

(2005) 07 KAR CK 0032
In the Karnataka High Court
Case No : Writ Appeal No. 5277 of 2001

C.V. Gajendra

APPELLANT

Vs

Karnataka State Road Transport Corporation and Others

RESPONDENT

Date of Decision : 08-07-2005

Acts Referred:

Karnataka State Road Transport Corporation Servants (Conduct and Discipline), Regulations, 1971 — Regulation 3, 3 (1)

Citation : (2006) 108 FLR 316 : (2005) ILR (Kar) 5096 : (2005) 5 KarLJ 57 : (2006) 1 KCCR 5 SN

Hon'ble Judges : V. Jagannathan, J;S.R. Nayak, J

Bench : Division Bench

Advocate : N.N. Harish, for AAREN Associates, for the Appellant; Ashok Haranahalli, for the Respondent

Final Decision : Dismissed

Judgement

V. Jagannathan, J.—This appeal arises out of the order passed by the learned Single Judge in W.P. No. 15085 of 1994 dismissing the writ petition filed by the appellant herein challenging the dismissal order passed by the respondent-Karnataka State Road Transport Corporation ("Corporation" in brief).

2. The facts in brief which have given rise to this appeal are as under:

The appellant joined the services of the Corporation as a Clerk and moved up in the ladder and reached the position of Divisional Traffic Officer (Class I Junior) in the year 1980. He was transferred to Belgaum Division in the year 1987 and while he was working at that place, the respondent-Corporation invited applications for the post of drivers to work in Belgaum Division. Under the Regulations of the Corporation, the Divisional Traffic Officer is also one of the members of the Selection Authority. The Selection Authority comprises of the Chairman, who is the Divisional Controller of Belgaum Division, and four members. The appellant was one of the four members of the Selection Authority.

3. Following the advertisement given for the post of drivers, several persons applied and, after scrutiny of the applications, only 1,641 candidates were in the fray for the post of drivers. It is on record that out of the above candidates, only 966 candidates were successful in the test by securing 40% marks and, when it came to the stage of interview, the number of candidates remained were 472.

4. After completion of the interview, 125 candidates were selected for the post of drivers and letters of appointment were issued to them. One unsuccessful candidate lodged a complaint with the Corporation to the effect that, in the selection of the candidates, the Recruitment Committee had shown favouritism in choosing some candidates. The Corporation thought it fit to look into the matter and, accordingly, the Chief Security Officer was asked to submit a report in regard to the complaint allegations. In turn, the Chief Security Officer submitted a report on 20-4-1989 and the Corporation then felt it necessary to order an enquiry and, accordingly, all those who were involved in the selection process were charged with gross negligence and failure to maintain devotion to duty in the matter of recruitment.

5. So far as the appellant is concerned, as many as six charges were levelled against him and in the enquiry held, only Charges 1, 2 and 6 were proved. Based on the report of the Enquiry Officer, the Disciplinary Authority dismissed the appellant from service by its letter dated 16-7-1993 and the appeal preferred against this dismissal order also came to be rejected by the Appellate Authority of the Corporation. Aggrieved by the dismissal order passed by the Corporation and the order of the Appellate Authority confirming the dismissal, the appellant preferred writ petition before this Court and the learned Single Judge, after hearing the parties and considering the contentions raised by both sides, dismissed the writ petition. It is this order of the learned Single Judge that is now assailed in this appeal.

6. Heard both sides.

7. The learned Counsel for the appellant Sri Harish mainly contended that the allegations made against the appellant do not come within the term "misconduct" and there is no Regulation of the Corporation bringing the said allegations within the ambit of the expression "misconduct". Secondly, it was contended that, even assuming that the charges levelled against the appellant stood proved, yet, there was no motive behind the alleged acts and, therefore, in the absence of motive element being there, no misconduct is deemed to have been committed by the appellant. Thirdly, it was contended that, even assuming that the charges levelled against the appellant stood proved, yet, the punishment meted out to the appellant is highly disproportionate to the alleged acts of misconduct. In support of the above said contentions, reliance was placed on unreported judgments of this Court in W.P. No. 24355 of 1991, disposed of on 8-12-1993 and of the Apex Court in Civil Appeal No. 5867 of 1997, dated 11-3-2003.

8. On the other hand, Sri Ashok Haranahalli, learned Standing Counsel for the Corporation, while supporting the judgment of the learned Single Judge, contended that the charges against the appellant relate to alteration of marks in respect of 24 candidates, giving more than the maximum marks prescribed to as many as 17 candidates, and altering the marks of a candidate bearing Register No. 2562 in order to ensure selection of the said candidates and thereby depriving the candidate bearing Register No. 2421. Therefore, it was contended that the above acts of the appellant squarely attract the allegations of gross negligence, abuse of official position, gross misconduct and failure to maintain devotion to duty and absolute integrity.

9. The above said submission was reinforced by referring to the documents produced, which were in the folder of the appellant. As regards the charge allegations coming within the term "misconduct", reference was made to the Corporation Regulations and to the judgment in the case of B.C. Chaturvedi Vs. Union of India and others, Reliance was also placed on a decision of the Supreme Court in the case of Chairman and Managing Director, United Commercial Bank and Others Vs. P.C. Kakkar, .

10. In the light of the contentions urged before us, the following points arise for consideration:

(1) Whether the conduct attributed to the delinquent tantamounts to "misconduct"?

(2) Whether the punishment imposed is disproportionate to the charges levelled against the appellant?

11. Point No. (1).--The main contention of the learned Counsel for the appellant is that the allegations made against the appellant cannot be termed as "misconduct" and even assuming that the charges against the appellant stood proved in the enquiry, the same would not amount to misconduct in the absence of motive.

12. Since, out of six charges levelled against the appellant, only Charges 1, 2 and 6 were held to have been proved, it is necessary at this juncture to extract the said charges:

"1. For your reprehensible conduct and abusing the official position by altering the marks of 24 candidates under different criteria columns prescribed for awarding marks to the candidates. Thereby you failed to maintain devotion to duty and absolute integrity in the discharge of official duties. The statement showing the names of candidates and alteration of marks is enclosed (Ex. A).

2. For gross negligence for failure to follow the definite criteria in relation to the job requirement evolved by the Selection Authority for adjudging the suitability of 17 candidates at the time of interview by awarding more marks than the maximum marks prescribed by the Selection Authority. The statement showing the names of such candidates and marks awarded to them is enclosed (Ex.B).

6. For gross misconduct and for failure to maintain devotion to duty and absolute integrity in the matter of recruitment for the post of Drivers in Belgaum Division by altering the marks of a candidate bearing Reg. No. 2562 under column 11(a) from 2 to 9 marks and under column 11(c) from 1 to 4 marks and in the total column from 6 to 16, in order to ensure selection of the above candidate with an ulterior motive by showing undue favouritism to the above candidate. Thereby the candidate bearing Reg. No. 2421 who belongs to "E" Category has been deprived of his chances of getting selected".

13. Before we deal with the main contention urged by the learned Counsel for the appellant, certain undisputed facts will have to be mentioned at the outset in order to appreciate the contentions in proper perspective. The appellant has not questioned the validity of the enquiry insofar as the procedure followed by the Enquiry Officer is concerned, nor any contention is raised before us as regards the fairness of the enquiry. Further, the appellant did not give his evidence nor did he examine any witness in his defence at the enquiry. With the above premise, we shall proceed to examine the contentions urged in this appeal.

14. It is not in dispute that the appellant gave more than the maximum marks to as many as 17 candidates and in respect of several candidates, there are alterations in the marks given to them. As regards the above, the defence taken before us is that appellant is not responsible for alteration of the marks of some of the candidates because, after the interview was over, the folder was not with him and, therefore, it is possible that someone else must have altered the marks in respect of some candidates. This defence now taken before this Court is like trying to catch the bird after it goes out of the cage. In other words, the appellant, as already mentioned, did not give any evidence before the Enquiry Officer nor he took the trouble of examining any witness in support of the above defence taken. Hence, the submission made in this Court has to be rejected as one of an afterthought and made too late in the day.

15. As regards the conduct attributed to the appellant coming within the expression "misconduct" is concerned, Karnataka State Road Transport Corporation Servants (Conduct and Discipline) Regulations, 1971 ("Regulations" for short) provides at Regulation 3(1) as under:

"3. General.--(1) Every Corporation servant shall at all times.--

(i) maintain absolute integrity;

(ii) maintain devotion to duty;

(iii) do nothing which is unbecoming of a Corporation servant".

It is thus clear from the above that violation of the above would imply that the servant concerned has "misconducted" himself. The charge levelled against the appellant at Charges 1, 2 and 6 clearly spell out that the appellant has failed to maintain devotion to duty and absolute integrity in the discharge of his official duties and, therefore, to say that the allegations attributed to the appellant-

officer will not come within the expression "misconduct" is clearly against Regulation 3(1) mentioned above.

16. The expression "misconduct" has not been defined in the Regulations. Yet, the very heading of Part II of the Regulations, which reads "Provisions Relating to Conduct" covering the provision Nos. 3 to 17 would indicate that the Regulations mention about various aspects of the duties of a servant and violation of any one of them will automatically bring the act within the term "misconduct". Hence, there is no force in the submission made by the learned Counsel for the appellant that the Regulations does not specifically spell out that the acts of alteration of marks or giving more than the maximum marks to the candidates in the interview, come within the expression "misconduct". But, on the other hand, the said submission is devoid of substance.

17. The term "misconduct" implies wrongful intention and in common parlance, "misconduct" means transgression of some aspect of definite rule of action. In other words, "misconduct" is forbidden act, whereas, carelessness, negligence are transgression of some aspect, but indefinite rule of action. Having regard to the meaning that is attached to the term "misconduct", and in view of Regulation 3(1) requiring every Corporation servant to maintain absolute integrity, devotion to duty, and do nothing which is unbecoming of a Corporation servant, the alleged act of the appellant, if proved, certainly comes within the ambit of the term "misconduct".

18. The learned Single Judge has also discussed the meaning of the expression "misconduct" with reference to various judgments of the Apex Court as well as to Regulation 3 of the Regulations and has opined, rightly in our view, that the acts alleged against the appellant do constitute "misconduct". We, therefore, do not subscribe to the submission put forward by the appellant's Counsel that the alleged acts do not come within the term "misconduct". To cut a long story short, every violation of the provisions relating to conduct, enumerated in Part II of the Regulations, amounts to "misconduct".

19. As regards the contention that even if the charges are proved, there was no motive attributed to the appellant, it has to be mentioned that motive is not something which is visible to the naked eye nor is it a tangible object. What goes on inside the mind of a person gets reflected in his actions. As put by James Allen, "A man is what his thoughts are". It may not be out of place in this context to refer to a verse from Upanishad:

"You are what your deep, driving desire is.

As your desire is, so is your will.

As your will is, so is your deed.

As your deed is, so is your destiny.

- Brihadaranyaka Upanishad IV.4.5".

20. We have referred to the above statements in order to reinforce our view that motive is something which can be understood when it manifests itself in action. In the case on hand, it is not in dispute that the appellant altered the marks in respect of several persons, that the appellant also gave more marks to candidate bearing Register No. 2562 by altering the marks under various columns and thereby ensuring the candidate bearing Register No. 2421 does not get selected and more shockingly, the appellant has given more than the maximum marks to as many as 17 persons.

21. Just to mention a few instances, the maximum marks allotted under various columns is 5, whereas Annexure-C1, which is part of the statement of imputations, discloses that all the 17 persons mentioned therein were given marks ranging from 6 to 10. The defence of the appellant that this was done due to oversight can never be accepted, more so when the appellant is holding the post of Divisional Traffic Officer, and having been in service for long years. Therefore, the explanation that the error was due to oversight will not appeal to any one endowed with ordinary prudence, let alone, the Courts of law.

22. The learned Single Judge has also referred to several instances of alteration of marks and giving more than the maximum marks and this conduct of the appellant cannot be accepted as having been done without any motive. On the other hand, the manner in which the marks have been altered, more than the maximum marks have been given to 17 candidates, is a reflection of the saying "As your will is, so is your deed". Hence, the contention of the learned Counsel for the appellant that the above irregularities committed by the appellant were done without any motive has to fall to the ground like nine pins.

23. As regards the judgments referred to by the learned Counsel for the appellant are concerned, we have carefully gone through them and it is observed that the facts in W.P. No. 24355 of 1991 were to the effect that there were some alterations or upgradation of marks in the marks list maintained by the petitioner therein and similar mistakes were also found in the list maintained by other members of the Selection Committee and, more importantly, out of 881 candidates interviewed, the alterations were alleged only in the cases of three candidates and to cap it, there was no difference or variation in the total marks given by all the members, except to an extent of one or two per cent. In other words, there was identity in application of mind in awarding marks to all the candidates. Having regard to the above evidence in the said case, the writ petition filed by the petitioner therein was allowed and the civil appeal preferred by the Corporation came to be dismissed.

24. Whereas, what we have before us is a different cup of tea. We have referred to all the defects which were noticed during the interview and they are quite different from the one which were the subject-matter of the above mentioned writ petition. Therefore, the facts of the case before us are clearly distinguishable from the facts involved in the writ petition and the civil appeal mentioned above. Thus, on a careful perusal of the material placed before us and having regard to

the reasoning given by the learned Single Judge, we have no hesitation in coming to the conclusion that the charge allegations made against the appellant squarely falls within the term "misconduct" and secondly, the very acts of the appellant, which were proved at the enquiry themselves establish the motive behind such conduct on the part of the appellant. For the above reasons, we answer Point No. (1) in the affirmative.

25. Point No. (2).--The learned Counsel for the appellant contended that, even assuming that the charges are proved against the appellant, the punishment imposed is disproportionate to the nature of the allegations. As regards this, the fact not to be lost sight of is that the appellant is not an ordinary official of the Corporation, but he is the Divisional Traffic Officer, Grade I and he was called upon to be one of the Members of the Selection Committee. It is expected of a person taking the said responsibility to act with utmost sincerity, honesty and with devotion to duty and not abuse the official position.

26. In fact, any office under the Government is a "Trust" and every servant of the Corporation is expected to live upto the trust reposed in him. That the misconduct alleged against the appellant, took place when selection for the post of drivers was being made, itself is a sufficient ground for the Corporation to have lost faith in such an officer. In the judgment referred to by the learned Counsel for the Corporation in the case of Chairman and Managing Director, United Commercial Bank, in connection with dismissal of a Bank Officer, it is observed by the Apex Court thus:

"14. A Bank Officer is required to exercise higher standards of honesty and integrity. He deals with the money of the depositors and the customers. Every officer/employee of the Bank is required to take all possible steps to protect the interests of the Bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a Bank Officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the Bank. As was observed by this Court in Disciplinary Authority-cum-Regional Manager and Others Vs. Nikunja Bihari Patnaik, , it is no defence available to say that there was no loss or profit resulted in case, when the officer/employee acted without authority. The very discipline of an organisation more particularly a bank is dependent upon each of its officers and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and is a misconduct. The charges against the employee were not casual in nature and were serious ...".

27. The position of the appellant herein is no better than that of the Bank Officer referred to above, insofar as integrity, honesty and devotion to duty is concerned. The appellant has acted beyond the authority given to him, which itself is a breach of discipline and misconduct, and since the acts alleged against him took place in connection with the selection of candidates for the post of drivers and the appellant having occupied a very important position, not only as a Member of the Selection Committee, but also as the Divisional Traffic Officer,

the manner in which the entire exercise of altering the marks and giving more than the maximum marks have been done speaks volume about the conduct of the appellant having regard to the fact that this fact came to light only when an unsuccessful candidate lodged complaint with the Corporation.

28. The ends of justice will be squarely met only when the punishment imposed is proportionate to the nature of the misconduct proved against the delinquent. The learned Single Judge has referred to the law laid down by the Apex Court in Disciplinary Authority-cum-Regional Manager and Others Vs. Nikunja Bihari Patnaik, and has opined that the punishment imposed by the Corporation is not one that will shock the conscience of any reasonable person. We would like to add further that, the very manner in which the appellant has gone through with his acts of manipulation with the marks itself should send a shock wave among the employees of the Corporation, let alone citizens, who aspire to get appointed through a selection process which is fair and proper. Therefore, we do not find any good reason to disagree with the well-considered opinion expressed by the learned Single Judge on this aspect of the matter and hence, we record our finding on the issue under consideration in the negative.

29. In the result and for the foregoing reasons, the appeal is dismissed. Parties to bear their respective costs.