HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.1483 of 2012

ORDER:

This writ petition is filed seeking a Writ of Certiorari, calling for the records related to and connected with the impugned proceedings dated 24.08.2011 insofar as deferring two annual increments which will have its effect on future increments besides treating the removal period as "not on duty" for all purposes, as arbitrary, unjust, capricious and violative of Articles 14, 16 and 21 of the Constitution of India, and sought a consequential direction directing the respondents to restore the deferred increments duly treating the removal period as "on duty" with wages, with all consequential benefits.

2. Heard Sri V.Narsimha Goud, counsel for petitioner and Sri B.Mayur Reddy, Standing Counsel for respondents.

3. It has been contended by the petitioner that he was appointed as a Conductor during May 1991 and has been discharging his duties to the best satisfaction of his superiors and everyone concerned. It has been contended by the petitioner that while he was discharging his duties, during March 2010, the disciplinary authority had initiated disciplinary proceedings for the alleged cash and ticket irregularities, conducted detailed inquiry and after regular departmental inquiry, for the proven misconduct, has imposed the punishment of removal vide orders dated 22.03.2010. Thereafter, the petitioner has preferred appeal, which was dismissed. Then, a revision was preferred before the 2nd respondent and

the 2nd respondent, vide orders dated 24.08.2011, was pleased to partly allow the revision preferred by the petitioner, set aside the orders of removal and modified the punishment of removal to that of deferment of annual increments for a period of two years, which will have effect on future increments and the period from the date of removal till reinstatement was treated as “not on duty”. The present writ petition is filed challenging the orders passed by the 2nd respondent in revision, only to the extent of deferment of annual increments for a period of two years with cumulative effect and treating the period from the date of removal to that of reinstatement as “not on duty”.

4. Counsel for petitioner contended that while the petitioner was discharging his duties as Conductor, he was entrusted to issue the tickets with TIM machine and that the said TIM machine was not properly functioning. The grievance of the petitioner is that at Stage No.7 at Kesampet, a batch of 13 passengers boarded the bus and petitioner tried to issue 13 tickets with the TIM machine. But unfortunately, the TIM machine did not support to issue 13 tickets. So, the petitioner has decided to issue 6 plus 6 plus 1 ticket, and after issuing 6 plus 6 tickets, he accidentally pressed 3 times, which resulted in some tickets being excessively generated. In order to compensate the loss, he had issued the said excess tickets generated by TIM machine to some other passengers. At that point of time, the checking officials have boarded the bus and after checking the bus, found that some of the passengers were holding tickets which were re-issued to them, and on that ground, disciplinary proceedings were initiated.

5. Counsel for petitioner contended that the 2nd respondent, while entertaining the revision, has given the benefit of doubt to the petitioner and the orders of removal were modified to that of punishment of deferment of annual increments for a period of two years with cumulative effect. He contended that once the benefit of doubt was given to the petitioner, the 2nd respondent ought to have set aside the entire punishment of removal instead of modifying the punishment with another major punishment of deferment of annual increments for a period of two years with cumulative effect, which is arbitrary exercise of power and the period from the date of removal till the date of reinstatement ought to have been treated as spent on duty. Therefore, counsel for petitioner contended that the impugned orders dated 24.08.2011 are liable to be set aside and the petitioner be allowed to draw the increments which were stopped by way of modified punishment and the out of employment period shall be treated as "on duty". Counsel for petitioner has relied on the judgment of this Court in **M.Abdul Lateef v. Government of A.P. rep. by its Principal Secretary, Agriculture and Co-operation Department & another**[1], wherein, this Court, at para 20, held as under :

> *"Since there is a serious doubt about the demand and acceptance, the benefit of doubt ought to have been given to the petitioner as held by one of us (GBJ) in K.Abdul Gafoor v. High Court of A.P. [1996 (3) ALT 368]. Further it is also curious to note that the Government had also not taken any steps to prosecute the petitioner obviously for the reason that there is no evidence to establish the guilt of the accused beyond reasonable doubt. However, this Court is aware that the non-prosecution of the petitioner in a criminal case*

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[1] 2005 (2) ALT 762 (D.B.)

> *cannot prohibit the Government from proceeding departmentally. But, even in the departmental enquiry, they have to establish the guilt of the accused in case of misconduct which is quasi-criminal in nature, if not beyond reasonable doubt, but beyond preponderance of probabilities. That is also lacking in this case."*

Relying on the above said judgment, counsel for petitioner contended that when benefit of doubt is given to an employee, in all fairness, the respondents ought to have granted full relief instead of modifying the punishment of removal to that of deferment of annual increments for a period of two years with cumulative effect.

6. Standing counsel for respondents submitted that after conducting inquiry, the disciplinary authority has imposed the punishment of removal from service. The 2nd respondent, while entertaining the revision, had categorically held that it is the primary duty of the Conductor to issue valid tickets to the passengers by operating the TIM machine properly, and then only the bus should move, but the petitioner had failed to do so, however, taking a lenient view, the 2nd respondent had modified the punishment of removal to that of deferment of two annual increments with cumulative effect and the period from the date of removal till the date of reinstatement was treated as "not on duty", which would mean that the 2nd respondent has not exonerated the petitioner completely, but, by taking a lenient view, the punishment of removal is modified. Therefore, there are no merits in the writ petition and it is liable to be dismissed.

7. This Court, having considered the rival submissions made by the parties, is of the considered view that the revisional authority has taken a lenient view and modified the punishment of removal to that of deferment of annual increments for a period of two years with cumulative effect, therefore, this Court is not inclined to take a further lenient view so as to completely exonerate the petitioner from the charges. The judgment relied on by the counsel for petitioner has no relevance at all for the facts and circumstances of this case. In the said case, there was an ACB trap and two contradictory statements were given by the complainant. In those set of circumstances, the Court held that benefit of doubt should be given to the petitioner. The facts in the said case have no relevance to the facts of the present case. Admittedly, in the instant case, the 2nd respondent, while entertaining the revision of the petitioner, has categorically held that the petitioner has failed to discharge his duties properly. When such a categorical finding is there, the petitioner cannot contend that no punishment ought to have been imposed while giving benefit of doubt. The expression "benefit of doubt", which was used by the 2nd respondent must be understood to take a lenient view, but it cannot be said that there is no misconduct at all on the part of the petitioner. Admittedly, all the three authorities i.e. the disciplinary authority, appellate and revisional authorities have categorically held that there is fault on the part of the petitioner in issuing the tickets, but by taking a lenient view, the revisional authority has modified the punishment of removal to that of deferment of annual increments for a period of two years with cumulative effect and treated the period from

the date of removal till the date of reinstatement as "not on duty", which is a fair and just order.

8. For the aforesaid reasons, there are no merits in the writ petition and it is accordingly dismissed. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

ABHINAND KUMAR SHAVILI, J

8th November, 2019

ajr