

(1993) 02 KAR CK 0023
In the Karnataka High Court
Case No : W.A. No. 283 of 1992

B. Nagaraju

APPELLANT

Vs

Karnataka State Road Transport Corporation and another

RESPONDENT

Date of Decision : 09-02-1993

Acts Referred:

Karnataka State Road Transport Corporation Servants (Conduct and Discipline), Regulations, 1971 — Regulation 25

Citation : (1993) ILR (Kar) 1008 : (1993) 2 KarLJ 97 : (1993) 2 LLJ 527

Hon'ble Judges : K.A. Swami, Acting C.J.; N.D.V. Bhat, J

Bench : Division Bench

Advocate : S.V. Narasimhan, for the Appellant; B.B. Mandappa, for the Respondent

Judgement

K.A. Swami, Actg. C.J.

1. The first respondent has put in appearance. The second respondent is the Presiding Officer of the Labour Court, Bangalore. Therefore, notice to the second respondent is dispensed with. As the appeal lies in a narrow compass, it is heard for final disposal.

2. The appellant was charged with the misconduct of permitting 11 adult passengers and one child passenger to travel without ticket from stage No. 10 to stage No. 16 on the route Bangalore to Bettadadurga, on March 27, 1979. In the domestic enquiry, the disciplinary authority found the charge proved and dismissed him from service. Therefore, the appellant raised a dispute which was referred to the Second Additional Labour Court, Bangalore, in Reference No. 7 of 1984. The Labour Court found that there was no evidence with regard to allowing 11 adult passengers and one minor by the appellant from stage No. 10 to stage No. 16. On the contrary, the evidence was to the effect that 11 adult passengers and one child passenger had boarded the bus without the knowledge of the conductor. The Labour Court further came to the conclusion that the disciplinary authority relied upon the past conduct of the appellant for the purpose of

imposing severe penalty of dismissal without affording him an opportunity to explain the past conduct and, as such, the order imposing penalty of dismissal was invalid. The Labour Court was of the view that there was a little negligence on the part of the conductor who had no intention to defraud the Corporation. It also found that, actually, there was no mention in the articles of charge that he had defrauded the Corporation. In the light of the conclusion arrived at by the Labour Court, the following award was passed on December 17, 1984 :

"The reference is accepted. The second party management is held not justified in dismissing the first party-workman from service with effect from January 14, 1980. The first party workman is reinstated in service with half back-wages and continuity of service, with a penalty of stoppage of two increments. No costs."

Penalty of stoppage of two increments was awarded by the Labour Court on the ground that there was a little negligence on the part of the conductor but there was no intention to defraud the Corporation.

3. It is not necessary to go into the question whether award of stoppage of two increments is justified in the facts and circumstances of the case because the appellant does not challenge the same. However, the Corporation has challenged the validity of the award before this Court in Writ Petition No. 10320 of 1985. The learned single Judge has confirmed the award in all respects except awarding of 50 per cent. back-wages. In other words, the award has been set aside to that extent. Hence the conductor has come up in appeal.

4. It appears to us that it is not possible to agree with the learned single Judge. Sri. B. B. Mandappa, learned counsel appearing for the first respondent, contends that it is open to the disciplinary authority to rely upon the past record pertaining to the conduct of the delinquent without affording an opportunity to him because Regulation 25 of the Karnataka State Road Transport Corporation Servants Conduct and Discipline) Regulations, 1971 (hereinafter referred to as "the Regulations"), enables the disciplinary authority to take into consideration the past record. In support of the submission, learned counsel has placed reliance on the decision of a learned single Judge of this Court in Karnataka State Road Transport Corporation v. G. Guru (Writ Petition No. 16830m of 1986 dated November 18, 1986.)

5. Regulation 25 reads thus :

"Without prejudice to the provisions of any law for the time being in force any Corporation servant who is found guilty of any act of misconduct or misbehavior shall be liable to one or more of the penalties specified in Regulation 18 according to the gravity of the misconduct or misbehaviour and also on his past record."

6. It is no doubt true that the learned single Judge has held that the consideration of the past record is only to enable the disciplinary authority to award any one of the penalties prescribed in Regulation 18 of the Regulations,

therefore, the labour Court was in error in introducing the principle of audi alteram partem in Regulation 25 of the Regulations, as, according to the learned single Judge, neither the language nor the object of Regulations permits any such concept.

7. We are of the view that it is not possible to agree with the view expressed by the learned single Judge. If the past record of conduct has a bearing on the severity of penalty to be imposed before it is taken into consideration the delinquent must be given an opportunity to put forth his say. Without affording an opportunity to the delinquent, it would not be permissible to rely upon the past conduct of the delinquent officer because it is well accepted principle of natural justice that no person can be condemned without affording an opportunity to put forth his say. Therefore, rules of natural justice shall have to be followed.

8. The power exercisable under Regulation 25 of the Regulations is a quasi-judicial power. Even if it is presumed that it is an administrative power the dividing line between an administrative power and a quasi-judicial power in a case like the one on hand is quite thin. The Supreme Court in A.K. Kraipak and Others Vs. Union of India (UOI) and Others, , has observed that the dividing line between an administrative power and a quasi-judicial power is quite thin and is being gradually obliterated. For determining whether a power is an administrative power or a quasi-judicial power, one has to look to the nature of the power conferred, the person or persons on whom it is conferred, the framework of the law conferring that power, the consequences ensuring from the exercise of that power and the manner in which that power is expected to be exercised.

9. Applying the aforesaid test to the power exercisable under Regulation 25 of the Regulations, it had to be concluded that it is quasi-judicial; it affects the very service of the delinquent officer and results in imposition of higher penalty or punishment. In the very same decision, the Supreme Court has observed further thus (at p. 155 of AIR 1970) :

"With the increase of the power of the administrative bodies, it had become necessary to provide guidelines for the just exercise of their power. To prevent the abuse of that power and to see that it does not become a new despotism, the Courts are gradually evolving the principles to be observed while exercising such powers. In matter like these, public good is not advanced by a rigid adherence to precedents. New problems call for new solutions. It is neither possible nor desirable to fix the limits of a quasi-judicial power. But, for the purpose of the present case, we shall assume that the power exercised by the selection board was an administrative power and test the validity of the impugned selections on that basis."

Again in para 20 of the judgment the Supreme Court observed thus (at p. 156) :

"The aim of the rules of natural justice is to secure justice or put it negatively to

prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words, they do not supplant the law of the land but supplement it. The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules, namely, (1) no one shall be a judge in his own cause (*Nemo debet esse iudex in propria causa*) and (2) no decision shall be given against a party without affording him a reasonable hearing (*audi alteram partem*). Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice. Till very recently, it was the opinion of the courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is not questioned. If the purposed of the rules of natural justice is to prevent miscarriage of justice, one fails to see why those rules should be made inapplicable to administrative enquiries. Oftentimes it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far-reaching effect than a decision in a quasi-judicial enquiry. As observed by this Court in *Suresh Koshy George Vs. University of Kerala and Others*, , rules of natural justice are not embodied rules. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the frame work of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a court that some principle of natural justice had been contravened the court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case."

10. Regulation 25 of the Regulations enables the disciplinary authority to take into consideration the past record of the delinquent officer. The rule does not exclude the application of principles of natural justice. As already pointed out, no person should be condemned without affording an opportunity to put forth his say in the matter. As such, the past bad record of the delinquent officer cannot be relied upon without affording an opportunity to show cause as to why his past bad record should not be taken into account for the purpose of determining the quantum of punishment. Apart from the fact that the principles of natural justice shall have to be observed, it is also necessary to point out that the disciplinary proceeding is a quasi-judicial proceeding in which the misconduct alleged against the delinquent officer has to be determined. Imposition of penalty is as much a part of the disciplinary proceedings, as the determination of the misconduct concerned in the disciplinary proceedings. The punishment has to be commensurate with the misconduct alleged and proved. Therefore if the past bad

record of the delinquent has to be relied upon for the purpose of imposition of penalty, it shall form part of the disciplinary proceedings, of which the delinquent must have full opportunity to meet; otherwise, the proceedings will not be just and fair.

11. In W.P. No. 16830 of 1986 (Karnataka State Road Transport Corporation v. G. Guru) (supra) decided by a learned single Judge of this Court on November 18, 1986, while dealing with Regulation 25 of the Regulations it has been observed thus :

"On this point, the Labour Court came to the conclusion that though the order of dismissal does not disclose that the disciplinary authority had taken into consideration the past record, the notes made by the disciplinary authority did disclose that he had in view the past record also. If that be so, Regulation 25 of the Regulations does not contemplate either expressly or impliedly that the past record of the workman should be put to him before he is visited with any of the penalties mentioned in Regulation 18. The consideration of the past records is only to enable the disciplinary authority to award any one of the penalties prescribed in Regulation 18 of the Regulations. Therefore, the Labour Court was in error in introducing the principle of audi alteram partem in Regulation 25 of the Regulations. Neither the language nor the object of Regulation 25 of the Regulations permits any such concept.

12. It is not possible to agree with the view expressed by Bopanna, J., in the aforesaid decision for the reasons already stated. Hence, we are of the view that the above decision has to be overruled. It is accordingly overruled.

13. In this case, it is not disputed that the past bad record of the delinquent in question was made use of, delinquent in question was made use of, without affording an opportunity to him put forth his say, to impose severe penalty of dismissal. We may also point out that Regulation 25 permits use of the past bad record of conduct for deciding on the severity of the punishment to be imposed only when the charge framed against the delinquent is proved and even there, it can be used only after affording an opportunity to the delinquent. In the the view we have taken, we hold that the disciplinary authority was not justified in taking into consideration was not justified in taking into consideration the past record of bad conduct without affording an opportunity to the delinquent to explain the same.

14. With regard to proof of misconduct as pointed out by the Labour Court, there is no positive evidence to hold that the delinquent allowed 11 adult passengers and one child passenger to travel from stage No. 10 stage No. 16 without ticket. The learned single Judge also does not refer to the evidence which supports the finding of the disciplinary authority. Therefore we are of the view that there is no justification whatsoever to interfere with the award passed by the Labour Court.

15. We accordingly allow this appeal, set aside the order dated December 16, 1991, passed by the learned single Judge in W. P. No. 10320 of 1985 and dismiss

the writ petition.

16. In the facts and circumstances of the case, there will be no order as to costs.