

(2014) 12 AP CK 0127
In the Andhra Pradesh High Court
Case No : Writ Petition No. 34003 of 2014

M.V. Sagar

APPELLANT

Vs

APSRTC and Others

RESPONDENT

Date of Decision : 10-12-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 21, 226

Citation : (2015) 4 ALD 214 : (2015) 5 ALT 504

Hon'ble Judges : R. Kantha Rao, J

Bench : Single Bench

Advocate : V. Narasimha Goud, Advocates for the Appellant; K. Srinivasa Rao, Standing Counsel, Advocates for the Respondent

Judgement

R. Kantha Rao, J.—This writ petition is filed under Article 226 of the Constitution of India seeking to quash the impugned proceedings No. 01/804(1)/2014-KMM, dated 03.11.2014 issued by the 2nd respondent in removing the petitioner from service and also recovering Rs. 5020/- as illegal, unjust and in violation of Articles 14, 16 & 21 of the Constitution of India and consequently direct the respondents to reinstate the petitioner into service with all attendant benefits.

2. I have heard Sri V. Narasimha Goud, learned counsel appearing for the petitioner and Sri K. Srinivasa Rao, learned Standing Counsel appearing for the respondent Corporation.

3. The petitioner is a conductor in the respondent corporation. The petitioner was suspended on 10.06.2014 on the following charge:

"For having posted the ticket blocks worth of Rs. 10,300/- in a wrong tray and when noticed in the Audit, returned back the ticket blocks worth Rs. 5,280/- and remitted the remaining amount of Rs. 5,020/- and thus committed serious irregularity, due to which there is scope for misappropriation of the legitimate revenue of the Corporation from 18.02.2014 to 26.05.2014, which constitutes misconduct as per Regulation No. 28 (x) (xxxii) of APSRTC Employees (Conduct)

Regulations 1963."

4. It is the version of the petitioner that one K.C.P. Reddy, ADC instead of posting the ticket block in question in his tray No. 006, had posted the said ticket block in Tray No. 926 which is meant for Jatara special, where as the petitioner was doing Kodad day out duty on 18.02.2014. According to the petitioner, while represented to K.C.P. Reddy, ADC about the posting of ticket block wrongly, he instructed him to post those blocks in Jatara special box kept in the section of the Assistant Manager Traffic who was dealing with Jatara special. Basing on the said instructions, the petitioner posted the ticket blocks in Jatara special.

5. The further version of the petitioner is that three months thereafter he was asked to search the Assistant Manager (T) Office room due to the Audit, which was being conducted in the 2nd respondent depot on 14.05.2014. After search, it was found that 7 ticket blocks were missing and the worth of missing tickets is Rs. 5020/-. It is submitted by the petitioner that though in fact the respondents have to recover only the printing and stationery charges for the missing ticket blocks, he was directed to remit the amount and accordingly, he remitted the entire amount, thereafter, the respondent Corporation issued show cause notice dated 30.09.2014 proposing to impose punishment of removal from service. Questioning the said show cause notice, the petitioner filed W.P. No. 30923 of 2014. While the said writ petition was pending, the enquiry was completed and the impugned removal order dated 03.11.2014 was passed against the petitioner. As the final order was passed, the earlier writ petition was closed on 12.11.2014.

6. It is submitted by the petitioner that as per the instructions of K.C.P. Reddy, ADC, he posted the ticket blocks in Jatara special tray, he did not sell away the tickets nor did he commit any mistake and therefore, the impugned removal order passed against him is illegal. It is further submitted that no action was taken against K.C.P. Reddy, ADC and he was made scapegoat in the entire episode.

7. Nextly, it is submitted by the petitioner that the charge is very vague and in the absence of any misappropriation of amount on his part, the removal order passed against him is illegal.

8. The respondent Corporation filed counter affidavit contending that even in the period of his entire service, the petitioner is bereft of clean record and altogether 18 punishments were imposed on him earlier. It is further contended that the petitioner was booked for performing 04.25 hours Kodad day out duty on 18.02.2014 with Tray No. 926 duly posting tickets worth of Rs. 10,300/-. During the audit the Tray No. 926 was checked by the Auditor and it was found no tickets were available in Tray No. 926, but surprisingly, on 26.05.2014 the petitioner returned tickets worth of Rs. 5280/- and for the remaining tickets worth of Rs. 5020/- he remitted the amount on 26.05.2014. According to the respondents, there is temporary misappropriation of amount resorted to by the petitioner and therefore, he was placed under suspension pending enquiry in to

the charge leveled against him. The version of the respondents is that the charge leveled against him is serious in nature and the charge reveals that there was scope of misuse of tickets and misappropriation of the legitimate revenues of the Corporation from 18.02.2014 to 26.05.2014 which constitutes misconduct as per the APSRTC Employee's (Conduct) Regulations No. 28(x) and (xxxii) of Regulations 1963.

9. Next, it is submitted by the respondents that the Enquiry officer recorded the statements of the Supervisors and also the petitioner and submitted his report on 16.09.2014 holding that the charge framed against the petitioner is proved beyond reasonable doubt. According to the respondents, since the petitioner produced part of the ticket blocks only when the Audit party found irregularities with reference to Tray No. 926, it is obvious that the petitioner has knowledge of whereabouts of the ticket blocks and therefore, the contention of the petitioner that the lapse occurred somewhere cannot be accepted.

10. It is further contended by the respondents that against the impugned order of removal from service dated 03.11.2014 the petitioner has a right of appeal under Regulation 22 of the APSRTC Employees (Classification, Control and Appeal) Regulations 1967 before the Deputy Chief Traffic Manager, Khammam within two months from the date of receipt of the order of removal. Thus, they contend that there is an effective alternate remedy available to the petitioner, and therefore, the writ petition filed by him is not maintainable in law. According to the respondents, there is mala fide intention on the part of the petitioner to misappropriate the ticket blocks worth of Rs. 10,300/- and that the penalty of removal from service imposed against the petitioner is just and proper and commensurate to the gravity of the misconduct committed by the petitioner and therefore, the writ petition is liable to be dismissed.

11. Admittedly, no charge has been framed against the petitioner alleging that either he misappropriated the amount relating to the missing ticket blocks or that he attempted to misappropriate the amount. The charge only states that there is scope to misuse the tickets and misappropriate the revenues of the Corporation during the period from 18.02.2014 to 26.05.2014. Therefore, the Corporation cannot say that either the petitioner misappropriated the amount or that he attempted to misappropriate the amounts for the reason that the charge is specific stating that there was scope for misappropriation of the revenue of the Corporation during the relevant period. Consequently, the substance of the charge only shows that there is negligence on the part of the petitioner in discharging his duties.

12. The Enquiry Officer in his report dated 16.09.2014 has specifically mentioned that in the preliminary enquiry it is proved that K.C.P. Reddy, ADC made a mistake in posting the ticket blocks in Jathara tray instead of Tray No. 006. It is also mentioned that K.C.P. Reddy, ADC has agreed in the enquiry that he advised the petitioner to put the fresh blocks and the SR in the box for Jathara trays in AM (T)'s room because he was busy. It is also mentioned by the Enquiry Officer

that K.C.P. Reddy, ADC posted 7 fresh blocks in the Jathara box so that they would be returned to DC (E), but they were not returned to DC (E), later they were ultimately traced out by the petitioner on 23.05.2014. By advertizing to the said fact, the Enquiry Officer mentioned in his report as follows:

"There is clearly a lapse somewhere. All this happened on 18.02.2014. The Audit took place on 20.05.2014 about 3 months later. Then the conductor returned a few blocks, after he searched in the stored SRs and found them there. If the blocks were found by somebody else they might have misused them."

The Enquiry Officer did not say or mention in his report that the lapse was on the part of the petitioner. In any event, the lapse attributable to the petitioner is that he simply put the blocks in the box for Jathara without handing over the blocks to the ADC (E) or DC (E) and there is scope to misuse the tickets and misappropriate the revenue of the Corporation.

13. Though the petitioner contended that no punishment was imposed against K.C.P. Reddy, ADC, the learned standing counsel for the respondent Corporation placed before this Court the proceedings dated 15.11.2014 which clearly go to show that after issuing charge sheet to K.C.P. Reddy, ADC and considering the explanation submitted by him, a punishment of postponement of annual increment for a period of one year without cumulative effect was imposed on him. Therefore, there is no force in the contention of the petitioner that no action at all has been taken against K.C.P. Reddy, ADC.

14. The learned standing counsel appearing for the respondent Corporation, in support of his contentions, relied upon the judgment of the Hon"ble Supreme Court in Deputy Commissioner, KVS and Others Vs. J. Hussain, wherein it was held that;

"In exercise of power of judicial review, the Court can interfere with the punishment wherever it is found to be irrational or outrageous in defiance of logic. The limited scope of judicial review is permissible and interference is available only when punishment is shockingly disproportionate, suggesting lack of good faith. Otherwise, merely because in the opinion of the Court lesser punishment would have been more appropriate, cannot be a ground to interfere with the discretion of the departmental authorities.

In view of the aforesaid judgment, it is therefore has to be seen whether the punishment imposed on the petitioner is shockingly disproportionate to the alleged misconduct.

15. The learned standing counsel appearing for the respondent Corporation further relied upon a decision of the Hon"ble Supreme Court in Additional District Magistrate (City) Agra Vs. Prabhakar Chaturvedi and Another, , in which case, the delinquent was charged for misconduct of misappropriation of huge amount of Rs. 21,000/- for couple of months. He admitted the charges in writing, therefore, the Hon"ble Supreme Court held that the Enquiry Officer is justified in imposing

the punishment of dismissal from service and the same is not disproportionate to the nature of misconduct.

16. The misconduct alleged against the employee in the case before the Hon"ble Supreme Court, in the opinion of this Court, is altogether different one and more over the employee therein admitted the charges in writing, whereas, in the instant case, the petitioner took defence that he followed the instructions of K.C.P. Reddy, ADC and he never resorted to commit any misconduct. Therefore, the instant case has to be judged with reference to the facts and circumstances of the case and also the nature of the misconduct alleged against the petitioner.

17. One of the important contentions raised by the learned standing counsel appearing for the respondent Corporation is that the petitioner has an effective and efficacious alternative remedy by way of an appeal and therefore, the writ petition filed by him is not maintainable.

18. Having regard to the said contentions, it is necessary to refer to the judgment of the Hon"ble Supreme Court in State of M.P. and Others Vs. Sanjay Nagayach and Others, wherein it was held that;

"The High Court, in our view, has therefore rightly exercised its jurisdiction under Article 226 of the Constitution and the alternative remedy of appeal is not a bar in exercising that jurisdiction, since the order passed by the Joint Registrar was arbitrary and in clear violation of the second proviso to Section 53(1) of the Act."

In view of the above judgment, if this Court is of the opinion that the order passed against the petitioner removing him from service is the result of arbitrary exercise of power or that the appellate remedy is not equally efficacious, certainly this Court can exercise the power of judicial review under Article 226 of the Constitution of India.

19. In the instant case, it is only at the instance of K.C.P. Reddy, ADC the petitioner had placed the ticket blocks in Jathara tray and therefore, K.C.P. Reddy, ADC is mainly responsible for placing the ticket blocks in the wrong tray. As already said, the misconduct attributable to the petitioner is only negligence on his part in not verifying as to in which tray the tickets are to be placed. In such a situation, K.C.P. Reddy, ADC ought to have been punished more severely or equally to that of the petitioner. But a minor penalty of stoppage of one annual increment without cumulative effect was imposed on K.C.P. Reddy, ADC, where the punishment of removal from service was passed against the petitioner. Therefore, this Court is of the considered view that imposing punishment of removal from service against the petitioner and imposing a very lesser punishment against K.C.P. Reddy, ADC who is mainly responsible for the aforesaid misconduct is the result of arbitrary exercise of power in which event this Court can exercise the power of judicial review.

20. In G. Chandrakanth Vs. Guntur Dist. Milk Producers" Union Ltd., learned single Judge of this Court took the view that when the charge leveled against the

delinquent that he planned to deliver certain goods to the contractor expecting some bribes, it is not the case of the disciplinary authority that the delinquent official has accepted the bribe for certain favour shown to the contractor. The learned single Judge held that the petitioner cannot be charged with misconduct of bribery or corruption unless the disciplinary authority is of the opinion that the delinquent official has received the bribe or some illegal gratification as consideration to show certain official favour in favour of the contractor. In the said circumstances, the learned single Judge took the view that the charge is illegal and improper and accordingly quashed the order of removal.

21. In Ch. P. Reddy Vs. APSRTC, Hyderabad and another, while dealing with the similar facts, learned single Judge of this Court held that when there is loss of tickets without there being any misappropriation of amount, the Corporation has to recover from the employee only the cost of printing the tickets, the tray and other articles which the Corporation suffered and not the entire amount covered by the tickets.

22. Turning to the facts of the present case, the charge against the petitioner is that on the instructions of K.C.P. Reddy, ADC he posted the ticket blocks in wrong tray. Even in the charge, it is not stated that the petitioner resorted to temporary misappropriation or attempted to commit misappropriation. When there is no such charge, the act of misappropriation cannot be attributed to the petitioner. The punishment imposed against the petitioner is removal from service, whereas the punishment imposed against K.C.P. Reddy, ADC, who is equally held responsible, is stoppage of one annual increment without cumulative effect. In imposing punishment, the disciplinary authority should be impartial and equal punishment shall be imposed to all the responsible delinquents. In this context, it is relevant to refer to the judgment of the Hon'ble Supreme Court in Rajendra Yadav Vs. State of M.P. and Others, wherein it was held as follows:

"8. We have gone through the inquiry report placed before us in respect of the Appellant as well as Constable Arjun Pathak. The inquiry clearly reveals the role of Arjun Pathak. It was Arjun Pathak who had demanded and received the money, though the tacit approval of the Appellant was proved in the inquiry. The charge levelled against Arjun Pathak was more serious than the one charged against the Appellant. Both Appellants and other two persons as well as Arjun Pathak were involved in the same incident. After having found that Arjun Pathak had a more serious role and, in fact, it was he who had demanded and received the money, he was inflicted comparatively a lighter punishment. At the same time, Appellant who had played a passive role was inflicted with a more serious punishment of dismissal from service which, in our view, cannot be sustained."

9. "The Doctrine of Equality applies to all who are equally placed; even among persons who are found guilty. The persons who have been found guilty can also claim equality of treatment, if they can establish discrimination while imposing punishment when all of them are involved in the same incident. Parity among co-delinquents has also to be maintained when punishment is being imposed.

Punishment should not be disproportionate while comparing the involvement of co-delinquents who are parties to the same transaction or incident. The Disciplinary Authority cannot impose punishment which is disproportionate, i.e., lesser punishment for serious offences and stringent punishment for lesser offences."

23. In the instant case, the disciplinary authority acted in an arbitrary and discriminatory way in imposing the punishment to the co-delinquents. Even otherwise, for the misconduct alleged against the petitioner, the punishment of removal from service is shockingly disproportionate and therefore, this Court can interfere with the quantum of punishment in exercise of power of judicial review.

24. Considering all aspects of the matter, this Court is of the view that the disciplinary authority ought to have imposed the same punishment to K.C.P. Reddy, ADC and the petitioner. Consequently, the punishment of removal from service imposed against the petitioner is modified to that of the punishment imposed against K.C.P. Reddy, ADC i.e. stoppage of one annual increment without cumulative effect. The period of removal from service of the petitioner shall be treated as on duty. It is needless to say that the petitioner is entitled to all consequential benefits in view of the modification of punishment. It is clarified that the amounts paid by the petitioner towards costs of missing ticket blocks shall not be refunded.

25. Accordingly, the Writ Petition is allowed in part. In the circumstances, there shall be no order as to costs.

Pending miscellaneous applications, if any, shall stand closed in consequence.