
(2008) 07 AP CK 0073

In the Andhra Pradesh High Court

Case No : Writ Petition No. 4027 of 2008

K. Venkateswara Rao

APPELLANT

Vs

Regional Manager, APSRTC and Others

RESPONDENT

Date of Decision : 14-07-2008

Acts Referred:

Industrial Disputes Act, 1947 — Section 2A(2)

Citation : (2008) 5 ALD 769 : (2009) 1 SLR 645

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : P. Nagendra Reddy, for the Appellant; C. Prakash Reddy, SC for APSRTC, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—The petitioner is employed as a Driver, in the Jaggaiahpet Depot of APSRTC. On 25.1.2006, the Depot Manager the 3rd respondent herein, directed the petitioner to appear before the Medical Officer, Vijayawada, to undergo periodical medical examination. Petitioner states that he appeared before the Medical Officer, on the appointed day, at 9 a.m., and since there were 14 persons, he waited for his turn, which fell after lunch. The petitioner said to have been called by the Medical Officer at 3 p.m., and asked whether the petitioner had consumed alcohol, and when the petitioner replied in negative, he was asked to go out and come after some time. When the petitioner went to the Medical Officer, after some time, he is said to have endorsed on the reverse of the report that the petitioner had taken alcohol, and in that view of the matter, medical test was not conducted.

2. The 3rd respondent initiated disciplinary proceedings against the petitioner, by issuing a charge-sheet, dated 1.2.2006, and on the same day, he suspended the petitioner. After the petitioner submitted his explanation, an enquiry officer was appointed, and he, in turn, submitted a report on 17.5.2006. A further show-cause notice was issued, proposing the punishment of removal from service.

Petitioner submitted his explanation, and not being satisfied with that, the 3rd respondent passed an order dated 21.11.2006, removing the petitioner from service. Departmental appeal was preferred before the Deputy Chief Traffic Manager, the 2nd respondent herein, and it was dismissed, through order dated 7.6.2007. Review filed by the petitioner, before the 1st respondent, was also rejected on 11.9.2007. Hence, this writ petition.

3. Sri P. Nagendra Rectify, learned Counsel for the petitioner, submits that the charge against the petitioner was totally unrelated to his discharge of duties, and the Medical Officer, who made the endorsement, was not examined as a witness, in the domestic enquiry. He submits that the appellate and review authorities have also failed to examine the matter, from the correct perspective.

Learned Standing Counsel for the respondents, on the other hand, submits that the petitioner is deemed to be on duty, when he appeared before the Medical Officer, and since he was found to be in intoxicated condition, the misconduct against him is proved. He raises an objection as to maintainability of writ petition.

4. The petitioner was sent for periodical medical examination to the Medical Officer of the Corporation, at Vijayawada, on 25.1.2006. According to the petitioner, the dispensary staff have conducted a preliminary examination, such as, urine test, vision test, and made entries in the records. It is stated that the Medical Officer did not come, when the tests were undertaken, and soon after he came, he conducted test on several drivers of Jaggaiahpet Depot, and that the petitioner was asked to come after lunch. It is the case of the petitioner that after taking lunch, he took pan, and during the course of examination, when the doctor asked as to whether the petitioner consumed any liquor, he answered in negative, and stated that he has only taken pan after lunch. When the petitioner visited the doctor, at a later point of time, he made an endorsement to the effect that the petitioner was not examined, since he was found to have consumed alcohol.

5. On seeing the endorsement on the report, the 3rd respondent issued a charge-memo, dated 1.2.2006, wherein the following charge was framed:

For having attended the periodical medical examination, by taking alcohol and the same was noticed and also endorsed on the reverse side of the directing letter by the Medical Officer at the time of Medical examination on 25.1.2006 which is serious misconduct in terms of Clause 9 of (2)(ix) of APSRTC Employees (CC&A) Regulations 1967.

The petitioner denied the allegation, by submitting an explanation. In the domestic enquiry, the Assistant Manager (Traffic) of the Depot, figured as a witness, on behalf of the Management. No one from the dispensary, much less the doctor, who made the endorsement, was examined. The petitioner has also deposed before the enquiry officer and narrated in detail, as to what happened at the dispensary.

6. The question as to whether the allegation that the petitioner consumed alcohol on 25.1.2006 could have been proved, if only the person, who saw the petitioner in drunken condition, has deposed, or that any technical data that has a bearing on the allegation, was placed before the Enquiry Officer. The only witness, on behalf of the Management, did not have even the basic idea, as to what happened on 25.1.2006 to the petitioner. Therefore, his evidence was hardly of any use. The finding recorded by the enquiry officer is somewhat curious. It reads as under:

... And it is observed from the driver that he himself admitted and accepted that he went to RTC dispensary, Vijayawada for PME, when the doctor asked him whether consumed alcohol, he told to the doctor that he is used to take pan. Therefore, it opined that the driver failed to observe not consuming alcohol while on duty when attending the PME examination.

Neither any deductive process, nor any inductive logic would lead to such a conclusion. When the career of an employee is involved, authorities are not supposed to in a whimsical manner.

7. Further, it is not as if that the petitioner was found in drunken condition, while on duty, or while driving a bus. In case, the Medical Officer noticed any traces of intoxication in the petitioner and wanted to make an allegation, he ought to have conducted the test, to base his conclusion. The averment of the petitioner that various other tests, such as urine test, vision test, were conducted, remains un rebutted.

8. Even assuming that the petitioner was found in a drunken condition, while undergoing test, it is not known as to how it can lead to the severe punishment of removal from service. It is not uncommon that several acts and omissions of employees are treated as misconducts, but every such misconduct cannot, by itself, lead to the punishment of removal from service. A disproportionate punishment, inflicted on an employee, partakes the character of arbitrary exercise of power, if not misuse thereof.

9. Normally, the petitioner shall have to approach the Labour Court, u/s 2A(2) of the Industrial Disputes Act, against the order of removal. This Court is of the view that it is neither in the interest of the petitioner, nor that of the Corporation, to protract the matter any further. Different things would have ensued, had it been a case, where the petitioner was found to have resorted to any acts of misconduct while driving the bus, or on duty. An unfair and unproved allegation, that too, in relation to the medical examination of the petitioner, cannot lead to such disastrous consequences. This Court is of the view that ends of justice would be met, if the petitioner is subjected to medical examination, and further action be taken, by denying the benefit of back wages to the petitioner.

10. Hence, the writ petition is allowed, and the order of removal dated 21.11.2006, passed against the petitioner by the 3rd respondent, is set aside. The petitioner shall be reinstated into service, with continuity of service, but

without back wages. He shall be subjected to medical examination, and depending upon the outcome thereof, further steps shall be taken. There shall be no order as to costs.