangana State Road Transport Corporation, Hyderabad and another**¹.

7. On review of precedent decisions, this Court noted the principles of judicial review against charge memo as under:

“22. The principles deducible from the above decisions are:

- (i) Ordinarily writ does not lie against show cause notice/charge memo;
- (ii) entertaining writ petition against show cause notice/charge memo is dehorse the limit of judicial

¹ 2017 (3) ALD 755

review/exceeds the power of judicial review at the threshold;

(iii) issuance of show cause notice/charge memo, does not adversely affect/infringe the rights of the employee; does not amount to an adverse order;

(iv) normally a charge-sheet is not quashed prior to the conducting of the enquiry on the ground that the facts stated in the charge are erroneous as determination of correctness or truth of the charge is the function of the disciplinary authority. It would be premature to deal with the issues;

(v) in only very rare and exceptional cases, if it is found to be wholly without jurisdiction or for some other reason, if it is wholly illegal, Court can exercise power of judicial review at the stage of show cause notice/ charge memo;

(vi) discretion under Article 226 should not ordinarily be exercised to quash charge sheet/ show cause notice.

8.1. In **Secretary, Ministry of Defence and others v. Prabhash Chandra Mirdha**², petitioner challenged the charge memo on the ground that said charge memo was issued by the Subordinate to the Appointing Authority. The Tribunal (Central Administrative Tribunal) set aside the charge memo on the ground that writ petition preferred against said decision was dismissed by the High Court. On appeal, Supreme Court held ***“A writ lies when some right of a party is infringed. In fact, charge-sheet does not infringe the right of a party. It is only when a final order imposing the punishment or otherwise adversely affecting a party is passed, it may have a grievance and cause of action. Thus, a charge-sheet or show-cause notice in disciplinary proceedings should not ordinarily be quashed by the Court”***.

² (2012) 11 SCC 565

In support of the said dictum, Supreme Court referred to earlier decisions on the subject. Supreme Court further held:

“12. Thus, the law on the issue can be summarised to the effect that the charge-sheet cannot generally be a subject-matter of challenge as it does not adversely affect the rights of the delinquent unless it is established that the same has been issued by an authority not competent to initiate the disciplinary proceedings. ***Neither the disciplinary proceedings nor the charge-sheet be quashed at an initial stage as it would be a premature stage to deal with the issues. Proceedings are not liable to be quashed on the grounds that proceedings had been initiated at a belated stage or could not be concluded in a reasonable period unless the delay creates prejudice to the delinquent employee. Gravity of alleged misconduct is a relevant factor to be taken into consideration while quashing the proceedings.***” (emphasis supplied)

8.2. In **Chairman, Life Insurance Corporation of India and others v. M.Masilamani**³, Supreme Court held as under:

“18. The court/tribunal should not generally set aside the departmental enquiry, and quash the charges on the ground of delay in initiation of disciplinary proceedings, as ***such a power is dehors the limits of judicial review***. In the event that the court/tribunal exercises such power, ***it exceeds its power of judicial review at the very threshold***. Therefore, a charge-sheet or show-cause notice, issued in the course of disciplinary proceedings, cannot ordinarily be quashed by the court. The same principle is applicable in relation to there being a delay in conclusion of disciplinary proceedings. The facts and circumstances of the case in question have to be examined taking into consideration the gravity/magnitude of charges involved therein. The essence of the matter is that the court must take into consideration all relevant facts and to balance and weigh the same, so as to determine if it is in fact in the interest of clean and honest administration, that the

³ (2013) 6 SCC 530

judicial proceedings are allowed to be terminated only on the ground of delay in their conclusion. (Vide *State of U.P. v. Brahm Datt Sharma* [(1987) 2 SCC 179 : (1987) 3 ATC 319 : AIR 1987 SC 943] , *State of M.P. v. Bani Singh* [1990 Supp SCC 738 : 1991 SCC (L&S) 638 : (1991) 16 ATC 514 : AIR 1990 SC 1308] , *Union of India v. Ashok Kacker* [1995 Supp (1) SCC 180 : 1995 SCC (L&S) 374 : (1995) 29 ATC 145] , *Prohibition & Excise Deptt. v. L. Srinivasan* [(1996) 3 SCC 157 : 1996 SCC (L&S) 686 : (1996) 33 ATC 745] , *State of A.P. v. N. Radhakishan* [(1998) 4 SCC 154 : 1998 SCC (L&S) 1044 : AIR 1998 SC 1833] , *M.V. Bijlani v. Union of India* [(2006) 5 SCC 88 : 2006 SCC (L&S) 919 : AIR 2006 SC 3475] , *Union of India v. Kunisetty Satyanarayana* [(2006) 12 SCC 28 : (2007) 2 SCC (L&S) 304] and *Ministry of Defence v. Prabhash Chandra Mirdha* [(2012) 11 SCC 565 : (2013) 1 SCC (L&S) 121 : AIR 2012 SC 2250])” (emphasis supplied)

9. In the above decision, Supreme Court was also dealing with delay in initiation and conclusion of disciplinary proceedings. As can be seen from the above extracted paragraph, Supreme Court held that exercise of jurisdiction at the initial stage on the issue of delay in initiation is *de hors* the limits of judicial review, exceeds power of judicial review at the very threshold.

10. It is not in dispute that Depot Manager is competent to place the petitioner under suspension and to initiate disciplinary proceedings. It appears from the reading of order of suspension and the charge memo, on *prima facie* assessment of record and treating alleged misconduct as amounting to gross negligence and serious lapses the disciplinary authority has taken appropriate action. *Prima facie*, initiation of disciplinary action is based on material placed before the disciplinary authority. Thus, it is not a case of non-application of mind or mechanical reaction to alleged misplacing of ticket blocks.

11. Whether the missing of ticket books is attributable to the petitioner or whether ticket blocks are no more required for disbursing the tickets as different mechanism of issuing tickets to passengers is adopted, are matters for consideration in the pending domestic enquiry. Admittedly, petitioner was the custodian of missing ticket blocks, whose numbers are mentioned in the charge sheet and those ticket blocks were not traced despite making best efforts and no satisfactory explanation was forthcoming from the petitioner about missing of those ticket blocks. Learned counsel for petitioner sought to contend that as ticket blocks are no more used, they were kept in open tray and therefore, he was not aware how they were misplaced. As ticket blocks were missing from the custody of petitioner, it cannot be said that initiation of disciplinary action on the allegation of non-availability of ticket blocks as not valid. Whether missing of ticket blocks would have caused loss to the respondent Corporation is again a matter for consideration in the domestic enquiry.

12. As held by the Hon'ble Supreme Court in the precedent decisions, in exercise of power of judicial review the writ Court cannot go into the correctness of charge leveled at the threshold.

ISSUE NO.2:

13. In **O.P. GUPTA V. UNION OF INDIA**⁴, Supreme Court held that order of suspension should not be lightly passed:

“15. We have set out the facts in sufficient detail to show that there is no presumption that the government always acts in a manner which is just

⁴ AIR 1987 SC 2257

and fair.....***The real effect of the order of suspension as explained by this Court in Khem Chand v. Union of India is that he continues to be a member of the government service but is not permitted to work and further during the period of suspension he is paid only some allowance — generally called subsistence allowance — which is normally less than the salary instead of the pay and allowances he would have been entitled to if he had not been suspended.*** There is no doubt that an order of suspension, unless the departmental inquiry is concluded within a reasonable time, affects a government servant injuriously. The very expression “subsistence allowance” has an undeniable penal significance. The dictionary meaning of the word “subsist” as given in *Shorter Oxford English Dictionary*, Vol. II at p. 2171 is “to remain alive as on food; to continue to exist”. “Subsistence” means — means of supporting life, especially a minimum livelihood. Although suspension is not one of the punishments specified in Rule 11 of the Rules, ***an order of suspension is not to be lightly passed against the government servant.*** In the case of *Board of Trustees of the Port of Bombay v. Dilipkumar Raghavendranath Nadkarni* the court held that the expression “life” does not merely connote animal existence or a continued drudgery through life. The expression “life” has a much wider meaning. Suspension in a case like the present where there was no question of inflicting any departmental punishment prima facie tantamounts to imposition of penalty which is manifestly repugnant to the principles of natural justice and fair play in action.....” (emphasis supplied)

14. As noted by this Court in the above decision while considering the issue against suspension from service, Court is required to note whether suspension was resorted to enforce discipline; convey to all the employees that dereliction of duty

cannot be tolerated; to ensure that employee would not create impediment in smooth conduct of enquiry and in the larger public interest, it is necessary to suspend the employee. Court is required to see whether such power is exercised not as an administrative routine or an automatic consequence of alleged misconduct; whether there was careful consideration of the issue and in right perspective and due assessment of misconduct of employee.

15. According to assessment of the disciplinary authority failing to maintain the seal to the lock and taking over and handing over the registers for the ticket blocks resulted in loss of ticket blocks valued at Rs.3,00,000/- and same would amount to serious lapse and amounts to gross negligence. When the allegation is amounting to gross negligence, it cannot be said that the employee cannot be suspended, and discretion was not validly exercised. Whether the corporation is subjected to loss or possibility of loss being caused to the corporation are matters for consideration in the disciplinary enquiry. Merely because petitioner is due for retirement, is also not a ground to say that disciplinary action cannot be initiated, or petitioner cannot be suspended. In the facts of this case, it cannot be said that the disciplinary authority resorted to suspending the petitioner as an administrative routine. In a given case, suspension can be resorted to convey the message to all the employees that dereliction of duty in any manner cannot be tolerated by the employer.

16. Thus, I do not see any error in initiation of the disciplinary action and placing the petitioner under suspension warranting interference. Accordingly, the Writ Petition is dismissed. However,

it is made clear that there is no expression of opinion on merits. It is needless to observe that as petitioner is due for retirement on 31.01.2019, the disciplinary proceedings be concluded expeditiously, preferably within two months from the date of receipt of copy of this order. Pending miscellaneous applications stand disposed of.

JUSTICE P.NAVEEN RAO

Date: 18.07.2018
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