

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

WRIT PETITION No.10308 OF 2017

ORDER :

Heard learned counsel for the petitioner and Sri N.Vasudeva Reddy, Standing Counsel for respondents.

The petitioner assails the proceedings dt.08-03-2017 issued by the 3rd respondent imposing punishment of removal from service on the petitioner.

The petitioner was employed as Conductor in the 1st respondent-Corporation.

On the ground that petitioner was unauthorizedly absent from 24-07-2016 to 26-07-2016, two charges were framed against him, which read as under:

CHARGE-1:

“For having absented to your duties unauthorizedly from 24-07-2016 to 26-07-2016 without any intimation or prior sanction of leave from the competent authority, which resulting in dislocation of scheduled services affecting the efficiency of the depot besides causing lot of inconvenience to the traveling public and loss of revenues to the Corporation, which constitutes misconduct in terms of Regulations No.28 (xxvii) of TSRTC Employee (Conduct) Regulations 1963.”

CHARGE-2:

“ For having not available for your duties 22 days, by means of 09 days leave, by means of 13 days absent (causing lot of inconvenience to the traveling public, besides) dislocation/cancellation of schedule services, which comes under mis-conduct in terms of Reg.28, sub-clause (xxvii) of TSRTC Employees (Conduct) Reg.1963.”

The petitioner submitted explanation thereto.

Thereafter, Enquiry Officer was appointed and he submitted a report on 04-05-2016 holding petitioner guilty of charges.

Without serving copy of the enquiry report on the petitioner, show-cause notice dt.08-12-2016 was issued to the petitioner to submit explanation.

On the ground that petitioner did not submit any reply hitherto, impugned order has been passed by the 3rd respondent imposing punishment of removal from service on the petitioner.

Counsel for the petitioner contended that the first charge framed against him relates to absence of only two days and second charge does not mention period of absence and is vague; and on the basis of said vague charge, there could not have been finding of guilt, on the basis of which punishment of removal can be imposed on the petitioner. He contends that punishment of removal

from service is disproportionate to the misconduct under charge No.1 as he could not have been found guilty of misconduct under charge No.2 without there being a valid charge framed.

Though counsel for the respondent sought to justify the action of the 3rd respondent, he is unable to state why actual period of absence by dates is not given in charge No.2 specifically.

How petitioner can be expected to give an explanation without knowing actual period of absence for which charge is framed, is also not explained by the counsel for the respondent. When charge No.2 is vague and particulars of period of absence are not specifically mentioned, there could not have been finding of guilt of the petitioner as regards said charge by the enquiry officer or the 3rd respondent and any such finding is therefore unsustainable.

Similar view has been taken by this Court in the judgment of A.P.S.R.T.C. rep. by **V.S.R.Krishna v. Managing Director, Hyderabad**¹ following the Division Bench of this Court dated 05-04-2005 in W.A.No.769 of 2005. It was held in that case as under:

“ 20. However, the fact remains that no charge was framed against the petitioner for his

¹ 2017(5) ALT 175

subsequent absence for this period and the charge-memo issued on 24.05.2007 did not cover his absence for the period after 28.05.2007.

21. Therefore, it was not fair on the part of the Corporation to terminate his services without framing a specific charge and conducting enquiry against him on the basis of the said charge. Therefore, there has been a gross violation of principles of natural justice.

22. The Division Bench of this Court in **M. Murali Krishna**(1 supra) also held that without there being a specific charge for the duration of unauthorized absence on the basis of which the punishment was imposed, it was not proper to terminate the services of an employee and that it would amount to arbitrariness.”

Assuming for the sake of argument that charge No.1 was found established in the enquiry, the said charge relates unauthorized absence for two days and for such absence of mere two days, punishment of removal from services is disproportionate, shocks the conscience of the Court. This action of the 3rd respondent is violative of Article 14 of Constitution of India.

Accordingly, the Writ Petition is allowed; the impugned order dt.08-03-2017 passed by the 3rd respondent is set aside and the matter is remanded to the 3rd respondent to consider the finding only on charge

No.1 and impose appropriate punishment in accordance with law on the petitioner within a period of four (04) weeks from the date of receipt of a copy of this order; and the period between 18-03-2017 till date shall be treated as 'on duty' for all purposes.

Consequently, Miscellaneous Petitions pending if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

14-03-2018
Nvl

