

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT APPEAL NO.1652 OF 2018

J U D G M E N T
(Per Sri Justice Sanjay Kumar)

Aggrieved by the dismissal of W.P.No.1586 of 2007, *vide* order dated 11.10.2018, the petitioner therein is in appeal.

The appellant-petitioner joined the service of the erstwhile Andhra Pradesh State Road Transport Corporation (APSRTC) in the year 1988. He was thereafter transferred from Warangal to Vizianagaram as a Deputy Chief Personnel Manager in August, 2004. While working as the Principal, Zonal Staff Training College, APSRTC, Cannavaram, he was subjected to disciplinary proceedings under Charge Sheet dated 31.10.2005, on the ground that while he was the Deputy Chief Personnel Manager of Vizianagaram Zone, he stayed at the APSRTC Guest House at Vizianagaram while irregularly drawing house rental allowance and did not vacate the said Guest House even when he was not in the headquarters, thereby causing inconvenience to other officers who visited Vizianagaram. The erstwhile APSRTC instituted an enquiry into the matter leading to submission of Enquiry Report dated 17.06.2006. The erstwhile APSRTC thereupon issued Office Order dated 18.07.2006 through its Executive Director, Vijayawada and Vizianagaram Zones, whereby he voiced agreement with the findings of the Enquiry Officer on both charges and ordered that the annual increment of the appellant-petitioner be deferred for a period of one year without the effect of postponing his future increments, apart from directing recovery of the house rental allowance of Rs.26,266=40, paid to him from 26.08.2004 to 06.08.2005, from his salary in twelve equal monthly installments.

Alleging irregularity in procedure, the appellant-petitioner filed a statutory appeal before the Managing Director of the erstwhile APSRTC. However, by order dated 28.12.2006, the Appellate Authority dismissed the appeal. The initial punishment order dated 18.07.2006 and the appellate order dated 28.12.2006 confirming the same were subjected to challenge in W.P.No.1586 of 2007 by the appellant-petitioner. However, the learned Judge dismissed the said writ petition holding that there was no merit in his contention that the erstwhile APSRTC did not follow the due procedure by furnishing him a copy of the Enquiry Report as only a minor penalty was imposed upon him. The learned Judge observed that in minor penalty proceedings, no enquiry was to be conducted but in spite of the same, the erstwhile APSRTC had done so to give additional benefit of adhering to the principles of natural justice and the non-furnishing of an Enquiry Report would not taint the proceedings, as there was no obligation to even conduct an enquiry in the first instance. On the basis of this reasoning, the learned Judge held against the appellant-petitioner.

Heard Sri A.K.Jaya Prakash Rao, learned counsel for the appellant-petitioner, and Sri P.Durga Prasad, learned counsel for the present APSRTC, the successor-in-interest of the erstwhile APSRTC in the State of Andhra Pradesh.

It would be appropriate at this stage to take note of the procedure prescribed. The Andhra Pradesh State Road Transport Corporation Employees (Classification, Control and Appeal) Regulations, 1967 (*for brevity*, 'the Regulations of 1967') were framed with the sanction of the Government of Andhra Pradesh under Section 45(1) of the Road Transport Corporations Act, 1950. Regulation 8 thereunder, falling in Part-IV (Discipline-Penalties), classifies 'penalties' into nine categories. The

six categories classified under Regulation 8(1)(i) to 8(1)(vi) are minor penalties while those falling under Regulation 8(1)(vii) to 8(1)(ix) are treated as major penalties.

Regulation 12 deals with the procedure for imposing penalties and Clause (1) thereunder states to the effect that no order imposing any of the minor penalties under Regulation 8(1)(i) to 8(1)(vi) should be passed except after the employee concerned is informed, in writing, of the proposal to take action against him and of the allegations on which such action is proposed to be taken and he is given an opportunity to make any representation that he may wish to make; and such representation, if any, is taken into consideration by the authority imposing the penalty.

The provision also makes it clear that the record of the proceeding in such cases should include, amongst others, the findings arrived at on the allegation(s) with the reasons therefor and the order passed in the case by the competent authority imposing the minor penalty.

Regulation 12(2) provides that no order imposing any of the major penalties under Regulation 8(1)(vii), (viii) and (ix) should be passed except after an enquiry is held in the manner provided. The procedure to be followed in such enquiry is stipulated from Regulation 12(3) onwards.

Significantly, Regulation 12(13) provides that the competent authority to impose the penalty shall determine what penalty, if any, should be imposed on the employee and pass appropriate orders in the case. If the penalty proposed to be imposed is one of the major penalties specified in Regulation 8(1)(vii), (viii) and (ix), the authority is required to give an opportunity to the employee to show-cause why the said penalty should not be imposed. Regulation 12(14) states that if the authority competent to impose the penalty, having regard to its findings, is of the

opinion that any of the minor penalties specified in Regulation 8(1)(i) to (vi) would be adequate, it should pass appropriate orders.

It is on the strength of Regulations 12(13) and 12(14) that Sri P.Durga Prasad, learned counsel, would contend that the APSRTC was not required to share the findings recorded in the enquiry report with the appellant-petitioner before imposition of a minor penalty. However, it is clear from Regulation 12(1) that an employee who is sought to be visited with a minor penalty is to be made aware of the allegation(s) made against him and allowed an opportunity to make a representation in relation thereto, whereupon the authority concerned is required to record his findings on each such allegation in the statement of allegations and the representation, if any, of the employee. Therefore, when the APSRTC, in its wisdom, chose to initiate an enquiry into the charges leveled against the appellant-petitioner, perhaps being of the opinion that a major penalty required to be levied upon him, but thereafter decided to let him off with a minor penalty, it necessarily had to follow the mandate of Regulation 12(1), which required the authority to communicate the allegation(s) on which the action was proposed to be taken. In the case on hand, upon submission of the enquiry report, the allegation(s) on the strength of which the minor penalty was sought to be imposed became the findings recorded in the said enquiry report and not the initially framed charges. This is clear from the fact that the punishment order records that the disciplinary authority expressed agreement with the findings in the enquiry report. Therefore, the APSRTC was bound to communicate a copy of the enquiry report to the appellant-petitioner.

Be it noted that the like provisions in the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991 (*for brevity*, 'the

Rules of 1991') provide that when major penalty proceedings are initiated, requiring an enquiry in terms of Rule 20 of the Rules of 1991, the Disciplinary Authority is required to forward a copy of the Enquiry Report to the Government servant as per Rule 21(2) of the Rules of 1991 so that the Government servant, if he so desires, can submit his written representation, irrespective of whether or not the report is favourable to him. Rule 21(3) postulates that upon consideration of the representation submitted by the Government servant, the Disciplinary Authority has to record its findings before proceeding further in the matter as specified in sub-rule (4) and (5) of Rule 21. Rule 21(4) provides that in the event the Disciplinary Authority, having regard to its findings on all or any of the articles of charge, is of the opinion that any of the minor penalties specified under Rule 9(i) to (v) of the Rules of 1991 should be imposed on the Government servant, it shall make an order imposing such penalty. Therefore, even in such a case if, after holding an enquiry, the Disciplinary Authority, in its wisdom, decides to impose a minor penalty upon the Government servant, a copy of the enquiry report still needs to be furnished to him. This procedure is in keeping with the rule of *audi alteram partem*, which forms an intrinsic part of the principles of natural justice. An employee who is sought to be proceeded against on disciplinary grounds necessarily has to be informed of what material is being considered by the Disciplinary Authority for reaching a decision adverse to his interest.

In terms of Regulation 12(1)(a) of the Regulations of 1967, as the Disciplinary Authority would only have the allegations leveled against the employee and his explanation submitted in response thereto, there is no other material that would be considered by the Disciplinary Authority while

arriving at a conclusion as to whether any of the minor penalties should be visited upon such employee and if so, which one. However, when an enquiry has been conducted against the employee and an enquiry report is furnished to the Disciplinary Authority, though Regulations 12(12) and 12(13) do not state in clear terms that such a report should be furnished to the employee concerned, this Court is of the opinion that such a requirement must be held to be part and parcel thereof, as the Disciplinary Authority would rely upon the findings of the Enquiry Officer as set out in the said report. Therefore, an opportunity necessarily has to be given to the employee concerned to know as to what the said findings are, so that he can submit his representation/objections, in relation thereto. Otherwise, the Disciplinary Authority would be relying upon material, *viz.*, the Enquiry Report, behind the back of the employee concerned so as to take a decision as to what should be the minor penalty to be imposed upon the said employee. Even a minor penalty would have consequences, as is clear from the case on hand, whereby the appellant-petitioner is visited with recoveries, apart from a cut in his salary, albeit without cumulative effect.

On the above analysis, we are of the opinion that minor penalty proceedings without an enquiry would stand on a different footing when compared to disciplinary proceedings which are initiated by holding an enquiry, culminating in an enquiry report adverse to the employee, which is sought to be taken into account by the Disciplinary Authority behind the back of such employee for the purpose of imposing a lesser punishment in the form of a minor penalty. In such circumstances, as an Enquiry Report forms part of the record and the same is sought to be relied upon by the Disciplinary Authority, it must necessarily be shared with the employee

concerned before it is relied upon by the Disciplinary Authority so that the employee concerned would have the opportunity of putting forth his representation/objections in relation to the findings recorded in the said Enquiry Report. The said requirement shall accordingly be read into Regulations 12(12) and 12(13) of the Regulations of 1967.

In the case on hand, it is an admitted fact that the Enquiry Report dated 17.06.2006 was not communicated to the appellant-petitioner before it was acted upon by the Disciplinary Authority, viz., the Executive Director, Vijayawada and Vizianagaram Zones, APSRTC. The punishment order dated 18.07.2006, basing on the findings in the said report, therefore stands vitiated on that ground. The initial punishment order dated 18.07.2006 and the appellate order dated 28.12.2006 confirming the same are accordingly set aside. The APSRTC shall communicate a copy of the Enquiry Report to the appellant-petitioner requiring him to submit his representation/objections in relation thereto within a time frame and thereafter take appropriate action in the matter in accordance with the Regulations of 1967, after considering the said representation/objections.

The writ appeal is accordingly allowed to the extent indicated above. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR,J

M.GANGA RAO,J

31st DECEMBER, 2018

PGS