

(2009) 07 KAR CK 0049
In the Karnataka High Court
Case No : Writ Petition No. 47792 of 2007

Nanjundegowda

APPELLANT

Vs

Karnataka State Road Transport Corporation

RESPONDENT

Date of Decision : 30-07-2009

Acts Referred:

Karnataka State Road Transport Corporation Regulations, 1979 — Regulation 18A

Citation : (2009) ILR (Kar) 3927 : (2009) 5 KCCR 3843

Hon'ble Judges : Huluvadi G. Ramesh, J

Bench : Single Bench

Advocate : Puttige R. Ramesh and P.S. Rajagopal, for the Appellant; R I D'sa, for R1 and R. Hirianna, for R2, for the Respondent

Judgement

Huluvadi G. Ramesh, J.—Petitioner has sought for quashing the order of the Disciplinary Authority at annexure B dated 27.2.2003 and the order passed by the Appellate Authority at annexure C dated 3.10/11/2004 and also to quash the endorsement dated 16.12.2003 at annexure E and to give him promotion from the date the petitioner's junior S Manohar was promoted and for consequential benefits.

2. Heard the counsel for the respective parties.

3. According to the petitioner's counsel, alleging dereliction of duty, various charges were levelled against the workman. While rejecting his reply, without holding an inquiry, impugned order of withholding two increments with cumulative effect came to be passed by the Disciplinary Authority against which, appeal was preferred. The Appellate Authority dismissed the appeal. It is his contention that there is non-application of mind and the order passed by the disciplinary authority as well as by the appellate authority do not sustain on the ground of basic non-compliance of regulations and the law laid down by the Apex Court in the case of O.K. Bhardwaj v. Union of India and others, 2001 (9) SCC 180 and accordingly, he has sought for quashing the orders passed by the respective authorities and to allow the petitions.

4. Per contra, the argument of the counsel representing the Corporation is that the Corporation has taken a decision to give him promotion despite withholding of increments and the recovery made thereon and the impugned orders passed thereon needs no interference.

5. Having heard the counsel for the parties, the point for consideration is whether the respondent authorities are justified in their conduct in imposing punishment and whether the impugned order needs interference.

6. It is seen petitioner is working as a Law Officer. While discharging his duty, on the ground of not following up the matter, an ex parte order came to be passed before the Labour Court wherein the order was against the interest of the management. Ultimately, the management had to incur displeasure in the contempt petition filed as is submitted. The explanation given by the workman is that the file was sent before the appellate authority as such, it could not be produced before the Labour Court and the file was rather being forwarded by the Administrative Section. Despite giving plausible explanation, Disciplinary Authority has rejected the explanation and ordered to withhold two increments with cumulative effect.

7. At this juncture what is to be noted is, in O.K. Bhardwaj's case cited supra, the Apex Court has held:

8. The High Court has recorded its opinion on two questions: (i) that the punishment imposing stoppage of three increments with cumulative effect is not a major penalty but a minor penalty; (ii) in the case of minor penalties, "it is not necessary to give opportunity to the employee to give explanation and it is also not necessary to hear him before awarding the penalty: a detailed departmental enquiry is also not contemplating in a case in which minor penalty is to be awarded.

9. While we agree with the first proposition of the High Court having regard to the rule position which expressly says that "withholding increments of pay with or without cumulative effect" is a minor penalty, we find it not possible to agree with the second proposition. Even in the case of a minor penalty an opportunity has to be given to the delinquent employee to have his say or to file his explanation with respect to the charges against him. Moreover, if the charges are factual and if they are denied by the delinquent employee, an enquiry should also be called for. This is the minimum requirement of the principle of natural justice and the said requirement cannot be dispensed with.

10. Disagreeing with the view taken by the High Court, the Apex Court has observed that imposing punishment of withholding increments with cumulative effect even if it is treated as minor penalty, but opportunity has to be given to the delinquent employee to have his say or to file his explanation with respect to the charges against him. If the charges are factual and if they are denied by the delinquent employee, necessarily inquiry could be held and it is the minimum requirement of principles of natural justice which cannot be dispensed with. The

above proposition speaks to the fact that when such plausible explanation was given and was not accepted, necessarily it was for the Corporation to hold an inquiry regarding proof of the misconduct. As such, if the procedure could have been followed, necessarily there was scope for the workman to explain the circumstances in detail and who has committed actual misconduct could have been ascertained ? whether the petitioner or some other person in the series. Without concluding on this aspect, straight away the disciplinary authority has also jumped to the conclusion holding him guilty of misconduct and, that it is a serious lapse. There appears to be perversity in the order of the disciplinary authority as also in the order of the appellate authority.

11. However, in the circumstances, after a lapse of several years, it may not be possible for the management to initiate a fresh inquiry. In stead, reducing the punishment and warning the petitioner would serve the purpose. Regulation 18(a) of the KSRTC Regulations provides for minor penalties i.e., fine in case of Class III and IV servants, censure, withholding of increments/wages or pay or withholding of promotion. However, even assuming that there is a lapse on the part of the petitioner, by censuring him, it would be sufficient to say that he should be careful in future to avoid happening of such mistakes for which ultimately the management would be held liable before the judicial forum or elsewhere.

12. In that view of the matter, petition is allowed. While quashing the order passed by the Disciplinary Authority as also the Appellate Authority-annexures B and C, the punishment imposed is set aside and in stead, petitioner is censured and directed to be careful in future. However, monetary benefits withheld by the Corporation shall be released in his favour and there shall not be any embargo to claim his promotion and if the promotion to him is deprived, it shall be extended to him at the earliest.

13. In WP 19370/2005, among other prayers, petitioner has also sought for quashing the endorsement dated 11/16th December, 2001 and to promote him to the cadre of Deputy Chief Law officer with effect from 18.10.2003.

14. In view of the observations made in WP 47792/2003, while setting aside the punishment imposed, since there is no stigma except censure and it would not come in the way of considering the petitioner for promotion, while allowing the prayer for granting promotion as per entitlement, the management is directed to extend the petitioner the benefit of promotion as per entitlement. Petition is disposed of in terms of the directions issued in WP 47792/2004.