
(1979) 02 KAR CK 0030
In the Karnataka High Court
Case No : Writ Petition No. 2262 of 1978

K.S. Raguramaiah

APPELLANT

Vs

Karnataka State Road Transport Corporation

RESPONDENT

Date of Decision : 28-02-1979

Acts Referred:

Citation : (1979) 2 LLJ 143

Hon'ble Judges : M. Rama Jois, J

Bench : Single Bench

Judgement

1. In this writ petition the petitioner, who was a conductor in the service of the Karnataka State Road Transport Corporation (hereinafter referred to as "the Corporation" has prayed for quashing the order made by the deputy general manager, K.S.R.T.C., Sirsi, North Kanara, discharging the petitioner from the service.

2. In the writ petition the petitioner has alleged that though the impugned order is innocuously worded and it is made to appear that it is discharge simpliciter, in fact, and in truth it is a penalty of removal from service, imposed against him for the misconduct alleged against him. In support of his submission, the petitioner has also produced an offence memo dated 7th July, 1977, which was served on him (Ext. A) and has stated that he was found guilty on the charges without holding an enquiry and was removed from service by the impugned order.

3. It is well-settled that though an order of discharge simpliciter is passed against a probationer, it does not preclude the Court from finding out as to whether the order of discharge was in the nature of penalty imposed for any misconduct without enquiry or a simple discharge order based on the formation of opinion that the probationer concerned is not suitable for the post of which he had been appointed on probation. If, after considering all the facts and circumstances of the case, the Court finds that the order was based on an assessment of the suitability of the concerned probationer for the post, without reference to any misconduct, if any alleged against him, the order was to be

upheld, but if it was based on any alleged charges, it has to be set aside notwithstanding its form. (See T. S. Chandrasekharaiah v. Karnataka State Road Transport Corporation, B.T.S. Division, Bangalore, writ Petition No. 7171 of 1978 dated 4-12-78 - since reported at p. 407 (supra).

4. In the present case, the order that was made against the petitioner reads as follows :

"You were appointed on probation for the post of a conductor pursuant to the offer of appointment made vide D.E.O. No. (A). 316 of 1975 issued under No. KST : NK : EST : 12430 dated 28-8-1975.

You were cautioned and given repeated chances to show improvement but as you have not been able to show adequate improvement, I am sorry to inform you that I have found you unsuitable for the job for which you were appointed.

You are, therefore, discharged from service with immediate effect as per the terms and conditions of your improvement."

The petitioner, however, has alleged in the petition that though the order is described as an order of discharge, it was a penalty imposed against him for alleged misconduct without holding an enquiry is required under the regulations. In the statement of objection filed on behalf of the respondent, it is stated as follows :

"The case referred to by the petitioner was booked on 12th June, 1977, when he was on Karwar-Dandelli duty, at which time he had issued lower denomination tickets of 35 paise to seven passengers despite the collection of the requisite fair of Rs. 1-05 paise from each of them. Thus he was found to be unfit to continue as conductor in view of his pilferage in course of his duty."

The aforesaid statement made in the statement of objection gives no room for doubt that the order passed against him was penalty imposed for misconduct referred to in the aforesaid para. It is not dispute that no enquiry was held in accordance with the regulations.

5. Sri B. M. Chandrashekaraiah, learned counsel appearing for the respondent, however, contended that even assuming that there were certain charges against the petitioner, the right of the Corporation to pass an order of discharge simpliciter is not taken away and, therefore, as the impugned order simply states that the petitioner is discharged from service, it cannot be characterised that it is an order imposing penalty for misconduct. It is no doubt true that mere existence of certain charges against an employee does not deprive the authority of its power to discharge the probationer. Notwithstanding the existence of charges, the authority can take a decision regarding the suitability of a probationer on the basis of his record of service or by calling for a report about his work from the officer under whom the concerned employee was working. If a decision is taken on the question of suitability and a probationer is discharged on the ground that he is unsuitable for the job, it cannot be set aside just because

certain charges were also pending against him. In other words, if discharge is based on the ground of unsuitability de hors the charge it is valid. Therefore, the question as to whether an order of discharge made against a probationer is really in the nature of penalty or an order of discharge simpliciter, always depends upon facts and circumstances of each case. In the present case, the stand taken in the statement of objections goes to show that the decision to discharge him was taken on account of the specific allegation levelled against him and not on the ground that generally his work was found to be not satisfactory and, therefore, he was not suitable for conformation in the service of Corporation.

6. In order to find out as to whether the discharge order was really based on the record of service of the petitioner as sought to be made out at the time of argument by the learned counsel for the respondent, I directed him to produce original records. The entry in the original records which resulted in the passing of the impugned order reads as follows :

"I have gone through the case. He was once discharged from service and the incumbent has come back as a probationer on an appeal. He has again involved himself in a very serious case of issuing of lower denomination after collection of correct fare. This is much more serious from the fact that there were only 45 + 3 passengers in the bus at the time of check and he had attempted to cheat the Corporation by way of issue of lower denomination to 7 passengers.

He should be discharged as unsuitable being probationer."

7. The statement of objections really reflects the contents of the original record. From the contents of the original record extracted above, it may be seen that the discharge order was made against the petitioner solely on the basis of the charges levelled against him and there is no other independent material on the basis of which decision to discharge the petitioner from service has been taken. If decision to discharge the petitioner had been taken on the basis of service records without reference to the charges framed against him, then it would have been possible for the learned counsel appearing for the respondent to contend that it is a discharge simpliciter based on his service records and has nothing to do with charges alleged against him. But the original records disclose that the discharge order was made solely relying on the charges levelled against the petitioner. Therefore, though the order is made to appear as a simple discharge order, in truth and substance it is in the nature of penalty imposed for misconduct against the petitioner in respect of which no enquiry as required under the regulation was held by the Corporation. Therefore, the impugned order is liable to be quashed.

8. For the reasons aforesaid, I make the following order :

(i) Rule made absolute.

(ii) The impugned order made by the respondent dated 20th July, 1977, (EXT. B) is quashed.

(iii) The petitioner is entitled to all consequential benefits arising from the quashing of the order.

(iv) No Costs.