

(2005) 01 KL CK 0056

In the High Court Of Kerala

Case No : W.A. No's. 2551 and 2906 of 2002

M.K. Sukumaran

APPELLANT

Vs

The Appellate Tribunal, K.S.R.T.C. and Others

RESPONDENT

Date of Decision : 27-01-2005

Acts Referred:

Kerala Civil Services (Classification, Control and Appeal) Rules, 1960 — Rule 15
Penal Code, 1860 (IPC) — Section 34, 379

Citation : (2005) 01 KL CK 0056

Hon'ble Judges : M.N. Krishnan, J;K.S. Radhakrishnan, J

Bench : Division Bench

Advocate : P. Ali, for the Appellant; T. Ravikumar, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Radhakrishnan, J.—Appellant in W.A. No. 2551 of 2002 was dismissed from the service of the Kerala State Road Transport Corporation (in short "K.S.R.T.C.") by proceedings of the Executive Director dated 7-9-1998 on the basis of enquiry report dated 2-2-1998 holding him guilty of the charges levelled against him pertaining to pilferage of diesel from buses parked at Muvattupuzha garage of the K.S.R.T.C. On 21-11-1997 at about 1.30 hrs. it was found that diesel has been stolen from the parked K.S.R.T.C. buses at Muvattupuzha garage by way of pilfering with the help of duty Guard. Guard was questioned about the incident and it was understood that the writ Petitioner who was driver of the K.S.R.T.C. was in the habit of pilfering diesel during night from the parked buses for unlawful gain. Matter was reported to Muvattupuzha police station and Crime No. 595/97 under Sections 379 and 34 I.P.C. was registered. Investigation was made by the police and the writ Petitioner was identified as the man who had committed theft of diesel from the parked K.S.R.T.C. vehicles. On inspection it was detected that 35 and 30 litres of diesel was lost from bus No. T.R. 172 and P 189 respectively during the midnight of 20-11-1997 and the Petitioner was therefore suspended from service on 22-11-1997 and was charge sheeted under

Rule 15 of the Kerala Civil Service (Classification, Control and Appeal) Rules 1960.

2. An Enquiry Officer was appointed who conducted detailed enquiry. Enquiry Officer submitted his report dated 2-2-1998 holding him guilty of the charge levelled against him. Based on the report he was removed from service. Aggrieved by the said order Petitioner filed appeal before the Appellate Authority, Managing Director of the K.S.R.T.C. which was dismissed as per order dated 20-12-1998. Petitioner took up the matter in revision before the Appellate Tribunal, but the Tribunal by order dated 15-1-2000 dismissed the appeal. However, punishment was modified to one of compulsory retirement from service from the date of removal. Aggrieved by the said order, Petitioner approached this Court.

3. Learned Single Judge did not interfere with the order but opined; that there was no proper enquiry. Learned Single Judge also found fault with the inept handling of the case by the K.S.R.T.C. and found it not possible to conduct a re-enquiry, Though learned Single Judge confirmed the order passed by the Tribunal, direction was given to the K.S.R.T.C. to pay an amount of Rs. 50,000 to the Petitioner by way of liquidated damages. Aggrieved by the said judgment, Petitioner preferred W.A. No. 2551 of 2002 and the K.S.R.T.C. filed W.A. No. 2906 of 2002.

4. Counsel appearing for the writ Petitioner Sri P. Ali submitted that learned Single Judge should have set aside the order of dismissal after having found that the enquiry was not properly conducted. Further the Petitioner should have been paid all backwages. Counsel appearing for the K.S.R.T.C. Sri T. Ravikumar on the other hand contended that the learned Single Judge was not justified in awarding liquidated damages as against K.S.R.T.C. We find it difficult to accept the contention advanced on behalf of the Petitioner that the enquiry was not properly conducted and that this Court ought to have interfered with the punishment imposed on the writ Petitioner. We have closely gone through the enquiry report. Enquiry Officer opined as follows:

The arguments of the accused that the case was not reported to the police is not true. The case was duly reported to the police and they came to the garage and prepared a mahazar and it is noteworthy from the deposition of P.W. 1 that the accused availed advance bail in connection with the case. His version that P.W. 1 had not used any scientific method to calculate the quantity of loss of diesel lacks weight since the accused stands charged with the theft of diesel and that using any scientific method at that midnight time was quite impossible.

His demand to summon the ex-guard for hearing in order to arrive at a conclusion is also cannot be accepted. This guard was terminated from the service. Now he is not a Corporation employee. Hence the accused is liable to make available the presence of non-official witnesses. On two occasions the accused came to my office but not attended the hearing. He attended only on the third occasion without any witnesses and documents indicating that he has not

such evidence at all to produce.

P.W. 3 is the duty Guard. It is a fact that he had not turned up for the personal hearing. But it is important to note that he confessed and stated that he connived with the accused in the theft of diesel from the vehicles and gave a statement to P.W. 1 to this effect. I cannot overlook his version since nobody will dare to give a false statement simply for obtaining a removal from the service. He gave his statement and was removed from the services which conclusively prove that the accused had stolen the diesel from the vehicle. In these circumstances, I hold that the view that the accused is guilty for the offences for which he stands charged.

It is well-settled that the standard of proof, the mode of enquiry and the rules governing the enquiry and trial are conceptually different from an enquiry conducted in respect of a criminal proceedings. The apex court in *Lalit Popli Vs. Canara Bank and Others*, , held as follows:

It is fairly well-settled that the approach and objective in criminal proceedings and the disciplinary proceedings are altogether distinct and different. In the disciplinary proceedings; the preliminary question is whether the employee is guilty of such conduct as would merit action against him, whereas in criminal proceedings the question is whether the offences registered against him are established and if established what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial reconceptually different. See: *State of Rajasthan v. B.K. Meena*. In case of disciplinary enquiry the technical rules of evidence have no application. The doctrine of "Proof beyond doubt" has no application. Preponderance of probabilities and some material on record are necessary to arrive at the conclusion whether or not the delinquent has committed misconduct.

Enquiry officer taking note of the preliminary enquiry report and the evidence adduced therein and the explanation submitted by the Petitioner and the circumstances of the case came to the conclusion that the charges levelled against the Petitioner were proved. Report of the Enquiry Officer was accepted by the disciplinary authority and punishment was imposed. The order was confirmed by the appellate authority as well as the Tribunal. Writ court cannot interfere with those factual findings and to arrive at its own conclusion as an appellate authority. The apex court in *Lalit Popli Vs. Canara Bank and Others*, held that while exercising jurisdiction under Article 226 High Court does not act as an appellate authority. Its jurisdiction is circumscribed by limits of judicial review to correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice. The court held that judicial review is not akin to adjudication of the case on merits as an appellate authority. The said legal position has been reiterated by the apex court in *Sub-Divisional Officer, Konch Vs. Maharaj Singh*, , wherein it was held that the jurisdiction of the High Court is a supervisory one and not an appellate one. The apex court came to the conclusion that when the evidence was accepted by the disciplinary authority and

further confirmed by the Tribunal. High Court is erred in disturbing the same by reappreciating the entire evidence. We may incidentally say that learned Single Judge in the impugned judgment has stated as follows:

It is beyond doubt that as a matter of fact unpleasant incidents had taken place in the night of 21-11-1997. Thus this is a case where there are materials, but they are scattered. Arrangements of such evidence was necessary to be given and it positively points to a conclusion that the Petitioner had acted dishonestly. I cannot accept the contention of the Petitioner that because of the lapses in procedure, the Petitioner has to be declared as honourably acquitted....

From the facts that had forth come, it is seen that there was sufficient justification for initiation of action. The inept handling, whoever may be responsible for it, at this distance of time need not cause an undue strain to the public exchequer.

The punishment now awarded is therefore left undisturbed. I confirm the orders that had been passed by the Appellate Tribunal, but the Petitioner is directed to be given liquidated damages which is assessed at Rs. 50,000.

We are of the view, after having found that arrangements of evidence positively points to the conclusion that the Petitioner had acted dishonestly there is no justification in awarding liquidated damages of Rs. 50,000. In such circumstances, we find no reason to disturb the order of the authorities below as modified by the Tribunal. Writ Appeal No. 2551 of 2002 would stand dismissed and Writ Appeal No. 2906 of 2002 would stand allowed. Consequently writ petition would stand dismissed. In the facts and circumstances of the case, parties are directed to bear their respective costs.