

(2013) 09 KAR CK 0040
In the Karnataka High Court
Case No : W.P. No. 2762/2006 (L-KSRTC)

North-West Karnataka Road Transport Corporation

APPELLANT

Vs

A.Y. Pawar

RESPONDENT

Date of Decision : 10-09-2013

Acts Referred:

Citation : (2014) ILR (Kar) 1235 : (2014) 3 KCCR 2107

Hon'ble Judges : Ashok B. Hinchigeri, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ashok B. Hinchigeri, J

1. The petitioner has called into question the award, dated 7.5.2005 (Annexure-E) passed by the Industrial Tribunal, Hubli in I.D. No. 54/2004.

2. The facts of the case in brief are that the respondent, who is working as a Conductor in the services of the petitioner was conducting from Chikkodi to Miraj on 13.3.2002. Near Manjari stage, the bus was intercepted by the squad, which found the wrong punching of the two tickets. Instead of punching the tickets showing the stage from Nos. 1 to 10, the punching showed the stage from Nos. 1 to 7. The petitioner/Management issued the articles of charges, dated 7.6.2002 (Annexure-A). The respondent submitted the reply stating that there were 75 passengers in the bus on the said day. As the bus was moving and as there was overcrowding, one passenger accidentally pushed the hand of the respondent pushing his (the Conductor's) hand from the 10th to 7th hole on the ticket. The petitioner, without holding the enquiry, passed the punitive order, dated 22.8.2002 (Annexure-C) deducting one increment with cumulative effect. This order was set-aside by the Industrial Tribunal, as the punitive order was passed without holding the enquiry.

3. Smt. Sunitha P. Kalasoor, the Learned Counsel for the petitioner submits that as the respondent himself has admitted his misconduct, the question of holding

the enquiry would not arise. She submits that the petitioner/Management has taken a lenient view of what the respondent has done and has therefore imposed only a minor punishment. The petitioner has just deducted one increment. She would contend that for imposing such a minor penalty, the departmental enquiry need not be held under Regulation 28 of the Karnataka State Road Transport Corporation Servants (Conduct and Discipline) Regulations, 1971 ("the said Regulations" for short).

4. Sri Ravi Hegde, the Learned Counsel appearing for the respondent submits that the punitive order is passed mechanically and in the cyclostyled form. While the respondent has explained how the mistake has occurred genuinely, the disciplinary authority has stated that there is no substance in the written statement filed by the respondent.

5. On hearing the Learned Advocates, I formulate the following two questions for my consideration:

(i) Whether the order imposing the punishment of deducting one increment with cumulative effect can be passed without holding the enquiry?

(ii) Whether the punitive orders can be passed using the cyclostyled forms?

6. In Re. Question No. (i): In order to answer this question, it is profitable to refer to Regulations 22(b) and 28 of the said Regulations. They are extracted hereinbelow:

22. Procedure for imposing minor penalties:-

(1) subject to the provisions of Sub-Regulation(26) of Regulation-23 and Regulation-15, no order imposing on a Corporation servant any of the penalties specified in clause (i) to (viii) of Regulation-18 shall be made except after-

(a) informing the Corporation servant in writing of the proposal to take action against him and of the imputations of misconduct or misbehaviour on which it is proposed to be taken, and giving him a reasonable opportunity of making such representation as he may wish to make against the proposal;

(b) holding an inquiry in the manner laid down in Sub-Regulations (3) to (23) of Regulation -- 23, in every case in which the Disciplinary Authority is of the opinion that such inquiry is necessary.

(c) taking the representation, if any, submitted by the Corporation servant under clause-(a) and the record of inquiry, if any, held under clause (b) into consideration; and

(d) recording a finding on each imputation of misconduct or misbehaviour;

28. Special procedure in certain cases:- Notwithstanding anything contained in Regulations-22 to 27.

(i) where any penalty is imposed on a Corporation Servant on the ground of

conduct which has led to his conviction on a criminal charge;

or

(ii) where the Disciplinary Authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these Regulations, the Disciplinary Authority may consider the circumstances of the case and make such orders thereon as it deems fit.

7. In the instant case, admittedly the respondent has not suffered the conviction on any criminal charge. Even in the absence of the criminal charge and conviction, the enquiry can be dispensed with, if it is not reasonably practicable to hold the inquiry. The stand taken is that imposing the punishment of deducting one increment with cumulative effect is a minor punishment and that therefore no enquiry need be held. To test the acceptability of this argument, I may usefully refer to this Court's decision in the case of Ankappa Vs. Management of K.S.R.T.C. Bangalore, , wherein it is held that an enquiry would become unnecessary only in case the disciplinary authority considered it to be so and recorded its opinion in express terms on the said issue. In the case on hand, no documents whatsoever are placed on the record to show that the disciplinary authority has ever recorded such an opinion. It is further held in the said case that while considering the question of either holding or dispensing with an enquiry, the disciplinary authority is bound to consider in a fair and objective manner not only the nature of the charges levelled against the employees but also the nature of the defence set up by the delinquent employees. The relevant portions of the said decision are extracted hereinbelow:

3..... before even a minor penalty could be imposed it is obligatory on the part of the Disciplinary Authority to consider the question of holding or dispensing with an enquiry into the allegations made against the delinquent employees. An enquiry would become unnecessary only in case the Disciplinary Authority considered it to be so and recorded its opinion in express terms on the said issue. Needless to say that while considering any such question of either holding or dispensing with an enquiry, the Disciplinary Authority was bound to consider in a fair and objective manner not only the nature of the charges levelled against the employees but also the nature of the defence set up by him.

4. In the instant case however, the respondents have not been able to demonstrate that the Disciplinary Authority had actually applied its mind to the question of either holding or dispensing with the conduct of the enquiry into the allegations made against the petitioners. Neither the order of punishment issued by the respondents nor any other record for that matter demonstrates either application of mind on the part of the Disciplinary Authority or a conscious decision to dispense with the holding of an enquiry, looking to the nature of the allegations made in the chargesheets. There is therefore no escape from the conclusion that the Disciplinary Authority had palpably failed in the discharge of the obligation cast upon it under Regulation 22-B and in proceeding to impose a

punishment without recording a finding that the holding of an enquiry was unnecessary. The impugned orders are thus unsustainable and have therefore to be quashed.

8. This Court's decision in the case of Hubert Lobo Vs. The Presiding Officer, Labour Court, Mangalore and Others, , is of immense value in deciding this case. It is held therein that the withholding the increment with cumulative effect is a major punishment. A cumulative punishment means a punishment that accumulates or accrues or adds together or a punishment, which continuously increases. The relevant portion of the said decision is extracted hereinbelow:

4. When the punishment imposed is withholding of the increments alone, then as contemplated under Regulation 18-A(iii) of the Karnataka State Road Transport Corporation Servants (Conduct and Discipline) Regulations, 1971, there is no need to conduct a detailed enquiry. On the contrary if the punishment imposed is a major penalty then a detailed enquiry has to be conducted. Therefore the question would be whether the withholding of increments for a period of 6 months with cumulative effect is a major punishment or not. Admittedly such a punishment has a far-reaching effect on the career of the worker and it will affect the prospective earning of the employee, because of stoppage of increments for a period of 6 months. Such a punishment is a serious punishment and it cannot be dealt with summarily. A cumulative punishment means a punishment that accumulates or accrues or adds together or a punishment which continuously increases. It also means a punishment which piles up. It means the said punishment would be said to subsist throughout the career of the employee. It results the employee losing an increment being withheld with cumulative effect, it will result in the punishment visiting the worker through out his career. It does have an adverse effect on the pension that would be earned by him; it will also adversely affect the service benefit. Therefore it has to be held that withholding of increment with cumulative effect is to be treated as a major penalty. With the above noted side effects, one cannot treat it as a minor penalty. If the Management wants to impose a major penalty as in the nature of withholding of increment with cumulative effect a detailed enquiry ought to have been held.....

9. Thus, as the punishment of stoppage of one increment with cumulative effect is held to be a major punishment and as it is imposed without holding the enquiry and as no recording of reasons for dispensing with the enquiry is produced, I answer question No. (i) in the negative and against the petitioner.

10. In Re. Question No. (ii): The punitive order, dated 22.8.2002 (Annexure-C), which fell for consideration before the Industrial Tribunal is in the cyclostyled form. The blanks in the said form are filled in the impugned order. The said punitive order does not even mention what is the charge against the respondent, muchless referring to his explanation. Such cyclostyled orders are not reflective of the application of mind. The giving of the reasons is insisted for, as it minimises the arbitrariness.

11. This Court in the case of Kasim Peer and Co. Vs. Deputy Transport Commissioner, , has this to say in paragraph No. 10 of its decision.

10. I have examined the order passed under Annexure-B. It is no doubt true that the entire order is in a cyclostyled form in Kannada leaving gap in certain places for purposes of making relevant entries before the order is signed by the R.T.O. I also noticed that all the particulars except the signature, have been filled up in the hand-writing, probably of an official of the Department other than the R.T.O., Shimoga. It is a well known principle of law that not only justice should be done but manifestly appear to have been done. There is scope for a feeling that the authority who is empowered to pass a considered order entailing civil consequences has not applied his mind. If an order is to be passed in a cyclostyled form, the officer not even caring to fill up the gaps by making relevant entries himself the feeling is to an extent justified. It is also possible to presume on the basis of the nature of the contents in the cyclostyled form that, that R.T.O. may be proceeding with a closed mind while considering the case. In public administration, a statutory" authority exercising quasi-judicial power should avoid any scope for reasonable apprehension that the person appearing before him in response to a show-cause notice is not receiving fair treatment. What applies to judicial authority in similar circumstances is equally applicable to a quasi-judicial authority. Therefore, I am inclined to believe that the order passed under Annexure-B in cyclostyled form seems to be an order passed mechanically and without application of judicial mind.

12. This Court in the case of V. Mahadeva Vs. The Managing Director, Karnataka State Road Transport Corporation and Another, , has deprecated the practice of issuing the cyclostyled order. The practice of filling up printed forms would defeat the very object of giving opportunities to the concerned persons. This Court has this to say in paragraph No. 6 of its decision:

6. Regulation 22 provides for a reasonable opportunity of making a representation with regard to the proposal. In the case on hand, a representation is made and the said representation is neither considered nor referred to in the cyclostyled order. In these circumstances, I am fully satisfied that the respondents are wrong in issuing this order. I must also notice at this stage that the respondent is a public body and it is a State under Article 12 of the Constitution of India. They are required to act in a fair manner. They have issued a cyclostyled order without even referring to the representation submitted by the petitioner. Cyclostyled orders are to be deprecated as otherwise the very object of opportunity is defeated if the authorities are permitted to fill up the blanks and issue orders affecting the rights of the parties.

13. The consideration of the delinquent's representation, prescribed by Regulation 22(c) cannot be skipped. The term consider" is vividly explained by the Hon"ble Supreme Court in its judgment in the case of Bhikhubhai Vithlabhai Patel and Others Vs. State of Gujarat and Another, .The term "consider" means to think over; it connotes that there should be active application of mind. In

other words, the term "consider" postulates the consideration of all the relevant aspects of the matter. It is also beneficial to refer to what the Apex Court has said in paragraph No. 15 of its judgment in the case of The Barium Chemicals Ltd. and Another Vs. Sh. A.J. Rana and Others, .

15. The words "considers it necessary" postulate that the authority concerned has thought over the matter deliberately and with care and it has been found necessary as a result of such thinking to pass the order. The dictionary meaning of the word "consider" is "to view attentively, to survey, examine, inspect (arch), to look attentively, to contemplate mentally, to think over, meditate on, give heed to, take note of, to think deliberately, be think oneself, to reflect" (vide Shorter Oxford Dictionary). According to Words & Phrases-Permanent Edn: Vol. 8A to "consider" means to think with care. It is also mentioned that to "consider" is to fix the mind upon with a view to careful examination; to ponder; study; meditate upon, think or reflect with care. It is, therefore, manifest that careful thinking or due application of the mind regarding the necessity to obtain and examine the documents in question is sine qua non for the making of the order. If the impugned order were to show that there has been no careful thinking or proper application of the mind as to the necessity of obtaining and examining the documents specified in the order, the essential requisite to the making of the order would be held to be non-existent.

14. The cyclostyled punitive order is bereft of application of mind. As the punitive order visits the person with the civil consequences, it cannot be permitted to be issued in the cyclostyled form. Filling in the blanks in the printed form without even stating the specific charge and without considering the respondent's explanation have rendered the punitive order laconic, to say the least. The second question is answered accordingly.

15. At this juncture, Smt. Sunitha Kalasoor, the Learned Counsel for the petitioner prays for the reserving of the liberty to the petitioner Management to hold the enquiry. In the normal course, I would have acceded to her prayer but an extenuating factor cannot be overlooked. Admittedly, the capacity of a bus is 55 sitting passengers + 10 standing passengers (totally 65). The bus was overloaded by 10 passengers. The petitioner-Management has not found fault with the respondent for the overloading of the passengers. It raises a serious doubt as to whether the petitioner had impliedly permitted the conductor to overload the bus either on account of the non-availability of requisite number of buses or because of the rise in the number of passengers. When the Conductors are impliedly permitted to take more number of passengers than the permitted capacity of the bus, the consequence of the Conductors working under pressure cannot be overlooked.

16. Further, it is not even the case of the petitioner-Management that the respondent has misappropriated any amounts collected from the passengers towards the issuance of the tickets. There are no allegations whatsoever that the respondent has caused any loss to the petitioner-Corporation.. The allegations

made are only of technical nature, which at the most warrants the issuance of an advice memo. I am therefore constrained to turn down the request of the petitioner for imposing the punishment after holding the departmental enquiry at this juncture, that is after, about 11 years of the wrong punching of the tickets. The respondent's explanation for the punching on the wrong hole of the ticket on account of the accidentally pushing of his hand by a passenger in an overloaded bus is worthy of acceptance under the facts and circumstances of the case.

17. Not finding an iota of merit in this case, this petition is dismissed. No order as to costs.