

(1978) 04 KAR CK 0012
In the Karnataka High Court
Case No : WPS. 1038, etc of 1977

Narayana C.

APPELLANT

Vs

Deputy General Manager, Bts. Divn

RESPONDENT

Date of Decision : 10-04-1978

Acts Referred:

Constitution of India, 1950 — Article 226(1)(B)
Ksrtc Servants (Conduct & Discipline) Regulations, 1971 — Regulation 23(19)

Citation : (1978) 2 KarLJ 318

Hon'ble Judges : Rama Jois, J

Judgement

1. These six writ petitions raise common questions of law and fact. Hence they are being disposed of by this common order.

2. All the petitioners were conductors on the establishment of the Karnataka State Road Transport Corporation (hereinafter referred to as "the Corporation") established under the provisions of the Road Transport Corporation Act, 1950 (hereinafter referred to as "the Act"). Disciplinary proceedings were instituted against each of the petitioners and after finding them guilty of the charges framed against them, they have been dismissed from service by separate orders passed by the Deputy General Manager of the Corporation on the dates mentioned hereinafter:

W. P. No. Name of the Petr. Date of dismissal.

1038/77 R.G. Narayana 31-7-1977

1758 /77 Narasimha Murthy 30-9-1976

1754/77 H.L. Rangaiah 17-6-1976

2270/77 C. Thimmaiah 26-2-1977

2422/77 Julappa 26-4-1976

2517/77 C. Venkatarayappa 6/11-8-1976

The petitioners have presented these writ petitions praying for quashing of the aforesaid orders passed by the Deputy General Manager dismissing them from service.

3. A preliminary objection has been raised on behalf of the respondent to the effect that as specific statutory remedy by way of appeal under Rule 30 of the Karnataka State Road Transport Corporation Servants (Conduct and Discipline) Regulations, 1971 (hereinafter referred to as "the Regulations") is provided and as the petitioners have not availed of that statutory remedy before approaching this Court, this Court has no jurisdiction to entertain the writ petition in view of clause (3) of Art. 226 of the Constitution.

4. An alternative remedy by way of appeal is provided against the impugned orders passed by the Deputy General Manager to the General Manager by virtue of Regulation 30 of the Regulations is not disputed. However, Sri G.B. Raikar, learned Counsel for the petitioners, submitted that these writ petitions are maintainable notwithstanding the alternative remedy, because the impugned orders are made in violation of principles of natural justice and the violation of principles of natural justice amounts to violation of fundamental right guaranteed under Art. 14 of the Constn and, therefore, these writ petitions are maintainable under Article 226(1)(a) of the Constitution.

5. Elaborating his contention, the learned Counsel for the petitioners submitted that in all these petitions, after the evidence was recorded no date of hearing was fixed by the Enquiry Officer and the petitioners were not heard before recording the finding by the Enquiry Officer or before passing the final order of dismissal by the disciplinary authority. He submitted that the denial of opportunity of hearing after recording the evidence on both sides is a clear violation of principles of natural justice and such violation tantamounts to violation of Art. 14 of the Constn.

6. In support of the submission that the violation of principles of natural justice amounts to violation of Art. 14 of the Constn, he referred to the decision of the Punjab High Court in *Balwant Singh v. Deputy Chief Settlement Commr*, AIR. 1965 Punjab 484 and relied on para 21, which reads as follows:

"(21) Regarding the second point which prevails with *Bishan Narain*, it may be observed that if there was an express provision in the Act or the rules requiring a hearing, the matter would probably have never reached this Court. It is for the maintenance of the rule of law enshrined in Art. 14 of the Constn and guaranteed to every citizen of this country that every Court, tribunal or statutory authority, who has to decide anything, which affects or is likely to prejudicially affect the right of any citizen to acquire, hold or dispose of property, etc, must strictly conform to the well-settled principle of natural justice laid down in the maxim *audi alteram partem*."

He next relied on the decision of Jammu & Kashmir High Court in *Gulam Rasul v. State of J & K*, AIR. 1956 J & K. 17. The relevant paras 31 and 34 read as follows:

"(31) The important principle of natural justice is that a person should not be condemned unheard. In this case we have heard the parties at length and the Counsel for the respondent has not been able to satisfy us that the principles of natural justice have been complied with in the present case. It is true that the statement of the petitioner was recorded by the Commission. He was asked questions and the petitioner had to reply those questions. The petitioner made a request that he should be given specific charges which he may have to meet and he should be given time to collect data to meet those charges..... .

* * * * *

(34) The Counsel for the respondent has drawn our attention to some authorities in which it has been held that if a person has been heard orally there is no violation of the principles of natural justice. All these authorities we have studied and we find that in these authorities the party had been apprised of the Specific charges which he had to meet and he had full opportunity to meet the charges levelled against him.

Here the case is quite different. The petitioner did not know whether he was called upon to meet the charges or whether the Commission was functioning as merely a fact-finding commission. He was not apprised of the findings on the basis of which he was punished. In these circumstances there is a clear violation of the principles of natural justice and the infringement of the fundamental right which the petitioner enjoys under Art. 14 of the Constn of India as applied to this State." He also referred to AIR Commentary on Constitution of India by Chitaley & Rao (Vol. 1 at page 1075).

7. On the basis of the aforesaid authorities, the learned Counsel for the petitioners, submitted that as no opportunity of hearing was given to the petitioners by the Enquiry Officer before he recorded the finding or by the disciplinary authority before he passed the final Order, the principles of natural justice stood violated and consequently Art. 14 of the Constitution is violated and if the violation of Art. 14 of the Constn is established, the petitions are maintainable under Article 226(1)(a) of the Constitution and the bar created on the basis of alternative remedy applies only to petitions falling under clauses (b) and (c) of Article 226(1) and not to the petitions falling under clause (a) of Article 226(1) of the Constitution.

8. Sri. B.S. Manjunath, learned counsel for respondent, Submitted that the conduct of the disciplinary proceedings against the employees of the Corporation is regulated by statutory provisions, namely, by the Regulations framed by the Corporation under Sec. 45 of the Act with the previous approval of the State Government and, therefore, there is no scope for invoking the principles of natural justice. He invited my attention to the various provisions contained in the Regulations framed under Secs. 14 and 45 of the Road Transport Corporation Act with the previous sanction of the Government given in Government Order dated 15th March 1972. With particular reference to the stage

at which the petitioners are seeking the right of hearing by the application of the principles of natural justice, he referred to Regulation No. 23(18), (19), (24), (25) and (26) of the Regulations, which read as follows:

"23. Procedure for imposing major penalties.

* * * * *

(18) The Inquiring authority, may after the Corporation servant closes his case, and shall, if the Corporation servant has not examined himself, generally question him on the circumstances, appearing against him in the evidence for the purpose of enabling the Corporation servant to explain any circumstances appearing in the evidence against him.

(19) The inquiring authority may, after the completion of the production of evidence, hear the Presenting Officer, if any, appointed, and the Corporation servant or permit them to file written briefs of their respective cases, if they so desire.

(24) The disciplinary authority if it is not itself the inquiring authority may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of this regulation as far as may be.

(25) The disciplinary authority, shall, if it agrees with the findings of the inquiring authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.

(26) If the disciplinary authority having regard to its findings on all or any of the articles of charge is of the opinion that one or more of the penalties specified in Regulation-18 should be imposed on the Corporation servant, it shall make an order imposing such penalty."

With reference to the aforesaid regulations, he pointed out that under Regulation No. 23(18) in cases where the delinquent official does not examine himself after the evidence against him is recorded, the Enquiry Officer is under an obligation to question the delinquent official in respect of the circumstances appearing against him in the evidence for the purpose of enabling the Corporation, Servant to explain any circumstances appearing in the evidence against him. He submitted that in all these cases the petitioners had examined themselves after the Corporation closed its case and they had given evidence, and therefore they had full opportunity of explaining the circumstances appearing against them in the evidence adduced in support of the charges framed against them. In support of his submission, the learned counsel for the respondent produced the original records relating to disciplinary proceedings and pointed out that every one of the

petitioners had examined themselves after the evidence of all other persons was recorded. He, therefore, submitted that the opportunity of hearing for the purpose of explaining the evidence against them was availed of by them in terms of Regulation 23(18) of the Regulations. He also invited reference to Regulation 23(19) and pointed out that it was discretionary for the inquiring authority to hear the presenting officer, if any, appointed by the Corporation and the Corporation servant or permit them to file written briefs of their respective cases, if they so desire. Thereafter, the disciplinary authority is required to follow the procedure prescribed under Regulation 23 (24) (25) and (26) and there is no obligation on the part of the disciplinary "authority to hear the delinquent official. He submitted that every opportunity which is mandatory under the Regulations has been given to the petitioners and even assuming that there is violation of Regulation 23(19) of the Regulations, the petitioners" have to seek redress by way of appeal under Regulation 30 of the Regulations. In other words, his submission was that as the conduct of the disciplinary proceedings against the Corporation servant is regulated by statutory provisions, there is no scope for invoking the principles of natural justice and, therefore, even assuming there is violation of statutory provisions regulating the disciplinary proceedings, such a ground of attack falls squarely under Article 226(1)(b) and (c) of the Constitution, and consequently in view of clause 3 of Art. 226, the writ petitions are not maintainable in view of statutory alternative remedy available to the petitioners under Regulation 30 of the Regulations.

9. I am of the opinion that the contentions urged for the respondent are well founded. The rules of natural Justice can operate only in the fields not covered by statutory provisions as held by the Supreme Court in the case of *Union of India v. J.N. Sinha*, AIR. 1971 SC. 40. The relevant portion at page 42 reads as follows:

". . . Rules of natural justice are not embodied rules nor can they be elevated to the position of fundamental rights. As observed by this Court in *Kraipak v. Union of India* (AIR 1970 SC 150), the aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law but supplement it."

10. In the Regulations framed by the Corporation, every opportunity that is required to be given to a Corporation servant when disciplinary proceedings are instituted against him is incorporated in the Regulations. In the conduct of disciplinary proceedings against the petitioners and passing the final order if any specific provision of the Regulations was violated, it amounts to violation of a specific statutory provision and such violation forms a ground on the basis of which a writ petition can be filed invoking the provisions of Art. 226(1)(b) and (c) of the Constn. Consequently if a statutory remedy is provided in the statutory provision itself, such a specific alternative remedy bars the entertainment of a writ petition on the grounds mentioned in clauses (b) and (c) of Art. 226(1) of the Constitution.

11. The learned Counsel for the petitioners, however, submitted that a second opportunity by way of hearing or show cause notice at least should have been given by the application of principles of natural justice as the Regulations are silent on this aspect and as such opportunity was not given, the final orders were made in violation of the principles of natural justice and, therefore, violative of Art. 14 of the Constn. The learned Counsel for the respondent, met the aforesaid point urged for the petitioners, by submitting that the giving of a second opportunity before imposing a penalty is not a requirement of natural justice. In support of the above submission, he relied on the decision of the Supreme Court in *S.S. Railway Coy Ltd v. S.S. Railway Workers Union*, AIR. 1969 SC. 513. The relevant portion is at para 18 which reads as follows:

"As regards the modification requiring a second show cause notice, neither the ordinary law of the land nor the industrial law requires an employer to give such a notice. In none of the decisions given by Courts or the tribunals such a second show cause notice in case of removal has ever been demanded or considered necessary. The only class of cases where such a notice has been held to be necessary are those arising under Art. 311. Even, that has now been removed by the recent amendment of that Article. To import such a requirement from Article 311 in industrial matters does not appear to be either necessary or proper and would be equating industrial employees with civil servants. In our view, there is no justification on any principle for such equation. Besides, such a requirement would unnecessarily prolong disciplinary enquiries which in the interest of industrial peace should be disposed of in as short a time as possible. In our view it is not possible to consider this modification as justifiable either on the ground of reasonableness or fairness and should therefore be set aside."

He pointed out that in the light of the above judgment, the contention of the petitioner that on the application of the principle of natural justice, the disciplinary authority atleast should have given a show-cause notice or hearing before passing the final order imposing penalty, cannot be accepted. In the face of the aforesaid decision of the Supreme Court, it is not possible to accede to the contention of the petitioners that the disciplinary authority in not giving a show cause notice or hearing violated any principles of natural justice.

12. In the light of the discussion made as above, I hold that as the conduct of the disciplinary proceedings against the petitioners is regulated by statutory provisions all that the petitioners can complain is that though an opportunity of hearing is contemplated by Reg. 23(19) of the Regulations, in the cases of the petitioners the same was not given and consequently the final order passed against them is illegal. Such illegality therefore, can be founded only on the basis of violation of statutory provisions contained in Regulation 23(19) of the Regulations and not on the ground of violation of principles of natural justice. Therefore, the grievance of the petitioners in these writ petitions in truth and substance is that the impugned Orders of dismissal against them are bad on account of illegality in the proceedings before the authority who conducted the

enquiry against them by the violation of the provisions of the Regulations and such illegality has resulted in substantial failure of justice. Such a grievance squarely falls either under sub-clause (b) or (c) of Art. 226(1) of the Constitution. As there is an alternative remedy, by way of appeal under Regulation 30 of the Regulations, against the impugned orders, the bar created by clause (3) of Art. 226 of the Constitution for the maintainability of the writ petitions on the ground mentioned in Art. 226(1)(b) and (c) of the Constitution comes into operation. Therefore, I accept the contention advanced on behalf of the respondent and hold that the writ petitions are not maintainable.

13. As I have come to the conclusion that the conduct of disciplinary proceedings against the petitioners, who are employees of the Corporation, is fully regulated by the statutory regulations made by the Corporation under Sec. 14 read with Sec. 45 of the Act and, therefore, there is no scope for invoking the principles of natural justice in respect of the specific grievance made out by the petitioners in these writ petitions, it is unnecessary for me to consider the question, viz., whether violation of principles of natural justice tantamount to violation of Article 14 of the Constitution, and therefore I do not express any opinion on the said question.

14. For the reasons aforesaid, the Rule issued in all the above writ petitions are discharged. The writ petitions are dismissed, but without costs.

15. The petitioners are at liberty to approach the appellate authority under the Regulations by way of appeal against the impugned orders. All the other contentions are therefore left open.