

(2013) 03 AP CK 0082

In the Andhra Pradesh High Court

Case No : Writ Petition No. 8028 of 2013

K. Gangadhar

APPELLANT

Vs

APSRTC, The Regional Manager, APSRTC, The Depot Manager,
APSTC and The Depot Manager, APSRTC

RESPONDENT

Date of Decision : 22-03-2013

Acts Referred:

Constitution of India, 1950 — Article 311(2)
Penal Code, 1860 (IPC) — Section 304A

Citation : (2013) 5 ALD 775 : (2013) 4 ALT 785 : (2013) LabIC 3558

Hon'ble Judges : Nooty Ramamohana Rao, J

Bench : Single Bench

Advocate : V. Narasimha Goud, for the Appellant; H. Venugopal, SC for APSRTC, for the Respondent

Final Decision : Dismissed

Judgement

Nooty Ramamohana Rao, J.—This Writ Petition is preferred by a driver employed with the 1st respondent Andhra Pradesh State Road Transport Corporation (henceforth, referred to, for brevity, as "the Corporation"), challenging the validity of the order of removal passed against him on 17.09.2011 by the 3rd respondent Depot Manager, Kamareddy of the Corporation and the orders passed on 05.05.2012 by the 2nd respondent Regional Manager, Nizamabad, substituting the punishment of removal with that of reduction of pay by two incremental stages, for a period of one year, which will have its effect on future increments, while treating the intervening period as period not spent on duty. The case of the petitioner is that he joined the service of the Corporation as a driver in the year 1985 and that his services have been subsequently regularized with effect from 01.08.1996. While he was working as a driver attached to the Depot at Kamareddy, the bus driven by him bearing No. AP 11Z 1126 was involved in an accident at about 16.00 hours on 10.11.2010 resulting in the death of an individual. Hence, the writ petitioner was suspended on 23.11.2010 from service and he was also subjected to a disciplinary enquiry by drawing a

charge sheet on the same day. The sum and substance of the charge drawn against the petitioner was that he has driven the bus rashly and negligently, without taking precautionary measures and due to lack of anticipation on his part, he caused an accident to a pedestrian, who was trying to cross the road from left to right side of the road resulting in his death. The petitioner has submitted his explanation on 29.11.2010 and disputed that he has driven the bus rashly or negligently. It is also asserted by the petitioner that he has been driving the bus very slowly, as, just a moment earlier, he has stopped the bus at the old bus stand of Kamareddy where several passengers have alighted and hence, he is not at fault and he cannot be penalized. A domestic enquiry was conducted and the enquiry officer examined the conductor of the bus at the enquiry. The petitioner was also examined by the enquiry officer. Thereafter, the enquiry officer submitted his report holding the petitioner guilty of the charge framed against him. After issuing a show cause notice to the petitioner proposing to impose on him the punishment of removal from service and notwithstanding the explanation offered by him protesting for imposition of such a grave punishment, the 3rd respondent Depot Manager proceeded further in the matter and passed orders on 17.09.2011 imposing on him the punishment of removal from service. As an appeal would lie there against, in terms of Regulation 22 of the A.P.S.R.T.C. Employees" (Classification, Control and Appeal) Regulations, 1967, he preferred an appeal to the Deputy Chief Traffic Manager, Nizamabad, who mechanically rejected the same on 06.01.2012. Since Regulation 29 of the aforementioned Regulations provides a further opportunity of review petition being preferred to the Regional Manager, the petitioner sought for such a remedy. The 2nd respondent Regional Manager passed orders on 05.05.2012, setting out that he has taken a lenient view in the matter and ordered for substituting the punishment of removal from service with that of reduction of his pay by two incremental stages, for a period of one year, which shall have its effect on future increments apart from treating the interregnum period between 17.09.2011 and 05.05.2012 as period "not spent on duty". Challenging the legality and validity of the orders passed on 17.09.2011 by the Depot Manager, removing him from service and the modified punishment order dated 05.05.2012 passed by the Regional Manager, the present Writ Petition is filed.

2. Heard Sri V. Narasimha Goud, learned counsel for the petitioner and Sri H. Venugopal, learned Standing Counsel for APSRTC on behalf of the respondents.

3. Sri V. Narasimha Goud, learned counsel for the petitioner would submit that no witness has been examined at the Domestic Tribunal, excepting the conductor of the bus, and the petitioner was examined in general terms and without any material, the enquiry officer has recorded a finding of guilt against the petitioner and based upon such an unsustainable enquiry officer's report, the Depot Manager proceeded to impose the punishment of removal from service. It is also contended that a preliminary enquiry was conducted for ascertaining the causative factors of the accident that had taken place on 10.11.2010 and based upon the said preliminary enquiry report, the charge sheet has been drawn on

23.11.2010 against the petitioner. Further, the officer, who conducted the preliminary enquiry, has not been examined by the Domestic Tribunal and hence, the preliminary enquiry report submitted by such an officer could not have formed the basis for imposition of the punishment against the petitioner at all. Sri Narasimha Goud would further contend that when the material in the form of a preliminary enquiry report is eschewed from the record, there is no material whatsoever with regard to the accident and hence, the petitioner could not have been held guilty or accountable for the accident that had taken place and he could not have been penalized at all. It is contended that the finding recorded by the enquiry officer, which was endorsed by the Depot Manager, the disciplinary authority, is hopelessly unsustainable and that the petitioner could not have been penalized for the accident since he was not at fault. The learned counsel would further submit that the 2nd respondent Regional Manager having clearly realized that the petitioner cannot be faulted for the accident and the resultant death of an individual, no way the punishment of reduction of his pay by two stages with cumulative effect could have been imposed. Hence, the punishment imposed by the Regional Manager against the petitioner is also disproportionate, inasmuch as he has already held the interregnum period as period not spent on duty and thus caused financial strain to the petitioner in the process itself. The learned counsel for the petitioner would further urge that even if the petitioner has taken all the necessary precautions, which he could have, if the accident in question could not have been avoided, the petitioner cannot be faulted at all. When no fault lies at the door steps of the petitioner, there is no way the petitioner can be penalized. The learned counsel for the petitioner has placed reliance upon the judgment rendered by the Supreme Court in Mahadeo Hari Lokre Vs. The State of Maharashtra, and the judgment rendered by a Division Bench of this Court in K. David Wilson Vs. Secretary to Government, Law Department (Legislative Affairs and Justice), Hyd. and another, and the judgment of the Supreme Court in State of U.P. and Others Vs. Saroj Kumar Sinha, .

4. The following facts are not disputed in this Writ Petition. They are: the petitioner was performing duty on 10.11.2010 by driving one of the buses of the Corporation on the route Kamareddy -- Bhimagal. At about 16.00 hours, he was taking the bus out of the old bus stand, after some of the passengers have alighted and was proceeding towards the new bus stand at Kamareddy. At that time, since a huge sound was heard by him and also by the conductor of the bus and immediately thereafter, the bus has felt a huge jump, the petitioner has stopped the bus and in the meantime, there were also some shouting heard from behind and the petitioner got down from his seat and he realized that the right hand side rear tyres of the bus have run over an individual, who died instantaneously. Hence, the information relating to the accident has been passed on to the local police as well as the Depot of the Corporation.

5. As one of the buses of the Corporation was involved in an accident resulting in the death of a 3rd party, a preliminary enquiry was conducted into the matter. The preliminary enquiry officer found that the bus was lying on the right hand

side of the road and there was a 12" distance from the left hand edge of the road to the point of the left side of the bus, whereas there was only 4" distance between the road divider on the right hand side and the bus and that the rear tyres of the bus ran all over the body of the victim, resulting in his death and the victim has been identified as Sri Gouti Shankar, S/o. Mallaiah, R/o Kamareddy. The preliminary enquiry officer has concluded that the petitioner is accountable and responsible for causing the accident resulting in the death of an individual. This report of the preliminary enquiry officer triggered the disciplinary action against the petitioner.

6. It is most significant to note that before the Domestic Tribunal, the officer, who conducted the preliminary enquiry, was not examined. Consequently, the preliminary enquiry report was not marked as a document. Before the Domestic Tribunal, the service conductor was examined as a witness and the petitioner was also examined generally. The conductor as well as the driver have both made identical nature of statements. Both of them stated that they are not in the know as to how the victim came in contact with the bus and then fell beneath the rear right side tyres of the bus. It is also stated by the service conductor that at best, the bus was running at about 20 km. per hour speed only at that point of time.

7. Every accident, involving a motor vehicle and a road, can be caused due to negligence and/or lack of anticipation. Sometimes a significant part or contribution may have also been made by the victim of a motor vehicle accident. Hence, contributory negligence resulting in a fatal road accident cannot be an uncommon feature. But, in the instant case, the very feature of the accident speaks for itself. The seat of a driver lies on the right front side of the bus. Unless the victim in the instant case had come in conflict with the running bus, at a point between the driver's window on the right hand side of the bus and the rear wheels of the bus, the possibility of the rear wheels of the bus running all over the victim can be completely ruled out. Therefore, the point of impact or conflict between the bus in motion and the victim can reasonably be inferred to have occurred in between the driver's window and the rear wheels. Because of the impact, the victim may have lost his balance and fallen on the road, thus, coming into the actual impact zone and since the driver could not notice the impact of the victim between the body of the bus and since the bus was still in motion, the rear wheels could have passed over the body of the victim. Otherwise, there was no way the rear right side wheels of the bus would have run over the body of the victim. Therefore, these facts disclose certain element of contribution to the accident by the writ petitioner, who is the driver of the bus. At best, it can also be said that the victim also should have failed to take notice of his likely to coming in the conflict zone of a moving vehicle. Therefore, he may have also contributed for the cause of the accident, but however, it would be difficult to deduce that the accident in question had occasioned completely due to the fault of the victim only.

8. During the course of disciplinary enquiries, the disciplinary authority is

required to gather all such relevant material, which can reasonably lead to a conclusion relating to the guilt or otherwise of a charged employee. In disciplinary proceedings, the standard of proof adopted is not the same as adopted by a criminal Court, namely proof beyond all reasonable doubt. It is the preponderance of probabilities which would be weighing with the disciplinary authorities in the matter of recording findings or conclusions about the guilt or otherwise of the charged employee.

9. It is true that as a part of adherence to the principles of natural justice, if any particular material, which is in the form of a preliminary enquiry report, is to be relied upon by the disciplinary authority, it is fundamental that the author of the preliminary enquiry report must be examined and a copy of the said preliminary enquiry report must be furnished to the charged employee, if it is feasible and if it is not so feasible, the charged employee must be granted time to peruse the said preliminary enquiry report and make his own notes at least by maintaining a three-day time gap between the perusal of the preliminary enquiry report and the examination of the author of such a report before the Domestic Tribunal, so that the charged employee will be able to properly analyze and understand the contents and correctness of the preliminary enquiry report. He can also have the benefit and advantage of consulting any other colleague or any other trained professional on the subject, so that he will be able to effectively participate in the disciplinary proceedings. Without adhering to this basic norm, there is no way that the disciplinary authority can get guided by the contents of the preliminary enquiry officer's report. In fact, that is the principle that has been enunciated by the Division Bench in K. David Wilson's case, referred to supra.

10. In the instant case, the author of the preliminary enquiry report has not been examined. Consequently, the preliminary enquiry report has not been made a part of the record of the enquiry officer. It has not been looked into for the purpose of drawing conclusions against the petitioner by the Depot Manager/disciplinary authority.

11. Sri Narasimha Goud, learned counsel would urge that the very basis for the charge sheet drawn against the petitioner on 23.11.2010 was the preliminary enquiry officer's report and if that report was not to be there, no charge, perhaps, would have been drawn against the petitioner and hence, no way the disciplinary authority could have held the petitioner guilty of the charge.

12. A preliminary enquiry is more in the nature of a fact-finding enquiry. It is a formal enquiry. It is intended to ascertain the antecedent and attendant facts and circumstances of a particular event. During the course of a preliminary enquiry, some material is sought to be gathered, if necessary, by contacting and examining persons, who can speak of the relevant facts. The preliminary enquiry, most of the times, is conducted behind the back of the charged employee. A preliminary enquiry is therefore, only a step-in-aid for exercising disciplinary control against the employees. Even without conducting any such preliminary enquiry also, the disciplinary authority has the right and power to initiate

disciplinary proceedings, but however, if any of the statements or material gathered during the preliminary enquiry are sought to be made part of the enquiry record, in such circumstances, the preliminary enquiry officer is required to be examined before the enquiry officer, so that the delinquent employee/charged employee can have a right of cross-examination for the purpose of extracting the truth behind the whole exercise. I therefore, hold that non-examination of the preliminary enquiry officer, in the instant case, cannot necessarily lead to a conclusion that the entire disciplinary proceedings are vitiated and consequently, the punishment of removal from service imposed by the disciplinary authority is unsustainable. As was already noticed supra, the report of the preliminary enquiry officer has not been made the basis for the imposition of the punishment of removal from service.

13. The disciplinary authority had subscribed to the view that the petitioner is responsible for causing the accident, inasmuch as the victim died because of the rear right side wheels of the bus driven by the petitioner ran over him. Therefore, the disciplinary authority found the petitioner guilty of the charge laid against him and proceeded to impose the punishment of removal from service. Though the appellate authority rejected the appeal, when the petitioner has preferred a revision petition, the Regional Manager had applied himself fully. The following statement found in the order passed on 05.05.2012 by the Regional Manager would clearly reveal that he has applied himself fully to the task on hand. This is what the reviewing authority observed:

... as it is a busy center, a driver cannot drive in high speed, the pedestrians should have observed the vehicle. Hence, the driver alone cannot be made responsible....

14. Therefore, the reviewing authority had subscribed to the view that the accident had occasioned because of contributory negligence, both from the point of view of the victim as well as the writ petitioner driver. This view of the reviewing authority cannot be described to be a perverse view. It is a fundamental principle of law that if two views are possible in the given fact situation, the Court exercising the writ jurisdiction is not required to substitute its opinion to that of the competent authority. In the given facts and circumstances of the case, it is quite probable and possible that the contribution of the writ petitioner, on however a minor scale it might be, for causing the accident resulting in the death of an individual, cannot be totally ruled out. It is one of the possible views. Therefore, if the Regional Manager has subscribed to such a view, I cannot wish it away unless I can come to a firm conclusion that it is a perverse view. In a certiorari jurisdiction, I can only interfere if the finding is a perverse finding recorded against the delinquent employee. Perversity of view is a fatal one for any exercise, whether it is administrative, quasi-judicial or judicial. The standard for arriving at a perverse view is, simply put, that no reasonable body of men would have arrived at the same conclusion in the given facts and circumstances. I am not able to hold that in the given circumstances and facts existing on

record, a reasonable body of men would have ruled out completely the role of a driver of a bus in the accident. Perhaps, if the victim had come under the left hand side rear wheels of the bus in motion, the situation would have been completely different, but, a victim getting crushed under the right hand side rear wheels of a bus makes certain element of difference, and hence, the probability of contribution of the driver of such a bus cannot be completely and satisfactorily ruled out.

15. What is relevant for a Domestic Tribunal to ascertain is not the percentage of contribution. Even if it is weighing on a minor scale, let us say 10% in the entire event, that gives scope for exercise of disciplinary control over an employee. That is the reason why the reviewing authority, in my opinion, very rightly exercised the discretion vested in him and substituted the punishment of removal with that of reduction of pay by two stages with cumulative effect. This exercise of power by the Regional Manager, to my mind, is a fair and reasonable one and does not call for interference.

16. The learned counsel for the petitioner has placed reliance upon the judgment rendered by the Supreme Court in Mahadeo Hari Lokre's case, referred to supra. That is a case where the appellant was convicted u/s 304-A of the Indian Penal Code and sentenced to one year rigorous imprisonment and payment of certain amount of fine for having caused the death of a pedestrian while driving a double-decker bus. In paragraph 4 of the judgment, the Supreme Court noted that there is really no good evidence on the side of the prosecution to show how exactly the accident took place and all that P.W. 2, a friend of the deceased, was able to say was that the deceased left him at point B and since the deceased came under the left front wheel, it can only be inferred that he must have crossed the road to the western side and in that process, came into the conflict zone with the bus. At about the middle of paragraph 4, the following statement has been relied upon:

...It may have been, perhaps, fool-hardy on the part of Ravikant to walk in the middle of the road about 14" away from the kerb. But that would not justify the bus driver knocking him down after taking due note that he was walking straight in front of the Bus. But the case assumes a different complexion. If we agree with the sole eye witness in the case Dayanand P.W. 1 that at the time of the impact Ravikant was actually crossing the road from West to East. That would mean that if Ravikant suddenly crossed the road from West to East without taking note of the approaching bus there was every possibility of his dashing against the bus without the driver become aware of his crossing till it was too late. If a person suddenly crosses the road the bus driver, however, slowly he may be driving, may not be in a position to save the accident. Therefore, it will not be possible to hold that the bus driver was negligent.

17. It is apt to notice that the proceeding, with which the Supreme Court was dealing in Mahadeo Hari Lokre's case was a criminal proceeding. Therefore, the standard of proof that would be applied would vary from that of the domestic enquiries/disciplinary proceedings. In disciplinary proceedings, the disciplinary

authority is concerned only to find out as to whether the employee has contributed to the accident at all or not. The fact that there is an insignificant contribution made by the employee to the accident, would, in my opinion, be sufficient to arrive at a conclusion of guilt of the employee concerned. In the instant case, the contribution of the writ petitioner was felt to be on a far lesser scale and hence, the Regional Manager, the reviewing authority has rightly reviewed the punishment and substituted the punishment of removal with that of reduction of pay by two stages with cumulative effect. In my opinion, the discretion has been very rightly exercised by the Regional Manager in this case.

18. Sri Narasimha Goud, learned counsel for the petitioner has placed reliance upon the judgment in Saroj Kumar Sinha's case, referred to supra and in particular, on the principles enunciated in paragraphs 28 and 29 thereof. It is to be noted that this is what the Supreme Court has set out in paragraphs 28 and 29:

28. An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents.

29. Apart from the above, by virtue of Article 311(2) of the Constitution of India the departmental enquiry had to be conducted in accordance with the rules of natural justice. It is a basic requirement of the rules of natural justice that an employee be given a reasonable opportunity of being heard in any proceedings which may culminate in punishment being imposed on the employee.

19. The Supreme Court has very rightly noted that the role of the enquiry officer, acting in a quasi-judicial proceeding, is akin to that of an impartial and independent adjudicator. So long as the enquiry officer maintains equi distance from both the sides and holds the scales even and faithfully follows the procedure prescribed and also observes all the relevant principles of natural justice, the inferences drawn by him so long as there is some material available on record, cannot be faulted. Sufficiency of material is not the relevant factor. Whether an inference can reasonably be drawn or not is the question. Sometimes, in cases involving motor accidents, there may not be much evidence in the form of eye witnesses account forthcoming. By looking at the totality of the circumstances, an inference may have to be drawn in such cases. Accidents being what they are, occurring without any prior notice, evidence may not be available in abundance. Drawing inference in the given fact situation is not an unreasonable exercise, warranting interference in a writ proceeding.

20. I therefore, do not find any justifiable reason to interfere with the proper exercise of discretion carried out by the Regional Manager, who substituted the punishment of removal imposed by the Depot Manager by reducing the pay of the writ petitioner by two stages with cumulative effect and also simultaneously treating the interregnum period from the date of removal till the date of reinstatement as period not spent on duty. The petitioner was not employed by the Corporation and they did not avail his service. Therefore, the question of treating the interregnum period as period spent on duty could not have arisen even otherwise.

21. Since I am not in a position to find any merit in this Writ Petition, I dismiss this Writ Petition at the admission stage. No costs. Consequently, the miscellaneous applications, if any shall also stand dismissed.