

***IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

***THE HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN**

and

***THE HON'BLE MS. JUSTICE J. UMADEVI**

+Writ Appeal No.2012 of 2017

Between:

G.S.S. Suresh, S/o Somaiah, aged 45 years,
Divisional Manager of Warangal Region of TSRTC,
L.B. Nagar, Hyderabad

... Appellant

Vs.

Managing Director, Telangana Road Transport
Corporation, Bus Bhavan, Musheerabad,
Hyderabad.

.. Respondent

! For Appellant

: Mr. C. Ramachandra Raju

^For Respondents

: Mr. G. Vidyasagar, learned senior
counsel

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HON'BLE SRI JUSTICE J. UMADEVI

Writ Appeal No.2012 of 2017

JUDGMENT: (V. Ramasubramanian, J)

Challenging a notice issued by the Management to show cause against the proposed punishment of removal from service, the appellant filed a writ petition in W.P.No.41161 of 2017. The writ petition was disposed of by the learned judge at the stage of admission, directing the petitioner to file his objections to the show cause notice within 10 days and further directing the disciplinary authority to afford personal hearing to the appellant on the date fixed in advance and also directing the disciplinary authority to pass appropriate orders as warranted by law, upon consideration of the explanation filed by him and the submissions made in the course of personal hearing, uninfluenced by the observations and the proposal to impose punishment of removal made in the show cause notice.

2. Contending that in the light of the directions so issued, the show cause notice is non-existence in law and that therefore, the learned Judge ought to have followed up his directions with an order setting aside the show cause notice also, to the extent of punishment, the petitioner has come up with the above writ appeal.

3. Heard Mr. C. Ramachandra Raju, learned counsel for the appellant and Mr. G. Vidyasagar, learned senior counsel taking notice for the respondent-Corporation.

4. The fact that the management initiated disciplinary proceedings against the appellant, pursuant to a charge sheet dated 18-02-2017 is not in dispute. It is also not in dispute that the appellant submitted an explanation to the charge memo on 21-02-2017 and an enquiry followed.

5. It is also not disputed that the Enquiry Officer submitted his report on 16-10-2017. The report of the Enquiry Officer was admittedly forwarded to the appellant, calling upon him to submit his objections to the findings of the Enquiry Officer. The appellant submitted his objections to the enquiry report on 21-10-2017.

6. Thereafter, the management issued a notice dated 24-11-2017 to the appellant to show cause as against the proposal to impose the penalty of removal from service. Challenging the said show cause notice, the appellant filed a writ petition.

7. The contention of the appellant before the learned Judge was that without even considering his objections to the findings of the Enquiry Officer, the respondent has reached the conclusion to impose penalty of removal from service and that therefore, the same was contrary to law.

8. The learned Judge, disposed of the writ petition with certain directions. It may be useful to extract paragraph-4 of the decision of the learned single Judge, since it is self-explanatory as to the directions issued by the learned Judge.

“....However, since learned counsel for petitioner expressed apprehension as to the fairness in considering the objections of the petitioner and to persuade disciplinary authority not to impose the punishment at all, whereas show-cause notice would go to show that punishment proposed is removal from service, the Court directs the disciplinary authority to afford personal hearing to the petitioner on the

date fixed in advance. Petitioner shall file his explanation to the show-cause notice before the disciplinary authority within ten days from today. On consideration of the explanation filed, if any, and the submissions made during the course of personal hearing, the disciplinary authority shall pass appropriate orders as warranted by law including taking disciplinary action per se and on imposing appropriate punishment, uninfluenced by the observations and the proposal to impose punishment of removal made in the show-cause notice....”

9. The grievance of the appellant is that once the learned Judge has issued a direction in the paragraph extracted above, to the management to consider his objections and also consider the submissions made in the course of personal hearing, the proposal made in the show cause notice to impose the penalty of removal from service will have no legs to stand and that the learned Judge ought to have removed the last portion of the show cause notice, which contained the proposal to impose the penalty of removal. It is contended by the learned counsel for the appellant that if the last portion of the show cause notice containing the proposal to impose the penalty of removal from service is not set aside as a consequence of what was observed in the earlier portion of the order, the same would lead to absurd consequences of sustaining the notice and also setting aside the same.

10. But, the learned counsel for the appellant is completely wrong in reading the purport of paragraph 4 of the order of the learned single Judge. The contents of paragraph-4 of the order of the learned single Judge, which we have extracted above, does not anywhere indicate that the proposal made by the management to impose the penalty of removal was contrary to law. The learned Judge could not also have reached such a conclusion, in view of the

development of the law that has taken place after Forty-Second Amendment to the Constitution.

11. After the Forty-Second Amendment to the Constitution, the opportunity to show cause against the proposed penalty under Article 311 of the Constitution was gone. But the opportunity to show cause against findings of the Enquiry Officer was invoked first in **Union of India v. E. Bashyan**¹, where a reference was made to a Larger Bench and the Larger Bench answered the question in **Union of India v. Mohd. Ramzan Khan**² and the ratio in **Union of India v. Mohd. Ramzan Khan** was amplified or clarified in **Managing Director, ECIL, Hyderabad v. B. Karunakar and others**³.

12. Therefore, two things follow out of the development of the law. The first is that an employee will have an opportunity to show cause against the findings recorded by the Enquiry Officer, at which stage, the disciplinary authority should not make up his mind about the findings. The second is that if the statutory rules, *de hors* the development of law, permit one more opportunity, in addition to the opportunity to show cause against the findings of the Enquiry Officer, the same may be followed by the management.

13. Keeping these two fundamental principles in mind let us now get back to the facts of this case. In this case, the opportunity, which was read as part of the principles of natural justice by the Supreme Court in **Mohd Ramzan Khan**, was actually provided to the appellant, when the copy of the enquiry report dated 16-10-2017

¹ AIR 1988 SC 1000

² (1991) 1 SCC 588)

³ (1993) 4 SCC 727

was furnished to him and he also submitted his objections to the findings on 21-10-2017. While forwarding the enquiry report to the appellant inviting his objections to the enquiry report, the disciplinary authority did not come to any conclusion. He did not agree or disagree with the findings of the enquiry officer at this stage. Therefore, by forwarding the enquiry report dated 16-10-2017 without expressing any opinion and inviting his objections, the disciplinary authority has complied with the principles of natural justice as enunciated in **Union of India v. Mohd. Ramzan Khan and Managing Director, ECIL, Hyderabad v. B. Karunakar and others.**

14. The management also complied with the second requirement, which was the requirement under the statutory regulations, which require a show cause notice on the proposed penalty alone. The grievance of the learned counsel for the appellant is that while issuing the show cause notice, the disciplinary authority did not at all deal with his objections to the findings of the Enquiry Officer, and that therefore, he could not have come to the conclusion to impose a penalty before dealing with his objections to the findings of the Enquiry Officer.

15. It is the contention of the learned counsel for the appellant that unless the objections of the appellant to the findings of the Enquiry Officer are first dealt with by the disciplinary authority, the question of the disciplinary authority arriving at a conclusion with regard to penalty does not arise. In the show cause notice impugned in the writ petition, the objections of the appellant are not dealt with

and hence, it is contended that the proposal to impose penalty should have been set aside.

16. But we do not agree. The appellant actually had two opportunities, one to send his objections to the findings of the Enquiry Officer and another in respect of the proposed penalty. While the first opportunity was part of the principles of natural justice, the second opportunity was part of the statutory regulations. Once these two opportunities have been given, the appellant cannot have any more grievance at the stage of show cause notice. Assuming that his objections were not dealt with in the impugned show cause notice, it may be a ground for the appellant only to challenge the final order and not to come at the stage of show cause notice.

Therefore, we find no justification to interfere with the order of the learned single judge. The writ appeal is dismissed.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

V. RAMASUBRAMANIAN, J

J. UMADEVI, J

Date: 02-01-2018

Note: Issue C.C. today.

B.O./Ksn