

(1998) 10 AP CK 0069
In the Andhra Pradesh High Court
Case No : Writ Petition No. 31300 of 1997

G. Mutyalu

APPELLANT

Vs

Managing Director, APSRTC, Hyderabad and another

RESPONDENT

Date of Decision : 26-10-1998

Acts Referred:

Andhra Pradesh State Road Transport Corporation Employees (Classification, Control and Appeal) Regulations, 1967 — Regulation 18(2)
Andhra Pradesh State Road Transport Corporation Employees (Conduct) Regulations, 1963 — Regulation 26, 28

Citation : (1998) 6 ALD 432 : (1998) 6 ALT 23 : (1998) 3 APLJ 337

Hon'ble Judges : S.R. Nayak, J

Bench : Single Bench

Advocate : Mr. G. Vidyasagar, for the Appellant; Mr. Y. Vivekananda Swamy, for the Respondent

Judgement

1. The petitioner is presently working as driver in the establishment of the 2nd respondent. The petitioner was issued with charge-sheet dated 27-9-1997 alleging that he failed to inform about his arrest on 27-9-1997 to his immediate superior officer and this conduct of the petitioner amounts to a mis-conduct under Regulation No.26 of the APSRTC Employees (Conduct) Regulations, 1963 and Regulation No. 18(2) of the APSRTC Employees (CC & A) Regulations, 1967. The following two charges are framed against the petitioner.

"" Charge No. 1: For having failed to inform the report of arrest on 27-9-1997 to the immediate superior officer even though you might have subsequently released on 14-10-1997, which constitutes mis-conduct under Regulation No.26 of APSRTC Employees (Conduct) Regulations, 1963.

Charge No. 2: For having involved in Criminal case No.27-9-1997 and detained in custody for a period of exceeding forty eight hours, which constitutes misconduct under Regulation 18(2) of APSRTC Employees (CC & A) Regulations, 1967."

Pending departmental enquiry, the petitioner was also placed under suspension

by a separate order dated 20-10-1997. The petitioner has assailed the validity of the charge-sheet as well as the suspension order in this writ petition.

2. Sri Vidyasagar, learned Counsel for the petitioner at the outset would contend that the framing of charge No.2 is based on total misconception of Regulation 18(2) of the APSRTC Employees (CC & A) Regulations, 1967 and secondly charge No.2 is nothing but a repetition of charge No. 1 itself in substance. Assailing the validity of the suspension order, the learned Counsel would maintain that there was absolutely no warrant for the disciplinary authority to place the petitioner under suspension if not for any other reason atleast having regard to the guidelines issued by the Vice-Chairman and the Managing Director of the APSRTC in Circular No.LC5/82-83 dated 14-2-1983. On the other hand, the learned Standing Counsel for the Corporation would support the impugned action.

3. The first charge attributes a misconduct to the petitioner under Regulation No.26 of the APSRTC (Conduct) Regulations. Regulation No.26 provides that an employee who may be arrested for any reason shall intimate the fact of his arrest as soon as possible thereafter to his immediate superior officer even though he might subsequently have been released on bail and that the failure to do so renders the employee liable for disciplinary action on that ground alone apart from any action that may be taken against him on the basis of the result of the criminal proceedings launched against him. Regulation No.28 of the APSRTC (Conduct) Regulations primarily deals with several kinds of mis-conduct on the basis of which disciplinary actions can be initiated against a delinquent. However, since Regulation No.26 specifically provides that the failure on the part of the employee to inform to his immediate superior officer about the arrest can be a basis for taking disciplinary action against him, framing of charge No. 1 by the disciplinary authority against the petitioner-employee under Regulation No.26 of the APSRTC Employees (Conduct) Regulations cannot be said to be the one without jurisdiction. However, the contention of the learned Counsel for the petitioner in assailing charge No.2, in my considered opinion, is well founded. Charge No.2 attributes a mis-conduct to the petitioner under Regulation No. 18(2) of the APSRTC Employees (CC & A) Regulations. Regulation 18(2) provides that an employee who is detained in custody, whether on a criminal charge or otherwise, for a period exceeding 48 hours, shall be deemed to have been suspended with effect from the date of detention by an order of the appointing authority and so remain under suspension until further orders. A legal fiction is introduced under sub-regulation (2) of Regulation 18 that if an employee of the Corporation is arrested and detained in custody for a period exceeding 48 hours, he should be deemed to have been suspended with effect from the date of detention and so introducing a legal fiction, the said regulation provides that such deemed suspension, would be in operation until further orders. The sub-regulation does not deal with nor refer to any conduct of the employee which may amount to mis-conduct. Therefore, charging the petitioner under Regulation 18(2) of the APSRTC Employees (CC & A) Regulations, 1967 is totally misconceived and without application of mind. Alternatively, it should be held

that Charge No. 1 encompasses the whole thing. The only charge against the petitioner is that despite his arrest and detention, he did not inform his immediate superior officer about his arrest. That is fully covered by charge No.1 itself. Therefore, framing of charge No.2 should be held to be unnecessary.

4. Adverting to the attack on the suspension order, suffice it to state that though it is the power of disciplinary authority to place a delinquent under suspension pending enquiry, such suspension has to be reviewed periodically. The learned Counsel drew the attention of the Court to the guidelines set out in circular dated 14-2-1983 referred to above.

5. In this case, it is submitted that the petitioner is on bail. One of the guidelines incorporated in the circular provides that when an employee who "is suspended by the disciplinary authority for his involvement in a crime and such employee is enlarged on bail, the suspension order can be lifted. Therefore, I think that the ends of justice would be met by directing the disciplinary authority to review the suspension order keeping in view the guidelines contained in the circular and also after assessing the expediency and necessity to continue the petitioner under suspension pending departmental enquiry.

6. In the result, the writ petition is allowed in part. Charge-sheet bearing No.P1/1(9)/97-HYT dated 20-10-1997 is quashed in so far as it relates to charge No.2. Charge No. 1 stands as it is. Further, the 2nd respondent is directed to review the suspension order and pass appropriate order in the premise of the guidelines issued by the Vice-Chairman and Managing Director in the circular dated 14-2-1983 and after assessing the need and expediency to continue the suspension order against the petitioner within a period of 15 days from the date of receipt of a copy of this order. The petitioner-delinquent is granted two weeks time from today to file his reply to charge No.1, if not already filed. No costs.