
(2003) 07 AP CK 0077
In the Andhra Pradesh High Court
Case No : Writ Petition No. 1871 of 1994

A. Venkat Rao

APPELLANT

Vs

The Depot Manager, Charminar Depot, APSRTC and Others

RESPONDENT

Date of Decision : 11-07-2003

Acts Referred:

Citation : (2004) 1 ALT 68 : (2004) 101 FLR 84

Hon'ble Judges : V. Eswaraiah, J

Bench : Single Bench

Advocate : S. Jagadish, for the Appellant; Vada Rajagopal Reddy, SC, for the Respondent

Final Decision : Dismissed

Judgement

V. Eswaraiah, J.—The petitioner questions the dismissal order of the 1st respondent in proceedings No.02/104/(53)/85-CR, dated 20-08-1985 as confirmed by the 2nd respondent in his Proceedings No.Steno/27(211)/85/C, dated 05-05-1986 as confirmed by the 3rd respondent by his Award dated 29-06-1989 in I.D.No.439 of 1987 and consequently direct the respondents to reinstatement him with back wages and all consequential benefits from the date of removal.

2. The petitioner was appointed as bus conductor on 31-09-1978 in Ranigunj Bus Depot. Subsequently, he was transferred to Charminar Bus Depot. While the petitioner was on duty on 03-05-1985 in Bus No.AAZ-1691 on route Bus No.8A Express, at stage No.5 Abids at about 13:30 hours, a surprise check was conducted by TTIs of RCS (City Squad, Hyderabad) and detected certain unaccountable cash and irregularities committed by the petitioner while performing his duty. Thereafter he was issued charge memo and directed to submit explanation. In the charge memo the following charges were leveled against the petitioner;

Charge 1:

For having failed, to issue tickets to a batch of Two (2) passengers inspite of collecting the concessional fare of 70 ps. instead of requisite fare of Rs.1.00 who boarded the bus at Madina and were found alighting without tickets at Abids, ex. Stages 2 to 5.

Charge 2:

For having failed to issue ticket to a passenger inspite of collecting 30 ps. as concessional who boarded the bus at Osmangunj and was found alighting without ticket at Abids, ex. stages 4 to 5.

Charge 3:

For having failed to collect fare and issue tickets to two (2) individual passengers who boarded the bus at Afzulgunj and were found alighting without tickets at Abids, ex. Stages 3 to 5.

Charge 4:

For having failed to collect fare and issue tickets to Three (3) passengers who boarded the bus at Charminar and were found alighting without tickets at Abids, ex. stages 1 to 5.

Charge 5:

For having failed to complete ticket issue within two fare stages and also failed to observe T.OC points enroute.

3. The petitioner was also placed under suspension by order dated 13-05-1985 and he submitted his explanation on 28-05-1985. An Enquiry Officer was appointed, and enquiry report is submitted on 25-07-1985, stating that all the charges leveled against the petitioner were proved. Thereafter though a show-cause notice dated 20-07-1985 was issued to the petitioner, he failed to submit his explanation to it and as the charges were held proved, the services of the petitioner were removed by order dated 20-08-1985. Against the said order of removal from service, the petitioner filed Appeal on 17-09-1985, and the Appellate Authority by order dated 05-05-1986, dismissed the Appeal confirming the order of removal, dated 20-05-1985, made by the 1st respondent. Questioning the said order of removal as upheld by the Appellate Authority, the petitioner raised industrial dispute in I.D.No.439 of 1987 before the Labour Court. The Labour Court by order dated 29-06-1989, while considering the contention of the petitioner held that the checking officials immediately after the check formalities, prepared the charge-memo pointing out the irregularities detected by them and they were noted down and served the same on the petitioner, which was acknowledged by him without any dispute. The checking officials have also noted down the irregularities detected by them in the Service Record of the petitioner and the petitioner offered his explanation to them, wherein he did not deny, as having collected the fare and also did not dispute over existence of ticket-less passengers. All the check documents were

acknowledged by the petitioner without any dispute.

4. It is not the case of the petitioner that a fair and proper enquiry was not conducted. Though the petitioner availed the opportunity of cross-examining one of the checking officials, who was cross-examined by the Enquiry Officer, he declined to cross-examine the second checking official. The said checking officials deposed during the enquiry that the ticket-less passengers who are alighting without tickets at the point of check were confronted by the petitioner. The petitioner in his defence did not examine any witness though he was afforded reasonable opportunity. At the time of the said surprise check there were 8 ticket-less passengers, to whom the petitioner failed to issue tickets and there was no proper explanation for the same. It is stated that out of the said 8 ticket-less passengers, the petitioner collected concessional fare from 3 passengers and failed to issue tickets to them, which shows that there is a clear misconduct on the part of the petitioner.

5. On consideration of entire documentary and oral evidence, the Enquiry Officer held that the misconduct on the part of the petitioner is clearly established and proved beyond all reasonable doubt. In the case on hand, it is openly established that the petitioner collected money from 3 ticket-less passengers at concessional rates i.e., lesser than the requisite fare of the ticket and allowed them to alight at their destination without tickets, which clearly establishes that the petitioner played a confidence trick game to defraud and cause loss to the A.P. State Road Transport Corporation by misappropriating the legitimate revenue of it, and therefore, the misconduct committed by the petitioner is proved beyond all reasonable doubt. The petitioner lost the confidence of his employer, and therefore, he is not entitled for any lesser punishment and the Labour Court rightly refused to reduce the punishment and held that the punishment of removal from service imposed by the Corporation is not disproportionate to the misconduct committed by the petitioner and justified the order of removal passed by the 1st respondent-corporation by assigning cogent reasons for its conclusion.

6. The Apex Court in U.P. STATE ROAD TRANSPORT CORPORATION V. MOHAN LAL GUPTA & OTHERS, (2000) 9 S.C.C. 521 while dealing with the quantum of punishment in respect of the employees, who have misappropriated the property of the employer-corporation, held as follows in paragraph No.8;

8. In the wake of the situation as above, we are of the opinion that the question of award of any minor punishment in the facts of the matter under consideration does not and cannot arise and neither the Labour Court could alter the punishment of termination of service having regard to its assessment of facts and the contentions as regards the validity of the inquiry proceedings. The employee has been found to be guilty of misappropriation and in such an event if the appellant Corporation loses its confidence vis-a-vis the employee it will be neither proper nor fair on the part of the Court to substitute the finding and confidence of the employer with that of its own by allowing reinstatement. The

misconduct stands proved and in such a situation by reason of the gravity of the offence the Labour Court cannot exercise its discretion and alter the punishment.

7. From the aforesaid judgment of the Apex Court, it is clear that the guilt of misappropriation is found and the employee lost the confidence of the employer, it will be neither proper nor fair for the Labour Court, to substitute the finding and the confidence of the employer with that of its own by allowing reinstatement.

8. In the instant case also, the misconduct on the part of the petitioner has been proved and he lost the confidence of the employer.

9. The Apex Court in Regional Manager, U.P.S.R.T.C., Etawah and Others Vs. Hoti Lal and Another, held that the Tribunal or the High Court 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. In the instant case, I do not see any special reasons warranting to reduce the punishment and I am of the opinion that the punishment imposed on the petitioner is commensurate with the proved charges and it is not one of the exceptional cases as indicated in the aforesaid judgment of the Apex Court. The punishment imposed by the 1st respondent-corporation is proportionate. Unless such cases of misconduct are dealt with iron hand, it may not send right signals to such of the employers. Such persons, who deals with public money or engaged in the financial transactions or acts in a fiduciary capacity, the highest degree of integrity and trustworthiness is a must and unexceptionable.

11. I therefore, do not see any reasons to interfere with the order of the Tribunal in I.D.No.439 of 1987, dated 29-06-1989 and the writ petition is liable to be dismissed.

12. Accordingly, the writ petition is dismissed. However, there shall be no order as to costs.