

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 14.03.2022

Pronounced on : 18.03.2022

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.15168 of 2010

&

M.P.No.1 of 2010

A.Gandhi

...Petitioner

Versus

1.Tamilnadu State Transport Corporation (Villupuram) Ltd.,
Rep. By its Managing Director,
Vazhudhareddy,
Villupuram.

2.The General Manager,
Tamilnadu State Transport Corporation (Villupuram) Ltd.,
Tiruvannamalai Region,
Thiruvannamalai.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying to the issuance of Writ of Certiorarified Mandamus, after calling for the records pertaining to the orders dated 18.09.2009 passed by the second respondent, Ka.Ku.No.113/1504/T2/Tha.Aa.Poo.Ka(V) Thi.Ma/2008 and modified by the first respondent in his order dated 23.06.2010 in Ka.Ku.No.113/1504/T2/Tha/Aa.Poo.Ka(V)Thi.Ma/2008, quash the same and consequently direct the respondents to grant the petitioner annual increments and third review, with arrears and all other consequential benefits together with interest, award costs.

For Petitioner : Mr.A.Thiyagarajan,
Senior Counsel.
Assist by Mr.D.Veerasekaran

For Respondents : Mr.G.Saravanakumar

ORDER

The petitioner, who was working as a Bus Conductor in the respondent Transport Corporation has filed this Writ Petition, challenging the order dated 18.09.2009, thereby imposing a punishment of demotion from Selection Grade Conductor to Senior Grade Conductor for a period of five years and the order dated 23.06.2010 in the appeal, confirming the findings and reducing the punishment of demotion of five years to three years.

2.The petitioner was issued with a charge memorandum containing the charges that during the period from 03.10.2007 to 25.10.2007 when he was on duty in Route No.122/E/H, he had collected the tickets issued to the passengers back from them and again re-issued them to the passengers, during the other trips and have unlawfully enriched himself to the tune of Rs.6,590/- and to hide the same, he has repeatedly made the corrections in the trip sheets about the serial numbers of those tickets. The petitioner, namely, Gandhi, denied the charge and submitted his explanation dated 08.05.2008. However, his explanation was not accepted and an Enquiry Officer was appointed.

3.In the course of the enquiry the management examined G.Sivaprakasam and K.Devakumar, Senior Superintendents and marked 25 documents. The delinquent examined himself as a witness. After considering the evidence on record the Enquiry Officer by his report found that the charges have been proved. Thereafter, a second show-cause notice dated 04.09.2008, was issued to the petitioner and the petitioner submitted his further explanation on 23.09.2008. After considering the further explanation on 18.09.2009, the second respondent passed the impugned order agreeing with the findings of the Enquiry Officer and imposing the punishment of demotion from the Selection Grade Conductor to Senior Grade Conductor for a period of five years.

4.The petitioner submitted an appeal dated 20.10.2009 to the first respondent and by an order dated 23.06.2010, the said appeal was disposed of by reducing the period of demotion from five years to three years. Aggrieved by the Original and Appellate orders, the present writ petition is filed.

5.Heard Mr.A.Thiyagarajan, Learned Senior Counsel appearing for the petitioner and Mr.G.Saravana Kumar, Learned Counsel appearing for the respondent. The Learned Senior Counsel, pointing out to the charge memo, would submit that in a case of re-issue of tickets, without any checking/inspection of the Bus or without getting any positive information from the

passengers that the petitioner had re-issued the tickets and seizing those tickets, which is issued for the second time to the passengers, only on an audit objection, on mere presumption and surmise, the charge has been framed only because of the trip sheets had over-writing. The Management did not prove even those over-writings in the trip sheets were by the petitioner. Therefore, the charge itself is not based on any concrete facts, but on presumption.

6.He would further take this Court through the evidence of the management witnesses and submits that the Management witnesses had evaded each and every question put to them so as to elicit as to whether or not any concrete evidence is with them. On perusal of the evidence of M.W.1 and M.W.2 examined by the Management, it is crystal clear that this is the case of no evidence. More so, because neither any tickets which were re-issued was seized nor there was any inspection nor there was any complaint from any of the passengers. Even the audit party, who made objections, was not examined in the Enquiry, so as to elicit from them as to on what basis they have doubted about the conduct of the petitioner. He would submit that the entire case is based on mere doubt, without any supporting evidence, therefore, the findings of the Enquiry Officer is perverse in nature.

7.For the said proposition, he would rely upon the Judgment of the Hon'ble Supreme Court of India in Roop Singh Negi Vs. Punjab National Bank and others¹, by relying upon paragraph No.14, which is extracted hereunder:-

"14.Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence. "

8. Further, the Learned Senior Counsel contended that a perusal of the punishment order of the original authority as well as the appellate authority, it would be clear that they have never considered the very many grounds raised by the petitioner in his further explanation as well as the memorandum of grounds. Therefore, the orders are non-speaking in nature and as such, which are liable to be quashed. He would further point out that in respect of one instance, even the serial number of the tickets which are alleged to be re-used, it is admitted that the book itself was not issued to the petitioner. When this is the nature of the evidence based on which, the petitioner is punished, and the Writ Petition is to be allowed as prayed for.

9. The Learned Counsel appearing on behalf of the respondents, taking this Court through the counter affidavit filed by the respondent would submit that this is the case of grave misconduct. The petitioner has repeatedly indulged in re-using the tickets which are collected back from the passengers. Otherwise, there was no occasion to make repeated corrections in the trip sheets. The trip sheets are marked and the petitioner never denied his signature in the corrections. Therefore, no further proof was necessary that it was that of the petitioner, especially, when the trip sheets belong to the Bus route in which he was on duty and which were submitted by him to the higher authorities.

10. The audit party, or for that matter any reasonable person can make out the mischief committed by the petitioner on a bare perusal of the trip sheets. Therefore, the reasonable inference drawn from the action of the petitioner cannot be termed as mere presumption and surmise. The Management has examined two witnesses, who are in the cadre of Senior Superintendents and have marked 25 documents including all the tampered trip sheets. The petitioner having mis-appropriated the monies on account of such re-used the tickets and thereby caused wrongful loss to the Transport Corporation and he was rightly punished.

11. The entire disciplinary proceedings from issue of charge memo till the disposal of the appeal was held in accordance with the rules and there is no procedural violation in the conduct of the disciplinary proceedings. He would further submit that the disciplinary authority as well as the appellate authority took into consideration of all the materials on record and have come to the conclusion, therefore, the orders cannot be termed as non-speaking orders.

12. I have considered the rival submissions made on behalf of both sides and perused the material records of the case.

13.This is the case seeking judicial review on the departmental proceedings initiated and culminating in the punishment. It goes without saying that this Court, while examining the matter, does not sit as an Appellate Court to re-appreciate the evidence and determine the adequacy of the evidence or otherwise, but, it would only interfere, if the findings of the Enquiry Officer is based on no evidence and if the principles of natural justice or the rules/standing orders for the conduct of disciplinary enquiries are violated or if the punishment imposed is so disproportionate so as to shock the conscience of the Court.

14.In the first instance, the Learned Senior Counsel made an attempt to portray, as if this is the case of no evidence and based on the presumption. I am unable to agree with him and as rightly pointed out by the Learned Counsel for the respondent, the charge memo is based on the glaring commissions i.e., the corrections on trip sheets by altering serial numbers of the tickets on repeated occasions by the petitioner. The same leads to the probable and reasonable inference that the petitioner did the same only with an ulterior motive. There is no explanation forthcoming from the petitioner, as to why he corrected trip sheets on the repeated occasions. Therefore, when the said trip sheets were marked in the enquiry and when the Senior Superintendents were examined as witnesses, this cannot be termed as case of no evidence, or as one which is based on mere surmises. It is not necessary in every case that the misconduct should be unearthed only by catching the conductor red handed. In this case, the misconduct has come to light during the detailed audit, which was conducted after six months. Therefore, upon considering the aspects pointed out by the audit party and the disciplinary authority had chosen to frame the charge and no exception can be taken for the same. Similarly, the respondent can choose to prove the charge in the manner by producing the witnesses/evidence which are relevant. Examining the audit party may be a mode, but when there is other evidence on record, non examination would not be fatal to the enquiry.

15.The other contention by the Learned Senior Counsel is that the orders are non-speaking cannot also be countenanced. On a perusal of the orders of the disciplinary authority as well as the appellate authority, it is clearly mentioned the said authorities have considered the objections / grounds raised by the petitioner coupled with the facts regarding the charge, evidence on record, Enquiry Officer's report, everything being considered in the impugned orders. Therefore, merely because, it is mentioned in one sentence that that the authority rejects the grounds raised, it cannot be concluded that the order is

non-speaking. On the other hand, the order has to be read as a whole to conclude whether there is application of mind and consideration of the grounds raised by the petitioner and upon reading the impugned orders in full, I hold that they cannot be termed as non-speaking orders.

16.The Learned Senior Counsel could not point out any other procedural violation in the manner of conduct of enquiry. The petitioner has been given full opportunity to defend the case and after appraising the evidence, the Enquiry Officer returned the finding of guilt and after duly appreciating the same, the disciplinary authority as well as the appellate authority have chosen to accept the same. In view of the same, I find no merits in the Writ Petition and the same is accordingly dismissed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

- 1.The Managing Director,
Tamilnadu State Transport Corporation (Villupuram) Ltd.,
Vazhutharedy,
Villupuram.
- 2.The General Manager,
Tamilnadu State Transport Corporation (Villupuram) Ltd.,
Tiruvannamalai Region,
Thiruvannamalai.

+1 CC to Mr.G.Saravana Kumar, Advocate sr 19038
+1 CC to Mr.D.Veerasekaran, advocate sr 18728

W.P.No.15168 of 2010
and
M.P.No.1 of 2010

MT(CO)
SP(31/03/2022)