

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No. 24680 of 2018

Date : 27.7.2018

Between:

B Balaiah S/o Ramalingam
53 years
E No. 301483 Asst Depot Clerk
TSRTC Karimnagar-2 Depot
Karimnagar

Petitioner

And

TSRTC,
Rep by its MD, Bus Bhavan
Hyderabad and others

Respondents

The Court made the following:



HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No. 24680 of 2018

ORAL ORDER:

Petitioner is working as Asst Depot Clerk in the Telangana State Road Transport Corporation(TSRTC). In this writ petition, petitioner is challenging charge sheet dated 6.6.2018 and suspension from service dated 6.6.2018.

2. Heard learned counsel for petitioner Sri Kasa Jaganmohan Reddy and Sri A Ravi Babu, learned standing counsel for TSRTC.

3. According to learned counsel for petitioner, a false allegation is levelled against him and based on the said false allegation disciplinary proceedings are initiated and he is suspended only to harass and humiliate him. There are contradictions in the allegations as reflected in the English version of charge memo and translated to Telugu. On the crucial day, Petitioner received cash of 3,78,979 from bus conductors and entire cash was kept in the locker and locked in the presence of Head Constable. Head Constable also locked the locker with another key kept with him. Thus, the entire amount received by the petitioner was already credited. Whereas, based on false statement of Head Constable, arrayed as 3rd respondent, allegation is levelled against him. By referring to bank transactions carried out on the relevant date he would submit that the entire amount received by him and kept in the locker was credited to the account of the respondent corporation and there is no short fall in cash. Therefore, on the face of it there is no truth in the allegation that 88,400 was found short and therefore would amount to theft of cash. It is also false to allege that petitioner made contradictory statements. He would further submit that based on this false allegation there was no justification to place him under suspension. In any case, the issue for consideration in the disciplinary proceedings is based on material on record and therefore there is no justification to place him under suspension.

4. Learned standing counsel for respondent corporation, justifies the disciplinary action initiated against petitioner. Reading of the charge memo would show that the entire amount received by him was not kept in the locker, therefore same amounts to theft of cash belonged to respondent corporation. As the allegation is grave, the employee is liable to be suspended, pending enquiry and therefore suspension is valid.

5. Two issues fall for consideration in this writ petition:

- 1) Whether Court can interfere in disciplinary proceedings at the stage of charge memo?
- 2) Whether suspension from service is justified?

ISSUE NO.1

6.1 On the scope of judicial review on a challenge to initiation of disciplinary proceedings, the law is well settled.

6.2.1 In **UNION OF INDIA Vs KUNISETTY SATYANARAYANA**¹ the employee challenged the charge memo dated 23.12.2003. In the said charge memo, it was alleged that the employee claimed reservation against ST roster point in the promotional post, though he did not belong to said category. Instead of replying to the aforesaid charge, the employee filed O.A., before the Central Administrative Tribunal. The Tribunal disposed of O.A. directing the employee to submit his reply to the charge memo. Instead of filing reply, he filed writ petition before the High Court and High Court allowed the writ petition. The Union of India preferred appeal before the Supreme Court.

6.2.2 On review of the precedent decisions, Supreme Court held as under:

“13. It is well settled by a series of decisions of this Court that **ordinarily no writ lies against a charge-sheet or show-cause notice** vide *Executive Engineer, Bihar State Housing Board v. Ramesh Kumar Singh* [(1996) 1 SCC 327 : JT (1995) 8 SC 331] , *Special Director v. Mohd. Ghulam Ghouse* [(2004) 3 SCC 440 : 2004 SCC (Cri) 826 : AIR 2004 SC 1467] , *Ulagappa v. Divisional Commr., Mysore*

¹ (2006) 12 SCC 28

[(2001) 10 SCC 639] , *State of U.P. v. BrahmDatt Sharma* [(1987) 2 SCC 179 : (1987) 3 ATC 319 : AIR 1987 SC 943], etc.

14. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that ***at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so.*** It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. ***It is well settled that a writ petition lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of anyone. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.***

15. Writ jurisdiction is discretionary jurisdiction and hence such ***discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge-sheet.***

16. No doubt, in some ***very rare and exceptional cases*** the High Court can quash a charge-sheet or show-cause notice if it is ***found to be wholly without jurisdiction or for some other reason if it is wholly illegal.*** However, ordinarily the High Court should not interfere in such a matter.” (emphasis supplied)

6.3.1 In **SECRETARY, MINISTRY OF DEFENCE AND OTHERS**

Vs PRABHASH CHANDRA MIRDHA² the employee was served with charge memo alleging that he demanded bribe and accepted. Challenging the said charge memo, employee filed O.A. before the Central Administrative Tribunal, alleging that the charge memo was issued by subordinate to the appointing authority; the O.A was allowed by the Tribunal holding that the charge memo was issued by authority subordinate to the appointing authority. Writ Petition preferred on behalf of Union of India was dismissed. On behalf of Union of India, appeal was preferred before the Supreme Court.

6.3.2. Supreme Court held as under:

“10. Ordinarily a writ application does not lie against a charge-sheet or show-cause notice for the reason that it does not give rise to any cause of action. It does not amount to an adverse order which affects the right of any party unless the same has been issued by a person having no jurisdiction/competence to do so. 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

² (2012) 11 SCC 565

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. (Vide *State of U.P. v. BrahmDatt Sharma* [(1987) 2 SCC 179 : (1987) 3 ATC 319 : AIR 1987 SC 943] , *Bihar State Housing Board v. Ramesh Kumar Singh* [(1996) 1 SCC 327] , *Ulagappa v. Commr.* [(2001) 10 SCC 639 : AIR 2000 SC 3603 (2)] , *Special Director v. Mohd. Ghulam Ghouse* [(2004) 3 SCC 440 : 2004 SCC (Cri) 826 : AIR 2004 SC 1467] and *Union of India v. Kunisetty Satyanarayana* [(2006) 12 SCC 28 : (2007) 2 SCC (L&S) 304] .)

11. In *State of Orissa v. Sangram Keshari Misra* [(2010) 13 SCC 311 : (2011) 1 SCC (L&S) 380] (SCC pp. 315-16, para 10) this Court held that ***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 for the reason that to determine correctness or truth of the charge is the function of the disciplinary authority.*** (See also *Union of India v. Upendra Singh* [(1994) 3 SCC 357 : 1994 SCC (L&S) 768 : (1994) 27 ATC 200] .)

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)

6.4.1. In **CHAIRMAN, LIFE INSURANCE CORPORATION OF INDIA AND OTHERS Vs M.MASILAMANI**³, it was alleged that there were certain irregularities and deviations in construction of house by the employee and the housing loan was obtained, upon non-disclosure of the facts, charge sheet was drawn on 6.1.1998; employee filed his reply; not satisfied with the reply, domestic enquiry was ordered. Based on the report of the enquiry, penalty of reduction in the basic pay was imposed on the employee. The appeal as well as memorial were rejected. Challenging the order of punishment, employee preferred writ petition. Writ petition was allowed observing that witnesses were examined in violation of the statutory rules and principles of natural justice; that employee was not accorded adequate opportunity to cross examine the witnesses; that appellate authority failed to observe that there were procedural violations by the enquiry officer as well as

³ (2013) 6 SCC 530

by the disciplinary authority. It was also held that mere concurrence by the appellate authority with the findings recorded by the enquiry officer and without adequate reasoning cannot be said to amount to adequate application of judicial mind by the appellate authority. The appeal filed by the corporation was dismissed. Aggrieved thereby, appeal was preferred before the Supreme Court.

6.4.2. Dealing with various contentions, the Supreme Court observed 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 judicial proceedings are allowed to be terminated only on the ground of delay in their conclusion. (Vide *State of U.P. v. BrahmDatt 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] .)”

7. 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 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 chargesheet/ show cause notice.

8. Keeping in mind above principles, it is necessary to assess the issue. The basic facts are not in dispute. It is also not in dispute that the Depot Manager is disciplinary authority and the charge sheet was issued by the competent authority.

9. Counsel for petitioner sought to assail correctness of allegations by referring to total cash deposited in the bank on relevant date and that the total amount received by him was accounted for and that there was no variation in his stand. He sought to contend that there are inconsistent statements in the allegations and the allegation made is contrary to material furnished to him. If what is contended by the petitioner is accepted, this Court is required to evaluate the evidence available on record and give a finding that the allegation made against the petitioner in the charge memo is not true and therefore the charge is liable to set aside. In other words, at the preliminary stage, this Court is asked to go into the merits of the allegations and record a finding. In exercise of power of judicial review under Article 226 of the Constitution, this Court cannot undertake such an exercise. Whether there

was theft of cash by the petitioner and whether there were different versions are matters to be gone into in the domestic enquiry. It is for the petitioner to satisfy the disciplinary authority that there was no shortage of amount kept in the bank locker and that he did not make contradictory statements. Evaluation of evidence is the prerogative of disciplinary authority. What is sought now amounts to stepping into the shoes of disciplinary authority. In fact, writ Court cannot undertake such exercise even after disciplinary proceedings are concluded. The jurisdiction of the writ Court under Article 226 of the Constitution of India is very limited in disciplinary proceedings. That being so, at the preliminary stage, Court can not undertake the exercise of evaluation of evidence. It is de-horse the limits of judicial review.

10. Thus, the challenge on the first issue fails.

ISSUE NO.2

11. The duties, responsibilities, conduct and discipline of an employee in public service are governed by service rules/ regulations. On allegation of misconduct, employer is entitled to take disciplinary action which may result in dismissal/ removal from service. The power to suspend an employee flows out of power to take disciplinary action on allegation of misconduct. The conduct rules/ regulations delineate the power of suspension and competent authority to exercise such power. When an allegation of misconduct comes to the notice of disciplinary authority and in the opinion of disciplinary authority that it is not desirable to entrust duties to the delinquent employee while enquiry/ investigation is in progress/ proposed, the competent authority may place his service under suspension. Suspension of service results in temporary withdrawal of duties and responsibilities of the delinquent employee. During the period of suspension, the relationship of master and servant subsists; the employee continues to be on the rolls of employment and is not entitled to take up any other assignment. He is still amenable to disciplinary control of the employer for any other misconduct also. He is only disabled from attending to his work. He is not entitled to draw pay and allowances. For his sustenance

during the period of suspension, he is paid allowance which in normal parlance called 'subsistence allowance'.

12. Ordinarily, an employee's services can be placed under suspension in the following contingencies:

- a) Where disciplinary proceedings are contemplated or pending.
- b) Where the disciplinary authority was of the prima facie opinion that the employee is engaged in activities prejudicial to the interest and security of the State;
- c) Where the case against him in respect of criminal offence is under investigation, enquiry or trial;
- d) Pending investigation/ enquire into allegations, it is found not desirable to continue the employee in service in public interest;
- e) Such continuation in service during pending enquiry/ investigation is likely to prejudice the investigation, trial, enquiry; there is a possibility of tampering of documents, influencing the witnesses, etc;
- f) It is also permissible to suspend an employee if his continuation is likely to cause /encourage indiscipline in the organization.

13. In matters of suspension, there are two competing interests. On the one side is employer's eagerness to ensure transparent operation of public service and to enforce discipline. Therefore, he would mince no words to take disciplinary action when it comes to his notice of misconduct. When allegations are grave/ disobedience is palpable, it is also in public interest to place such employee under suspension. On the other hand is the concern of the employee. It is an accepted fact that though suspension does not take away the employment and is not a punishment per se, but it has deleterious effect on the employee and his family and attaches stigma as he would be looked down in the community whenever person is placed under suspension.

The suspension from service continues for months together and in many cases for years together.

14. In matters of suspension, the exercise of extra-ordinary power of judicial review vested in this court under Article 226 of the Constitution of India is very limited. Scope of consideration is limited to the extent of examining the competence of the authority who places an employee under suspension; arbitrary exercise of power; selective suspension; allegations are frivolous/ technical in nature; suspension was wholly unwarranted; and there was no application of mind. In matters of suspension, each case has to be examined in the factual back ground of given case.

15.1 At this stage, it is necessary to parade briefly the precedent pronouncements of Supreme Court and this Court on the issue of suspension.

15.2. In **STATE OF ORISSA Vs BIMAL KUMAR MAHANTY**⁴ Supreme Court laid down parameters of suspension and scope of judicial review. Supreme Court held:

“13. It is thus settled law that normally when an appointing authority or the disciplinary authority seeks to suspend an employee, pending inquiry or contemplated inquiry or pending investigation into grave charges of misconduct or defalcation of funds or serious acts of omission and commission, the order of suspension would be passed after taking into consideration the gravity of the misconduct sought to be inquired into or investigated and the nature of the evidence placed before the appointing authority and on application of the mind by disciplinary authority. Appointing authority or disciplinary authority should consider the above aspects and decide whether it is expedient to keep an employee under suspension pending aforesaid action. ***It would not be as an administrative routine or an automatic order to suspend an employee. It should be on consideration of the gravity of the alleged misconduct or the nature of the allegations imputed to the delinquent employee.*** The Court or the Tribunal must consider each case on its own facts and no general law could be laid down in that behalf. ***Suspension is not a punishment but is only one of forbidding or disabling an employee to discharge the duties of office or post held by him. In other words it is to refrain him to avail further opportunity to perpetrate the alleged misconduct or to remove the impression among the members of service that dereliction of duty would pay fruits and the offending employee could get away even pending inquiry without any impediment or to prevent an opportunity to the delinquent officer to scuttle the inquiry or investigation or to win over the witnesses or the***

⁴[(1994) 4 SCC 126]

delinquent having had the opportunity in office to impede the progress of the investigation or inquiry etc. But as stated earlier, each case must be considered depending on the nature of the allegations, gravity of the situation and the indelible impact it creates on the service for the continuance of the delinquent employee in service pending inquiry or contemplated inquiry or investigation. It would be another thing if the action is actuated by mala fides, arbitrary or for ulterior purpose. **The suspension must be a step in aid to the ultimate result of the investigation or inquiry.** The authority also should keep in mind public interest of the impact of the delinquent's continuance in office while facing departmental inquiry or trial of a criminal charge.”(Emphasis supplied)

15.3. In **UNION OF INDIA V. ASHOK KUMAR AGGARWAL**⁵, Supreme Court held,

“21. The power of suspension should not be exercised in an arbitrary manner and without any reasonable ground or as vindictive misuse of power. Suspension should be made only in a case where there is a strong prima facie case against the delinquent employee and the allegations involving moral turpitude, grave misconduct or **indiscipline or refusal to carry out the orders of superior authority** are there, or there is a strong prima facie case against him, if proved, would ordinarily result in reduction in rank, removal or dismissal from service. The authority should also take into account all the available material as to whether in a given case, it is advisable to allow the delinquent to continue to perform his duties in the office or his retention in office is likely to hamper or frustrate the inquiry.

22. In view of the above, the law on **the issue can be summarised to the effect that suspension order can be passed by the competent authority considering the gravity of the alleged misconduct i.e. serious act of omission or commission and the nature of evidence available.** It cannot be actuated by mala fide, arbitrariness, or for ulterior purpose. Effect on public interest due to the employee's continuation in office is also a relevant and determining factor. The facts of each case have to be taken into consideration as no formula of universal application can be laid down in this regard. *However, suspension order should be passed only where there is a strong prima facie case against the delinquent, and if the charges stand proved, would ordinarily warrant imposition of major punishment i.e. removal or dismissal from service, or reduction in rank, etc (emphasis supplied).*

27. Suspension is a device to keep the delinquent out of the mischief range. The purpose is to complete the proceedings unhindered. Suspension is an interim measure in the aid of disciplinary proceedings so that the delinquent may not gain custody or control of papers or take any advantage of his position. More so, at this stage, **it is not desirable that the court may find out as to which version is true when there are claims and counterclaims on factual issues.** The court cannot act as if it is an appellate forum de hors the powers of judicial review.

29. However, as the suspension order constitutes a great hardship to the person concerned as it leads to reduction in emoluments, adversely affects his prospects of promotion and also carried a stigma, an order of suspension should not be made in a perfunctory or in a

⁵(2013) 16 SCC 147

routine and casual manner but *with due care and caution after taking all factors into account.*”(emphasis supplied)

15.4 In **R.S. MADHUBABU**, Division Bench of this Court held as under:

“18. Having regard to the facts and circumstances of the case, we are of the opinion that the Tribunal ought not to have interfered with the order of suspension passed by competent authority, particularly when the authorities have got the power under Rule 8 of the APCS (CCA) Rules 1991 to place an employee under suspension pending enquiry. All the aspects have to be gone into by the fact finding authority and the enquiry will disclose the truth and otherwise of the allegations. Further, it is settled preposition of law that suspension pending enquiry cannot be interfered with and the Courts can direct only to conclude and complete the proceedings. In the circumstances of the case, the Tribunal instead of directing the authorities to complete and conclude the disciplinary proceedings pending against the respondent within the time frame, exceeded its limit and over stepped its jurisdiction by directing the authorities that he should be transferred to a far off place, which is impermissible under law and unwarranted. As the task undertaken by the Tribunal is impermissible under law, the order passed by it suffers from various serious legal infirmities and therefore, the impugned order is liable to be set aside.”

16. The principles that can be culled out from precedent decisions are:

- (i) The real effect of the order of suspension is that employee continues to be a member of service of employer but is not permitted to work and further during the period of suspension he is paid subsistence allowance.
- (ii) It would not be as an administrative routine or an automatic order to suspend an employee and not to be lightly passed. It should be on consideration of the gravity of the alleged misconduct or the nature of the allegations imputed to the delinquent employee.
- (iii) The suspension must be a step in aid to the ultimate result of the investigation or inquiry.
- (iv) The power of suspension should not be exercised in an arbitrary manner and without any reasonable ground, as vindictive and in misuse of power.

- (v) Suspension should be made only when there is a strong prima facie case of delinquency.
- (vi) Suspension is a device to keep the delinquent out of the mischief range. The purpose is to complete the proceedings unhindered.
- (vii) order of suspension can be resorted to pending further investigation or contemplated disciplinary action only on grave charges.
- (viii) Competent Authority should take into consideration relevant facts and attendant circumstances as to how far and to what extent public interest would suffer if the delinquent is not placed under suspension.

17. To appreciate the contentions of the learned counsel, having regard to the broad principles noted above, it is necessary to consider the provisions in Regulation 18 of the CCA Regulations. Regulation 18 vests power in the competent authority to place an employee under suspension (i) pending investigation or enquiry into **grave charges** and such suspension is necessary in the **public interest**; and (ii) whether criminal offence is under investigation or trial. This Regulation also guides the disciplinary authority when to resort to suspension.

18. The 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.

19. According to assessment of the disciplinary authority there was shortage of 88,400/- in the cash kept in the locker and the same would

amount to theft of money belonging to the respondent-corporation. It cannot be said that allegation of theft, if proved, is not gross misconduct. When the allegation is amounting to gross misconduct, it cannot be said that the employee cannot be suspended, and discretion was not validly exercised. Whether there was theft of corporation money is matter for consideration in the disciplinary enquiry. In the facts of this case, it cannot be said that the disciplinary authority resorted to suspending the petitioner as an administrative routine.

20. Thus, I do not see any error in placing the petitioner under suspension warranting interference. The issue no.2 is answered accordingly.

21. Accordingly, the Writ Petition is dismissed. It is made clear that the tenability of the allegation and the involvement of petitioner can be gone into during the departmental enquiry and Court has not expressed any opinion on merits at this stage. It is made clear that what is discussed in the above paragraphs is only to appreciate the contentions on behalf of petitioner on the validity of the disciplinary action and order of suspension and there is no expression of opinion on merits. Pending miscellaneous petitions stand closed.

DATE: 27 -07-2018

TVK

P NAVEEN RAO,J

