

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.34644 OF 2018

ORDER:

Heard learned counsel for the petitioner and the learned Standing Counsel for TSRTC.

2. By order, dated 15.09.2018, the Disciplinary Authority removed the petitioner from service. This order is challenged in this writ petition on several grounds. The main ground is that enquiry was not properly conducted and without affording due opportunity to the petitioner, the Enquiry Officer submitted an *ex parte* report holding that charges are proved; that based on the said findings of the Enquiry Officer, in spite of objections raised by the petitioner, the Disciplinary Authority ignored the objections and passed the order of removal from service.

3. Learned counsel for the petitioner placed on record the Enquiry Report, dated 28.06.2018. A reading of the second para in page 3 of the said report would show that on 27.06.2018 the petitioner happened to be present in the office of Regional Manager seeking posting orders as a consequence of revocation of suspension. As the petitioner refused to participate in the enquiry, the Enquiry Officer submitted *ex parte* enquiry report. According to learned counsel for the petitioner, no prior notice was issued to the petitioner for holding enquiry on 27.06.2018. On this aspect, learned Standing Counsel for TSRTC fairly submits that no prior notice was issued fixing the date of enquiry as 27.06.2018 in advance.

4. Thus, in the absence of notice fixing the date of enquiry, directing the employee to attend enquiry on a particular day, merely because the petitioner incidentally happened to be present in the Regional Manager's office, cannot compel him to participate in the enquiry and to hold that the petitioner refused to participate in the enquiry and therefore, enquiry was conducted *ex parte* and submitted report. Thus, as petitioner was illegally deprived the opportunity of hearing in the domestic enquiry to defend himself against the allegations levelled on him, consequential order of removal from service is not sustainable.

5. Since learned Standing Counsel for TSRTC also fairly admitted that no notice was issued to the petitioner before setting him *ex parte* and conducting *ex parte* enquiry, the order of removal from service is liable to be set aside.

6. Accordingly, the Writ Petition is allowed setting aside the order, dated 15.09.2018, passed by the Disciplinary Authority directing the respondents to reinstate the petitioner into service. Subject to supply of all the relevant documents, which are the basis for levelling charges against the petitioner, the Enquiry Officer shall conduct enquiry afresh after due opportunity to the petitioner and complete the same, as expeditiously as possible, and submit his report. The petitioner shall cooperate with the enquiry. If petitioner does not co-operate in conducting enquiry on the dates fixed by the Enquiry Officer, it is open to the Enquiry Officer to hold that the petitioner is not cooperating and set him *ex parte* and complete the enquiry.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed. There shall be no order as to costs.

P.NAVEEN RAO, J

OCTOBER 12, 2018
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Date: 12.10.2018

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