
(1958) 10 AP CK 0018

In the Andhra Pradesh High Court

Case No : Writ Petition No. 774 of 1957

Chander Rao (P.M.)

APPELLANT

Vs

Road Transport Corporation

RESPONDENT

Date of Decision : 07-10-1958

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1959) 1 LLJ 360

Final Decision : Dismissed

Judgement

1. This is a petition under Art. 226 of the Constitution of India, filed by one P. M. Chander Rao, formerly a driver employed in the Road Transport Department, Hyderabad, for the issue of a writ of mandamus or any other appropriate writ or direction to cancel the order passed by the Superintendent, Road Transport Department, No. E5298, dated 29 May 1956/4 June 1956, by which, the petitioner, who had been medically declared unfit for a driver's post, was offered an alternative job of a chowkidar and was asked to intimate whether he was willing to take up the job; and, pending the receipt of his reply, was placed on leave with immediate effect. debiting the leave to his leave account. The petitioner seeks a further direction from this Court to enable him to be taken on service as assistant depot clerk in the Road Transport Department. The contention of behalf of the petitioner is that Superintendent of the Road Transport Department had no power under the rules governing the employees of the Road Transport Department, to grant compulsory leave without its being asked for by the petitioner. On the other hand, the contention of the respondent (the General Manager, Andhra Pradesh Road Transport Department, now the Chief Executive Officer, Road Transport Corporation, Hyderabad) is that the action taken by the department was neither illegal nor unjust. Before considering this question, the material facts leading up to the impugned order may be stated :

The petitioner was employed as a driver in the Road Transport Department, Hyderabad, on 3 April 1947. In or about May 1954. The petitioner developed

heart trouble and in July 1954, he produced a medical certificate from the District Medical Officer, Lallaguda, to the following effect :-

"He is unfit for a driver's post, but fit for sedentary duties only." Subsequently, the petitioner produced another certificate dated 8/11 October 1954 which was issued by the District Medical Officer, Central Railway, which reads as follows :-

"As the above employee (i.e., Sri P. M. Chander Rao, driver) was declared by me as "unfit" for driver's post and fit for sedentary duties, it is up to the department to give him an alternative post and in case he could not be provided with such a job as recommended by me. The person should be unfitted on the strength of my endorsement. In such a case, no further unfit certificate is issued."

2. Instead of discharging the petitioner from service, the department allotted to the petitioner the duties of an assistant depot clerk on 31 July 1954; and he worked as such till 3 June 1956. The petitioner was, however, shown in the records as a driver and continued to draw the same salary as that of a driver during the period.

3. On 4 June 1956, the petitioner received the following communication from the Road Transport Superintendent, which is challenged in this writ petition :-

ROAD TRANSPORT DEPARTMENT

From : RTS Office. To. P. M. Chander Rao Dr. E. 5298

Station : MSRD Through S.I./C.Rd. Qurs. Depot.

No. E5298. Dated 29 May 1956/ 4 June 1956.

You have been declared unfit for driver's post and fit for sedentary duties by the District Medical Officer (I), Central Railway, Lallaguda; you are therefore offered a chowkidar" a post as an alternative job.

Please say whether you are willing to take up the post of a chowkidar and pending receipt of your reply in the matter, you are placed on leave with immediate effect and the same will be debited to your leave account.

(Sd.) M. V. Ali Khan, Road Traffic Superintendent. The department was forced to take that step because of the continued disability of the petitioner to perform his duties as driver. In reply to the above communication, the petitioner, by his letter dated 3 July 1956, stated that he was surprised and shocked to know that he was offered the job of a chowkidar as an alternative job and stated that although he was not feeling fit in May and June 1954, he was quite fit to work as driver then.

4. He was therefore once again sent for medical examination to the District Medical Officer, Central Railway, who reported as follows on 26 July 1956 :-

"The above named driver was admitted into this hospital on 24 July 1956 for observation. He is still suffering from weak heart. Hence it is recommended that

he should not be entrusted with the job of driving vehicles and also should not be given any job which involves physical strain."

5. On receipt of this report, the Road Transport Superintendent again addressed a letter on 7/8 August 1956 to the petitioner referring him to the communication dated 29 May 1956/4 June 1956 and intimating to him that the District Medical Officer had reported that he should not be entrusted with the job of driving vehicles or with any other job which involves strenuous physical strain, and the petitioner was asked to give a reply to the earlier communication by 15 August 1956. The petitioner, instead of giving a direct reply to the said communication and telling the department whether or not he was willing to accept the job of a chowkidar, sent a petition dated 27/28 September 1956 to the Secretary to Government, Home Department. Through the Road Transport Superintendent, complaining against the offer of a chowkidar's job to him and stating that he was entitled to continue as an assistant depot clerk. During the pendency of his appeal, the Road Transport Department again addressed a letter to the petitioner on 10/12 April 1957 asking the petitioner to let the department know definitely before 15 April 1957 whether he was prepared to accept the job of a chowkidar as an alternative job. To this letter the petitioner sent a reply to the General Manager on 13 April 1957, questioning the latter's authority to place him on compulsory leave, but without intimating whether he was prepared to accept the job of a chowkidar or not. The petitioner addressed another letter in the same terms on 10 May 1957 to the General Manager. On 19 June 1957 a reply was sent to the petitioner by the General Manager intimating to him that the only alternative job which was available and which could be offered to the petitioner, was that of a watchman and that he would be taken on duty immediately provided he was prepared to accept the same. The petitioner was also told that the General Manager regretted that he could not be offered an alternative post of assistant depot clerk or controller. The petitioner thereafter sent a lawyer's notice on 24 June 1957. To the General Manager and filed this writ petition on 10 October 1957. Now, the rules governing the conditions of service of employees under the Road Transport Department, may be noticed. Till the year 1951, the Road Transport Department, Hyderabad, was part of the N.S. Railway Department; but the two departments were separated in 1951 and at the time of separation, the Establishment Code governing the conditions of service of railway personnel was made applicable to the employees of the Road Transport Department. Under rule 13.11 of the Establishment Code, one of the penalties which may for good and sufficient reasons be imposed upon railway servants is, removal from service, and rule 13.11 recognizes inefficiency as one of the circumstances by reason of which the railway servant is liable to be removed. Rule 13.12 prescribes the procedure for removal and Cl. (d) of the said rule provides :

"Where inefficiency is due to failure to conform to the requisite standard of physical fitness, it shall not be necessary to serve a railway servant with a charge sheet or to obtain his explanation."

6. Therefore, when the petitioner was found medically unfit to discharge the duties of a driver, it was open to the Road Transport Department to have removed him from service straightaway on the strength of the medical certificate. The department, however, did not take that drastic step, but explored the possibility of providing the petitioner with an alternative employment within the frame work of the rules. It is apparent from the Cadres and Recruitment Rules of the Road Transport Branch of the Hyderabad General Services, that the petitioner was not eligible for the post of an assistant depot clerk, and he was not appointed as an assistant depot clerk during the period from 31 July 1954 to 3 July 1956. He was only allotted the duties of the assistant depot clerk but he was shown as a driver and was drawing his salary as a driver. When the department found that they would not under the rules give him that job or any other comparable job, they offered the job of a chowkidar, for which alone he was eligible. In the communication dated 29 May 1956/4 June 1956, the petitioner was specifically asked whether he was willing to take up the post of a chowkidar and pending his reply, he was placed on leave. There can be little doubt that the department took a sympathetic view of the petitioner's case and did what they considered to be in the best interests of the petitioner. The petitioner took up a defiant attitude and instead of saying "yes" "or no" to the offer, went on addressing letter after letter to the authorities questioning their power to place him on leave. He chose to look a gift horse in the mouth.

7. The learned advocate for the petitioner contends that Road Transport Superintendent had no power under the Establishment Code to grant leave to the petitioner in the absence of specific request by him. In my opinion this contention is untenable, because rule 5.11 gives ample power to the head of the department to give leave without pay to a class III railway servant. The rule, so far as is relevant for the present purpose, is as follows :-

"5.11. Leave without pay to other than class I or class II railway servants. - In the case of railway servants, other than class I or class II, leave without pay may be given at any time at the discretion of the head of the department . . ."

8. Thus the rule gives an absolute discretion to the head of the department and it does not in terms say that a request or an application by the employee, is a condition precedent to the grant of such leave. In the Oxford Dictionary the meaning of the expression "leave" is given as "permission to be absent from a post of duty."

9. Moreover in the present case, there is no question of the petitioner having been compelled to go on leave. There was no element of compulsion at all. He was given leave pending the receipt of an intimation from him whether or not he was willing to accept the job of a chowkidar. Had the petitioner replied one way or the other, no question of further leave would have arisen; and if he had signified his unwillingness to accept the job, in all probability he would have been forthwith removed from service. He was granted leave by the department apparently with a view to ensure continuity of service. It is argued by the learned

advocate for the petitioner that compelling a person to go on leave, would amount to the infliction of a punishment on him. It cannot be said that the action taken by the department in this case was intended to be a punishment; on the contrary it was taken with a view to help the petitioner by providing him with an alternative employment permissible under the rules. Naturally the authorities could not be expected to flout the rules and oblige the petitioner by giving him the particular job he wanted. It follows that the impugned order is not contrary to the statutory rules, nor can it be said to have been passed mala fide. It is no doubt that the department might have terminated the services of the petitioner after waiting for a reasonable time for his reply; but apparently the department did not think it proper to do so since the appeal preferred by the petitioner to the Government was pending disposal. There are thus no merits in this writ petition. It is dismissed with costs; advocate's fee Rs. 50.