

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Orders reserved on 02.09.2022	Orders pronounced on 02.09.2022
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THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

W.P(MD)No.21861 of 2015

S.Durairaju

... Petitioner

Vs.

1.The Management,
Tamil Nadu Transport Corporation
(Kumbakonam) Limited,
Represented by its Managing Director,
Kumbakonam.

2.The General Manager,
Tamil Nadu Transport Corporation
(Kumbakonam) Limited,
Trichy Region,
Trichy.

... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the punishment of increment cut for the period of six months with cumulative effect besides treating the period of suspension from 05.03.2012 to 28.03.2012 as eligible leave imposed by the second respondent on the petitioner in his office proceedings Ref.ThAaPoKaa/Kumba/Trichy/D5/5156/2012, dated

14.05.2014 as confirmed by the first respondent in his Ref : ThaAaPoKaa/Kumba/Kootta - Sattam/Trichy/15 dated 14.07.2015, quash the same and consequently directing the respondents to disburse the increment arrears and revised retirement benefits by treating the period of suspension from 05.03.2012 to 28.03.2012 as on duty with wages to the petitioner.

For Petitioner : Mr.A.Rahul

For Respondents : Mr.D.Sivaraman
Standing Counsel

ORDER

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the punishment of increment cut for the period of six months with cumulative effect besides treating the period of suspension from 05.03.2012 to 28.03.2012 as eligible leave imposed by the second respondent on the petitioner in proceedings Ref.ThaaAaPoKaa/Kumba/Trichy/D5/5156/2012, dated 14.05.2014 as confirmed by the first respondent in Ref.ThaaAaPoKaa/Kumba/Kootta - Sattam/Trichy/15 dated 14.07.2015, quash the same and consequently directing the respondents to disburse the increment arrears and revised retirement benefits by treating the period of suspension from 05.03.2012 to 28.03.2012 as on duty with wages to the petitioner.

2. Learned counsel appearing for the petitioner submitted that the petitioner was working as a Driver at Musiri Branch. He was placed under suspension with effect from 05.03.2012 and issued a charge-memo, dated 09.03.2012 alleging that while he was on duty on 28.02.2012 in the bus bearing Registration No.TN-45-N-2130 in Musiri – Thuraiyur route, he had dashed against Tamarind tree at about 05.50 a.m, resulting in damage to the bus to the tune of Rs.12,000/- and two passengers sustained simple injuries. He was held responsible for the accident due to his negligent driving. He submitted his explanation, dated 03.08.2012, stating that while he was driving the bus at about 05.50 a.m., a lorry came from the opposite direction in a rash and negligent manner with its four flash bright lights causing disturbance to his eyesight and despite his warning, the lorry driver did not dim the bright headlights. Due to glare from the bright head lights, he could not see the road properly and in order to avoid head on collusion, he swerved the bus to the left side. As a result, the bus was pulled off to the left side and dashed against the tree. Not satisfied with his explanation, domestic enquiry was conducted. Mr.M.Chellappan, Assistant Engineer of Musiri Branch was examined as Management witness. The Enquiry Officer found that the charges against him were proved. Then a show-cause notice, dated 06.02.2014, was issued to him asking for

explanation as to why increment for a period of one year cannot be withheld with cumulative effect. He submitted his explanation, dated 05.05.2014. However, the second respondent passed the impugned order imposing the punishment of stoppage of increment for six months with cumulative effect by proceedings dated 14.05.2014 besides treating the period of suspension from 05.03.2012 to 28.03.2012 as eligible leave. He preferred an appeal, dated 04.10.2014 before the first respondent challenging the punishment. It was not disposed of, therefore, he filed a Writ Petition in W.P.No.9241 of 2015, to dispose of the appeal. As per the direction of this Court, the appeal was taken up and his appeal was rejected on 14.07.2015.

3. Learned counsel appearing for the petitioner further submitted that the petitioner was not at all responsible for the accident. Without examining any eye-witness and without considering the petitioner's explanation, the finding recorded by the Enquiry Officer is not in accordance with law. In fact, the respondents Corporation while filing counter in M.C.O.P.No.1076 of 2012 for claiming compensation by one of the injured in the accident specifically stated that the petitioner had driven the bus

with all care and caution and by sounding horn. It was pleaded that the lorry was coming from opposite direction with bright headlights on the wrong side. Despite the warning given by the petitioner, the lorry driver did not dim the bright headlights. Only in order to avoid the head on collision, the petitioner had to take a swerve on the left side resulting in hitting against the tree. When such specific stand was taken by the respondents Corporation before the Motor Accidents Claims Tribunal that the petitioner was not responsible for the accident, it was contrarily found in the enquiry that the petitioner was responsible for the accident. It was against the evidence available. Without serving the copy of the Enquiry Report, calling for an explanation, straightaway show-cause notice was given calling for an explanation on the proposed punishment. This is contrary to the well settled principle and procedure. The Appellate Authority dismissed the appeal filed by the petitioner without giving any valid reasons. Thus, learned counsel appearing for the petitioner prayed for setting aside the impugned order and for allowing this Writ Petition.

4. Per contra, learned counsel appearing for the respondents submitted that the Writ Petition filed by the petitioner challenging

the impugned order is not maintainable for the reason that there is an effective alternate remedy available to the petitioner. The petitioner ought to have approached the Labour Court challenging the order passed by the respondents. Without approaching the Labour Court, filing the Writ Petition before this Court is wrong and thus, liable to be dismissed.

5. In this connection, learned counsel appearing for the respondents relied on the following Judgments:-

(i) In **2004 (3) CTC 1 [P.Pitchumani Vs. The Managing Director, Management of Sri Chakra Tyres Limited, Madurai]** , it is held as follows:-

"14. In view of what is stated supra, we hold that

(i) only such violations under [I.D. Act](#), which involve public duties, are amenable to Writ jurisdiction under [Article 226](#) of Constitution of India;

(ii) dismissals, transfers and other matters concerning the service conditions of employees governed by [I.D. Act](#), have to be adjudicated only by the forums created under the said statute and not otherwise;

(iii) it is needless to mention that the disputes relating to matters not governed by [I.D. Act](#) have to be resolved only by common law Courts;

(iv) the transfers effected in these cases do not involve any public duties and involve the disputed questions of fact and they should be resolved only before the forums under the [I.D. Act](#);

(v) the appellants/petitioners-employees shall be entitled to seek for reference by filing application under [Section 10](#) of the ID Act within two weeks from the date of receipt of a copy of this order;

(vi) if any industrial disputes are raised, then the concerned forums, be it Labour Court or Industrial Tribunal, shall dispose of the same within four months from the date of receipt of the reference, after affording opportunity to either party;

(vii) without prejudice to the contentions of the appellants/petitioners-employees, one week time from the date of receipt of a copy of this order is given to the employees to join at the transferred places and in respect to such of those dismissed employees, for non-joining at the transferred places, the delay is condoned if they join as stipulated above and in that event, dismissal orders passed against them disappear automatically; and

(viii) the respondents-managements shall sympathetically consider the payments of wages/salaries to the appellants/petitioners-

employees so as to maintain the industrial peace and harmony.”

(ii) In **W.A(MD)No.1088 of 2021, dated 30.07.2021**
[P.Ravichandran Vs. The General Manager, Tamil Nadu State
Transport Corporation Kumbakonam Limited, Kumbakonam],
it is held as follows:-

"2. We find that learned Single Bench has referred to an earlier decision in W.P.(MD) No.10416 of 2009, which may not be of much relevance to the case on hand. Admittedly, disputed question of facts are involved and whether the order of punishment was justified or not needs to be adjudicated, which cannot be done in a summary proceedings based on affidavits in a petition under Article 226 of the Constitution. Therefore, to that extent, we agree with the findings of learned Single Bench in directing the appellant to approach the Labour Court.

3. Accordingly, we dispose of this appeal by giving liberty to the appellant to approach the concerned Labour Court and if the appellant does so within a month from the date of receipt of a copy of this judgment and order, the respondent Transport Corporation shall not raise the ground of limitation that the claim petition has been filed belatedly."

6. Learned counsel appearing for the respondents further submitted that the pleadings of the respondents in the counter affidavit filed before the Motor Accident Claims Tribunal cannot be relied on by the petitioner in this writ proceedings to take aid and to state that the Management had taken a position that the petitioner was not responsible for the accident, but the lorry driver was responsible for the accident. The defence in Motor Accident Claims case was taken to avoid payment of compensation and to safeguard the interest of the Transport Corporation. Transport Corporation cannot be expected to concede the claim of the claimant in the claim petition. The defence open to the Transport Corporation was rightly taken, however, the oral enquiry conducted in the departmental proceedings proved the charges against the petitioner that he was responsible for the accident. The plea of estoppel cannot be pressed into service in this case. In support of this proposition, he relied on the following Judgments:-

(i) ***In W.P(MD)No.23880 of 2017, dated 02.03.2018 [The Management, Tamil Nadu State Transport Corporation (Kumbakonam) Limited, Tiruchirappalli],*** it is held as follows:-

"4. The Labour Court had allowed the Industrial Dispute in toto principally on two grounds. One ground is that the Management having taken a stand in support

of the employee in the claim proceedings before the Motor Accidents Claims Tribunal, cannot resile from its stand and initiate disciplinary action. But propounding the theory of estoppel in such cases has been framed upon by me in W.P.(MD)No.21575 of 2017, dated 12.02.2018. Paragraph No.5 of the said order reads as under:-

“5. This Court is of the view that the theory of estoppel cannot be pressed into service. [Section 115](#) of the Indian Evidence Act, 1972, deals with estoppel. Only when a person has intentionally caused or permitted another person to believe the thing to be true and to act upon such plea, he cannot later resile from his position. In this case, no doubt, the Management had filed its counter seeking to fasten the entire negligence on the driver of the private bus in the claims Tribunal proceedings. But, on that ground, Thiru.Radha, did not alter his position. The affected parties filed a claim for damages before the Tribunal. They wanted to fasten the liability on the petitioner Corporation. The petitioner Corporation in order to avoid the consequences took a stand that its driver was not at fault. This stand taken by the Management was not acted upon by Thiru.Radha, later. Therefore, the principle of estoppel cannot be applied against the Management. In any event, filing of such a pleading cannot take away the prerogative of the employer to take action. The Labour Court had chosen to allow the I.D. on this sole ground.”

(ii) In **(2009) 2 MLJ 849 [Sevugaperumal Vs. Superintendent of Police, Dindigul and another]**, it is held as follows:-

"10. The petitioner is placing reliance on the report given by the Inspector of Police, Palani Nagar before the II Class Judicial Magistrate, Palani in connection with the criminal case. In the said report, it has been stated that the accident took place in view of the negligence of the boy. It may be noted here that the said report was submitted by the Inspector of Police of the very same police station in which the petitioner was working as Sub-Inspector of Police. Therefore, we do not attach much reliance on the said report. In any event, in view of the said report filed in the criminal case, it does not debar the department from initiating departmental proceeding against the petitioner. The purpose of both the two proceedings are different. In a criminal proceeding the guilt of a person is assessed and if the guilt is proved, the person may lose his liberty. Whereas in a departmental proceeding only the charges are to be established, and if the charges are established the delinquent employee has to suffer civil consequences. In the instant case, the charges against the petitioner were established and the petitioner never challenged the same."

7. In reply to the submissions of the learned counsel appearing for the respondents that the petitioner has to approach the Labour Court which offers an effective alternative remedy and not to file the Writ Petition before this Court, learned counsel appearing for the petitioner relied on catena of Judgments to show that even in case where alternative remedy is available, a litigant is not precluded from approaching the Writ Court for appropriate remedy. Especially, in a case where principles of natural justice is violated.

8. In the case beforehand, enquiry was completed and the petitioner was not served with copy of the enquiry report and given an opportunity to offer his explanation with regard to the enquiry report. Without giving this opportunity, the authority accepted the enquiry report and came to the conclusion that the charges against the petitioner were proved and called for explanation through a show-cause notice, dated 06.02.2014 with regard to the proposed punishment of stoppage of increment for one year with cumulative effect. Copy of the enquiry report alone was sent, without the copy of the enquiry proceedings. The petitioner sought for copy of the enquiry proceedings through his letter, dated 16.03.2014. That was

not furnished to him, but the punishment order was passed. Copy of the enquiry report should be furnished to the delinquent and he should be given an opportunity to offer his explanation with regard to the enquiry report before proceeding further with the enquiry proceedings ie., passing final orders. In this regard, learned counsel appearing for the petitioner relied on the following Judgments:-

(i) In **(1993) 4 SCC 727 [Managing Director, ECIL, Hyderabad and others Vs. B.Karunakar and others]**, it is held as follows:-

"25.While the right to represent against the findings in the report is part of the reasonable opportunity available during the first stage of the inquiry viz., before the disciplinary authority takes into consideration the findings in the report. The right to show cause against the penalty proposed belongs to the second stage when the disciplinary authority has considered the findings in the report and has come to the conclusion with regard to the guilt of the employee and proposes to award penalty on the basis of its conclusions. The first right is the right to prove innocence. The second right is to plead for either no penalty or a lesser penalty although the conclusion regarding the guilt is accepted. It is the second right exercisable at the second stage which was taken away by the 42nd Amendment.

26. *The reason why the right to receive the report of the Inquiry Officer is considered an essential part of the reasonable opportunity at the first stage and also a principle of natural justice is that the findings recorded by the Inquiry Officer form an important material before the disciplinary authority which along with the evidence is taken into consideration by it to come to its conclusions. It is difficult to say in advance, to what extent the said findings including the punishment, if any, recommended in the report would influence the disciplinary authority while drawing its conclusions. The findings further might have been recorded without considering the relevant evidence on record, or by misconstruing it or unsupported by it. If such a finding is to be one of the documents to be considered by the disciplinary authority, the principles of natural justice require that the employee should have a fair opportunity to meet, explain and controvert it before he is condemned. It is the negation of the tenets of justice and a denial of fair opportunity to the employee to consider the findings recorded by a third party like the Inquiry Officer without giving the employee an opportunity to reply to it. Although it is true that the disciplinary authority is supposed to arrive at its own findings on the basis of the evidence recorded in the inquiry, it is also equally true that the disciplinary authority takes into consideration the findings recorded by the Inquiry Officer along with the evidence on record. In the circumstances, the findings of the Inquiry Officer do constitute an important*

material before the disciplinary authority which is likely to influence its conclusions. If the Inquiry Officer were only to record the evidence and forward the same to the disciplinary authority, that would not constitute any additional material before the disciplinary authority of which the delinquent employee has no knowledge. However, when the Inquiry Officer goes further and records his findings, as stated above, which may or may not be based on the evidence on record or are contrary to the same or in ignorance of it, such findings are an additional material unknown to the employee but are taken into consideration by the disciplinary authority while arriving at its conclusion. Both the dictates of the reasonable opportunity as well as the principles of natural justice, therefore, require that before the disciplinary authority comes to its own conclusions, the delinquent employee should have an opportunity to reply to the Inquiry Officer's findings. The disciplinary authority is then required to consider the evidence, the report of the Inquiry Officer and the representation of the employee against it."

(ii) In **1994 Supp (2) SCC 391 [Managing Director, E.C.I.L., Hyderabad Vs. B.Karunakar (II)]**, it is held as follows:-

"1.....It has been held by the Constitution Bench that the principles of natural justice do require that a copy of the enquiry report is supplied to the charged officer though it is not necessary to give him a

notice indicating the proposed penalty. But, it has been held, this requirement will be held obligatory only from the date of the judgment in Ramzan Khan case 2, viz., 20-11-1990. In this case, it may be noted, the order of dismissal of the respondent is far earlier to the said date. In the circumstances, the dismissal order cannot be said to be vitiated by nonfurnishing of the Enquiry Officer's report."

9. With regard to powers of High Court while exercising the power of judicial review, the High Court can appropriately mould the relief, if the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal. To support this proposition, he relied on the Judgment reported in **(1995) 6 SCC 749 [B.C.Chaturvedi Vs. Union of India and others]**, wherein it is held as follows:-

"18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and

impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof. "

10. When there is no proper evidence and reason for reaching the finding of guilt in the enquiry report, the report has to be rejected. In support of this proposition, the Judgment reported in ***AIR 2006 SC 3475 [M.V.Bijlani Vs. Union of India and others]*** is relied on, wherein it is held as follows:-

"25.It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidences to prove the charge. Although the charges in a departmental proceedings are not required to be proved like a criminal trial, i.e., beyond all reasonable doubts, we cannot lose sight of the fact that the Enquiry Officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the

charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with.

26.The report of the Enquiry Officer suffers from the aforementioned vices. The orders of the disciplinary authority as also the appellate authority which are based on the said Enquiry Report, thus, cannot be sustained. We have also noticed the way in which the Tribunal has dealt with the matter. Upon its findings, the High Court also commented that it had not delved deep into the contentions raised by the Appellant. The Tribunal also, thus, failed to discharge its functions properly.”

11. With regard to the submission that in appropriate cases, a Writ will lie even if there is an alternative remedy is provided, especially when there is violation of principles of natural justice, learned counsel appearing for the petitioner relied on the following Judgments:-

(i) In **(2003) 7 SCC 693 [Kanak (Smt) and another Vs. U.P.Avas Evam Vikas Parishad and others]**, it is held as follows:-

"29.Furthermore, this Writ Petition was entertained. The appellants herein filed a counter-affidavit. The matter was argued on merit and in that view of the matter it is too late in the day to contend that the respondent herein should have availed of the alternative remedy."

(ii) In **(2006) 2 SCC 269 [L.K.Verma Vs. Hmt Limited and another]**, it is held as follows:-

"13.It is true that in terms of sub-rule (3) of Rule 14 of the Rules an appeal was maintainable before the State Government. But it is well settled, availability of an alternative forum for redressal of grievances itself may not be sufficient to come to a conclusion that the power of judicial review vested in the High Court is not to be exercised.

.....

20.The High Court in exercise of its jurisdiction under [Article 226](#) of the Constitution, in a given case although may not entertain a writ petition inter alia on the ground of availability of an alternative remedy, but the said rule cannot be said to be of universal

application. Despite existence of an alternative remedy, a writ court may exercise its discretionary jurisdiction of judicial review inter alia in cases where the court or the tribunal lacks inherent jurisdiction or for enforcement of a fundamental right or if there has been a violation of a principle of natural justice or where vires of the act is in question. In the aforementioned circumstances, the alternative remedy has been held not to operate as a bar. [See Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and Others , (1998) 1 SCC 1, Sanjana M. Wig (Ms.) v. Hindustan Petroleum Corpn. Ltd., (2005) 8 SCC 242, State of H.P. and Others v. Gujarat Ambuja Cement Ltd. and Another (2005) 6 SCC 499].

21.In any event, once a writ petition has been entertained and determined on merit of the matter, the appellate court, except in rare cases, would not interfere therewith only on the ground of existence of alternative remedy. [See Kanak (Smt.) and Another v. U.P. Avas Evam Vikas Parishad and Others, (2003) 7 SCC 693]. We, therefore, do not see any justification to hold that the High Court wrongly entertained the writ petition filed by the respondent.”

(iii) In **2003 (1) CTC 189 [Harbanslal Sahnia and another Vs. Indian Oil Corporation Limited and others]**, it is held as follows:-

“7. So far as the view taken by the High Court

that the remedy by way of recourse to arbitration clause was available to the appellants and therefore. the writ petition filed by the appellants was liable to be dismissed, suffice it to observe that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the Fundamental Rights; (ii) where there is failure of principles of natural justice or, (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act and is challenged.....”

12. Countering this submission, learned counsel appearing for the respondents submitted that it is not a case of denial of opportunity of hearing or total violation of principles of natural justice. There may be some procedural violations, that would not *ipso facto* result in negation of the enquiry report and consequent action taken on the basis of the enquiry report. In the case beforehand, the petitioner was given an opportunity of hearing. It is seen from the show-cause notice dated 06.02.2014 and impugned order that he did not offer his explanation for the charges framed

against him. Proper oral enquiry was conducted. Exhibits were marked on either side. On considering the rival contentions and the evidence, the enquiry authority reached the finding of guilt against the petitioner. Along with show-cause notice, dated 06.02.2014, copy of the enquiry report was also sent to him. Therefore, the petitioner cannot claim that principles of natural justice was not followed. In fact, there is no plea taken previously that principles of natural justice is violated and therefore, the petitioner was prejudiced. Fair opportunity was given prior to the enquiry, during the course of enquiry and subsequent to the enquiry before passing final orders. Therefore, it is not open to the petitioner to contend that principles of natural justice was violated. In support of this submission, he relied on the Judgment reported in **(1996) 3 SCC 364 [State Bank of Patiala and others Vs. S.K.Sharma]**. It is observed in the Judgment as follows:-

"33.We may summarise the principles emerging from the above discussion. [These are by no means intended to be exhaustive and are evolved keeping in view the context of disciplinary enquiries and orders of punishment imposed by an employer upon the employee]:

(1) An order passed imposing a punishment on an employee consequent upon a disciplinary/departmental enquiry in violation of the

rules/regulations/statutory provisions governing such enquiries should not be set aside automatically. The Court or the Tribunal should enquire whether (a) the provision violated is of a substantive nature or (b) whether it is procedural in character.

(2) A substantive provision has normally to be complied with as explained hereinbefore and the theory of substantial compliance or the test of prejudice would not be applicable in such a case.

(3) In the case of violation of a procedural provision, the position is this: procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under 'no notice', 'no opportunity' and 'no hearing' categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice, including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for.

In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of The Court may not insist on proof of prejudice in such cases. As explained in the body of the judgment, take a case where there is a provision g expressly providing that after the evidence of the employer/government is over, the employee shall be given an opportunity to lead defence in his evidence, and in a given case, the enquiry officer does not give that opportunity inspite of the delinquent officer/employee asking for it. The prejudice is self-evident. No proof of prejudice as such need be called for in such a case. To repeat, the test is one of prejudice, i.e., whether the person has received a fair hearing considering all things. Now, this very aspect can also be looked at from the point of view of directory and mandatory provisions, if one is so inclined. The principle stated under (4) hereinbelow is only another way of looking at the same aspect as is dealt with herein and not a different or distinct principle.

(4)(a) In the case of a procedural provision which is not of a mandatory characters the complaint of violation has to be examined from the standpoint of substantial compliance. Be that as it may the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee.

(b) In the case of violation of a procedural provisional which is of a mandatory character, it has to be ascertained whether the provision is conceived in the interest of the person proceeded against or in public interest. If it is found to be the former, then it must be seen whether the delinquent officer has waived the said requirements either expressly or by his conduct. If he is found to have waived its then the order of punishment cannot be set aside on the ground of said violation. If, on the other hand, it is found that the delinquent officer/employee has not it or that the provision could not be waived by him, then the Court or Tribunal should make appropriate directions [include the setting aside of the order of punishment], keeping in mind the approach adopted by the Constitution Bench in B.Karunkar. The ultimate test is always the same viz., test of prejudice or the test of fair hearing, as it may be called.

(5) Where the enquiry is not governed by any rules/regulations/statutory provisions and the only obligation is to observe the principles of natural justice - or, for that matter, wherever such principles are held to be implied by the very nature and impact of the order/action the Court or the Tribunal should make a distinction between a total violation of natural justice [rule of audi alteram] and violation of a facet of the said rule, as explained in the body of the judgment. In other words, a distinction must be made between "no opportunity" and "adequate opportunity, i.e., between "no notice"/"no hearing"

"no fair hearing". (a) In the case of former, the order passed would undoubtedly be invalid [one may call it "void" or a nullity if one chooses to]. In such cases, normally, liberty will be reserved for the Authority to take proceedings afresh according to law, i.e., in accordance with the said rule [audi alteram partem]. (b) But in the latter case, the effect of violation [of a facet of the rule of audi alteram] has to be examined from the standpoint of prejudice; in other word in other words, what the Court or Tribunal has to see is whether in the totality of the circumstances, the delinquent officer/employee did or did not have a fair hearing and the orders to be made shall depend upon the answer to the said query. [It is made clear that this principle [No.5] does not apply in the case of rule against bias, the test in which behalf are laid down elsewhere.]

(6) While applying the rule of audi alteram partem [the primary principle of natural justice] the Court/ Tribunal/Authority must always bear in mind the ultimate and over-riding objective underlying the said rule, viz., to ensure a fair hearing and to ensure that there is no failure of justice. It is this objective which should guide them in applying the rule to varying situations that arise before them.

(7) There may be situations where the interests of state or public interest may call for a curtailing of the rule of audi alteram partem. . In such situations, the Court may have to balance

public/State interest with the requirement of natural justice and arrive at an appropriate decision.”

13. Considered the rival submissions and perused the records.

14. A perusal of the enquiry report, dated 02.09.2013 shows that no eye witness was examined to prove the manner in which the accident had happened. One Mr.M.Chellappan, was examined as witness on the side of the Management. The petitioner was examined as witness on his side. Four documents had been marked on the side of the Management and three documents had been marked on the side of the petitioner.

15. It is the specific case of the petitioner that lorry, which was coming from the opposite side came with bright headlights. Despite the warning from the petitioner, the lorry driver did not dim the bright headlights. Petitioner, in order to avoid the head on collision, swerved the bus to the left side and dashed against the standing tree. Incidentally, this is the case set out by the

respondents Corporation before the Motor Accident Claims Tribunal. However, in the light of the Judgments submitted by the learned counsel appearing for the respondents, this Court is not deciding the issue on the basis of the defence taken by the respondents Corporation before the Motor Accident Claims Tribunal.

16. The consistent case of the petitioner is that the accident had happened because of the lorry driver coming with bright headlights. No one else, except the petitioner, involved in the accident was examined to establish the manner in which the accident had happened. Mr.M.Chellappan, Management witness is not an eye witness. After the accident, he visited the spot and from the analysis of scene of occurrence, he submitted his report stating that the petitioner had not taken any steps to avoid the accident and therefore, the petitioner was responsible for the accident. It is seen from the enquiry report that the conductor had also filed a report and it was marked. However, the report of the conductor was not properly considered. No eye witness was examined to corroborate the evidence of the petitioner and the Management witness. No rough sketch with regard to scene of time is produced to show whether the bus and the lorry followed the lane discipline at

the time of the accident. In the absence of any concrete evidence, the possibility of the accident being caused as claimed by the petitioner can not be ruled out. It is also possible that the accident could have been avoided, had the petitioner driven the bus at a slow speed. However it can not be decided with certainty, from the available evidence, that petitioner was solely responsible for the accident. Thus the findings of the enquiry officer that petitioner was responsible for the accident can not be sustained.

17. What happened subsequent to the filing of the enquiry report is to be considered now.

18. We have seen from the Judgment reported in **(1993) 4 SCC 727 [Managing Director, ECIL, Hyderabad and others Vs. B.Karunakar and others]** that it is necessary that the delinquent should be supplied with the copy of the enquiry report for providing him an opportunity to offer his explanation. However, no such opportunity was given to the delinquent. The copy of the enquiry report was not supplied to the petitioner and he was not asked to offer his explanation on the enquiry report. Straightaway show-cause notice dated 06.02.2014 was issued calling for his

explanation with regard to the proposed punishment of stoppage of increment for a period of one year with cumulative effect. Without providing the copy of the enquiry report and seeking petitioner's explanation, the authority found on the basis of the enquiry report alone that the charges against the petitioner were proved. From the catena of Judgments produced by the learned counsel appearing for the petitioner, we can safely conclude that non-supply of the copy of the enquiry report to the petitioner for giving him an opportunity to submit his explanation is a gross violation of principles of natural justice. It is a total violation and total non-compliance of the legal requirements. Therefore, in the considered view of this Court and on the basis of the proposition held by the Judgments referred above on this point, this Court finds that even though an alternative remedy is available to the petitioner, the petitioner can approach this Court for enforcing his fundamental right and challenging the violation of principles of natural justice. In this regard, this Court finds that the Judgment relied on by the learned counsel appearing for the petitioner is applicable to the facts and circumstances of the case than the Judgment relied on by the learned counsel appearing for the respondents. Thus, this Court finds that this Writ Petition filed by the petitioner, challenging the impugned orders, dated 14.05.2014 and 14.07.2015, is maintainable.

19. One more thing is that in the copy of the enquiry report, it is mentioned that the petitioner's explanation for the charge-memo was marked as document No.3 on the side of the petitioner. However, in the show-cause notice dated 06.02.2014 and in the order of punishment passed on 14.05.2014, it is mentioned that the petitioner had not given explanation to the show-cause notice. It is strikingly opposite to what is stated in the enquiry report. It leads to an inference that the explanation offered by the petitioner was not considered by the enquiry officer.

20. Challenging the order of punishment of the second respondent, the petitioner filed an appeal before the first respondent. In the appeal, the petitioner raised a ground that in the criminal case filed against him in Crime No.238 of 2013 with regard to the accident, final report was filed stating that he was not responsible for the accident. The appeal order also refers about the petitioner's claim that the further action was dropped against the petitioner in the criminal case. Though both the parties have not produced any document to show that action was dropped against the petitioner in a criminal case for the reason that the petitioner

was not responsible for the accident, learned counsel appearing for the petitioner referred to the Standing Order of the Corporation in Order 23A that when a person is acquitted by a criminal Court on merits, the Management can re-consider the decision taken against the workman on the basis of the enquiry report.

21. It is the case of the petitioner that further action was dropped against him in a criminal case for the reason that he was not responsible for the accident. If this claim is true, no doubt, the petitioner is entitled for the benefit under this Standing Order. Then again, the appeal order shows that various grounds taken by the petitioner were not considered in detail, but a cryptic order was passed confirming the order of the second respondent.

22. For all these reasons stated above, this Court finds that the impugned order, dated 14.05.2014 passed by the second respondent and the impugned order, dated 14.07.2015 passed by the first respondent are violative of the principles of natural justice and thus, cannot be sustained and liable to be set aside and accordingly, set aside.

23. In the result,

"This Writ Petition is allowed by setting aside the order of the second respondent, dated 14.05.2014, as confirmed by the first respondent, dated 14.07.2015 and the respondents are directed to disburse the increment arrears and revised retirement benefits by treating the period of suspension from 05.03.2012 to 28.03.2012 as on duty with wages to the petitioner. The said exercise shall be completed within a period of three months from the date of receipt of a copy of this order."

There shall be no order as to costs.

.09.2022

Internet :Yes

Index :Yes

ps

To

1.The Management,
Tamil Nadu Transport Corporation
(Kumbakonam) Limited,
Represented by its Managing Director,
Kumbakonam.

2.The General Manager,
Tamil Nadu Transport Corporation
(Kumbakonam) Limited,
Trichy Region,
Trichy.

W.P(MD)No.21861 of 2015

G.CHANDRASEKHARAN, J.

ps

Order made in
W.P(MD)No.21861 of 2015

02.09.2022