

(2016) 08 KAR CK 0101

In the Karnataka High Court

Case No : Writ Petition No. 24879 of 2016 (S-KSRTC)

R.A. Nagendranath

APPELLANT

Vs

The Karnataka State Road Transport Corporation

RESPONDENT

Date of Decision : 30-08-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Karnataka State Road Transport Corporation Servants (Conduct And Discipline)
Regulations, 1971 — Regulation 23(24)

Citation : (2016) ILRKarnataka 5071 : (2016) 4 KCCR 451

Hon'ble Judges : Raghvendra S. Chauhan, J.

Bench : Single Bench

Advocate : Sri Subramanya Jois, Senior Advocate for Sri Sumanth L. Bhardwaj, Advocate, for the Petitioner; Ms. H.R. Renuka, Advocate, for the Respondent Nos. 1 to 4

Final Decision : Allowed

Judgement

Raghvendra S. Chauhan, J. - The petitioner, Mr. R.A. Nagendranath, has challenged the legality of the order dated 14-1-2016, passed by the Managing Director/the Disciplinary Authority of the Karnataka State Road Transport Corporation, whereby the Disciplinary Authority has appointed Mr. K.G. Lakshmipathi, a retired District and Sessions Judge, as an Inquiring Authority, and has remitted the enquiry back to the Inquiring Authority by invoking his powers under Regulation 23(24) of the Karnataka State Road Transport Corporation Servants (Conduct & Discipline) Regulations, 1971 (for short, "the Regulations"). The petitioner has further prayed that the enquiry notice dated 28-3-2016, which is placed with the impugned order dated 14-1-2016, should also be quashed and set aside by this Court.

2. The material facts of the case are that in 1981, the petitioner joined the Karnataka State Road Transport Corporation (for short, "the K.S.R.T.C") as an Assistant Mechanical Engineer Class - II. During his probationary period, which

was extended for two years from the date of his joining the service, the petitioner was discharged from the service. Since the petitioner was aggrieved by the order of discharge from service, he filed a writ petition before this Court, namely Writ Petition 973/1986. By order dated 3-11-1995, this Court allowed the said writ petition, and directed that the petitioner be reinstated in service with all consequential benefits. Since the respondent - K.S.R.T.C. was aggrieved by the said order, it filed a writ appeal, namely Writ Appeal No. 36/1986. However, by judgment dated 22-10-1997, the said writ appeal was dismissed. Subsequently, the K.S.R.T.C. filed a civil appeal before the Hon"ble Supreme Court, namely Civil Appeal No. 115/1998, but even the said civil appeal was dismissed by the Apex Court by judgment dated 24-4-2000. Having lost its case before the learned Single Judge, before the learned Division Bench, and before the Apex Court, by order dated 21-10-2000, the petitioner was finally reinstated in service.

3. Thereafter, the petitioner was promoted in the cadre of Divisional Mechanical Engineer Class - I Junior with all consequential benefits, and with retrospective effect from 11-2-1989. Since the petitioner was promoted to the post of Mechanical Engineer Class - I Senior with effect from 8-1-1997, he was entitled to a further promotion on the post of Chief Mechanical Engineer (Class - I Selection Grade). However, his claim was overlooked by the respondents. Therefore, the petitioner again filed a writ petition, namely Writ Petition No. 12648/2011, before this Court. This Court, by its order, directed the respondents to promote the petitioner in the said post with retrospective effect from 21-2-2004.

4. Again aggrieved by the order of the learned Single Judge, the respondent, the K.S.R.T.C, filed a writ appeal, namely Writ Appeal No. 17884/2011 before the learned Division Bench of this Court. By judgment dated 14-3-2011, the said writ appeal was dismissed by the learned Division Bench. Eventually, the respondent granted the promotion to the petitioner retrospectively from 21-2-2004.

5. Thereafter, by order dated 9-12-2013, the petitioner was promoted to the post of Senior Divisional Controller (Selection Grade), and posted at Bangalore Metropolitan Transport Corporation (Bangalore East Division), Bangalore. However, by order dated 28-2-2015, the petitioner was transferred and posted at N.W.K.R.T.C, Hubballi, as the Principal of the Regional Training Institute. But since the post of the Principal of the Regional Training Institute was a lower post than the Senior Divisional Controller (Selection Grade), the petitioner claimed that he was reverted to a lower post by such posting. Therefore, for the third time, the petitioner approached this Court and filed a writ petition challenging the order dated 28-2-2015, namely Writ Petition No. 8683/2015. In the said writ petition, the respondents gave an undertaking that they would re-transfer the petitioner. Recording the undertaking given by the respondents, this Court disposed of the said writ petition.

6. Notwithstanding the undertaking given before this Court, the respondents did not re-transfer the petitioner, but continued to post him at Hubballi, on the post

of Chief Planning & Statistical Office, Class-I Selection Grade at the Central Office. Meanwhile, the respondents decided to fill up two posts of Chief Mechanical Engineers by inviting the credentials of five Officers belonging to the lower cadre of Deputy Chief Mechanical Engineers. Since the petitioner was aggrieved by the fact that his candidacy for the said post was overlooked, he approached the Court for the fourth time by filing Writ Petition No. 108192/2015. However, this Court directed the petitioner to submit a representation which has to be decided by the respondents within fifteen days from the date of receipt of the said representation. Since the respondents did not decide the representation filed by the petitioner within the stipulated fifteen days, the petitioner filed a writ appeal before this Court, namely W.A. No. 100796/2015.

7. During the course of the petitioner's service in 2012, the petitioner was working as a Works Manager, Central Workshop - 1, B.M.T.C. Allegedly, the Chargeman of the Workshop reported to the petitioner that stepney assemblies in five vehicles were missing. Even after receiving the said information, allegedly, the petitioner did not take any action on the said information. He further failed to instruct his sub-ordinate officers to take the necessary steps for the safe custody of the stepnies, and to also maintain the records of new vehicles. Allegedly, the respondents suffered a loss of eighteen stepney assemblies. Therefore, the respondents directed one Mr. B.M. Ramachandraiah, the then Chief Security and Vigilance Officer, B.M.T.C., to conduct an investigation with regard to the missing of eighteen stepney assemblies. On 28-7-2012, Mr. B.M. Ramachandraiah submitted his report. On the basis of the report, on 31-7-2013, the petitioner was served with the charge-sheet. The petitioner replied to the same. But as the Disciplinary Authority was dissatisfied with his reply, by order dated 27-3-2014, the Disciplinary Authority appointed an Enquiry Officer. The Enquiry Officer conducted the enquiry.

8. During the course of enquiry, Mr. B.M. Ramachandraiah was examined, on behalf of the Management, as M.W. 1. Although his examination-in-chief was recorded, although three opportunities were given to the Management for producing the said witness for the purpose of cross-examination, the Management failed to do so. Therefore, on 11-11-2014, when a request was made by the Presenting Officer to give a fourth chance to produce the said witness, the said request was declined by the Enquiry Officer. The Enquiry Officer posted the enquiry for the statement of the Delinquent Officers, for the arguments, and for closing the enquiry. On the next date, i.e. on 18-11-2014, the petitioner submitted his written statement, and the Co-delinquent Officer sought time for submitting his statement. On the next date of hearing, namely 16-12-2014, the Presenting Officer also submitted his submission. After going through the evidence produced by the Management, the Enquiry Officer submitted his report on 16-12-2014. He clearly held that the Management had failed to prove the charges levelled against the petitioner.

9. Having received the enquiry report, with its categorical finding, the

respondents went into a coma for two long years. It is only on 14-1-2016 that the respondents issued the impugned order, thereby, appointing a new Inquiry Officer, and remitting the case for re-initiating the enquiry from the moment the cross-examination of M.W. 1 was to be begin. Hence, the present petition before this Court.

10. Mr. Subramanya Jois, the learned Senior Counsel for the petitioner, has raised the following contentions before this Court: firstly, according to Regulation 23(14) of the Regulations, on the date fixed for the inquiry, the oral and documentary evidence on which the Management proposes to rely upon, in order to prove the articles of charges, such evidence shall be produced before the Enquiry Officer. The witnesses should be examined by the Presenting Officer, and would be subject to cross-examination on behalf of the Delinquent Officer. Moreover, according to Regulation 23(15) of the Regulations, the Inquiring Authority may allow the Presenting Officer to produce the evidence not included in the list given to the Delinquent Officer, or the Inquiring Officer may call for new evidence, or recall, and to re-examine the witness.

Secondly, although Regulation 23(24) of the Regulations empowers the Disciplinary Authority to remit an enquiry back to the Inquiring Authority for further inquiry, but the Disciplinary Authority must record his reasons for remitting the inquiry.

Thirdly, the reasons recorded by the Disciplinary Authority are clearly untenable. According to the impugned order, the Disciplinary Authority is of the opinion that the Management should have been given an opportunity to produce all the relevant witness, and Management should have further be given an opportunity to produce M.W. 1 for further cross-examination. Since these opportunities were not given by the Enquiry Officer, the Disciplinary Authority thought it pertinent to remit the enquiry back to a newly appointed Enquiry Officer. However, according to the learned Senior Counsel, thrice opportunities were given to the Management to produce M.W. 1 for cross-examination by the Disciplinary Authority. But the Management had failed to produce its own witness. Moreover, there was no request made by the Management to produce any further evidence, for the purpose of establishing the charges levelled against the petitioner. In fact, the Management had submitted a written statement, thereby clearly indicating that it had no further evidence to produce on its part. Therefore, the reasons given by the Disciplinary Authority are legally untenable. Thus, the impugned order dated 14-1-2016 deserves to be set aside by this Court.

11. On the other hand, Ms. H.R. Renuka, the learned counsel for the respondents, has vehemently contended that the purpose of holding an enquiry is to reach the truth. Therefore, the Enquiry Officer should have permitted the Management to produce its witness, M.W. 1, so that, he could be further subjected to a cross-examination by the petitioner. Thus, the cross-examination of the witness would have been in favour of the petitioner, as the petitioner would have an opportunity to test the veracity of the witness. But

notwithstanding the relevance of cross-examination, the Enquiry Officer had declined the request of the Presenting Officer.

Secondly, no opportunity was given to the Management to produce other relevant documents. Therefore, the truth could not be discovered. Hence, the Disciplinary Authority was justified in invoking its powers under Regulation 23(24) of the Regulations, and remitting the enquiry back to the Inquiring Authority. Hence, the learned counsel has supported the impugned order.

12. Heard the learned Counsel for the parties, and perused the record, and examined the impugned order.

13. Regulation 23(14) of the Regulations is as under:

"14). On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of the Disciplinary Authority. The witnesses shall be examined by or on behalf of the Presenting Officer and may be cross-examined by or on behalf of the Corporation servant the Presenting Officer shall be entitled to re-examine the witnesses on any points on which they have been cross-examined, but not on any new matter, without the leave of the Inquiring Authority the Inquiring Authority may also put such questions to the witnesses at it thinks fit."

14. Regulation 23(15) of the Regulations is as under:

15). If it shall appear necessary before the close of the case on behalf of the Disciplinary Authority, the Inquiring Authority may, in its discretion, allow the Presenting Officer to produce evidence not included in the list given to the Corporation servant or may itself call for new evidence or recall and re-examine any witness and in such case the Corporation servant shall be entitled to have, if he demands it, a copy of the list of further evidence proposed to be produced and an adjournment of the inquiry for three clear days before the production of such new evidence, exclusive, of the day of adjournment and the day to which the inquiry adjourned. The Inquiring Authority shall give the Corporation servant an opportunity of inspecting such documents before they are taken on the record. The Inquiring Authority may also allow the Corporation servant to produce new evidence if it is of the opinion that the production of such evidence is necessary in the interests of justice.

Note- New evidence shall not be permitted or called for or any witness shall not be recalled to fill up any gap in the evidence. Such evidence may be called for only when there is an inherent lacuna or defect in the evidence which has been produced originally."

15. A bare perusal of Regulations clearly reveal that while prescribing an elaborate procedure to hold an enquiry for imposing major penalties, each step of the enquiry is prescribed under Regulation 23 of the Regulations. According to Regulation 23(14) of the Regulations, an opportunity for producing the oral and documentary evidence, on part of the Management, is given to the Management

in order to prove its case against the Delinquent Officer. According to Regulation 23(15) of the Regulations, the Inquiring Authority may allow the Presenting Officer to call a witness on his own, and to recall and re-examine any witness produced by the Management. However, the Note appended to Regulation 23(15) of the Regulations clearly indicates that new evidence should not be permitted or called for, or any witness should not be recalled so as to permit the Management to fill up any gap in the evidence. Such evidence or witness may be called for only when there is an inherent lacuna or defect in the evidence which has been produced originally. This Note is pertinent for the understanding of the power granted to the Disciplinary Authority under Regulation 23(24) of the Regulations.

16. Regulation 23(24) of the Regulations is as under:

"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."

17. A bare perusal of the provision clearly reveals that it bestows a power upon the Disciplinary Authority to remit the case to the Inquiring Authority for further enquiry, after recording the reasons in writing for remitting the case.

18. Although the learned counsel for the respondents has pleaded that the power to remit can be exercised in order to discover the truth, but keeping in mind the Note appended to Regulation 23(15), obviously, the said power cannot be used for filling up any gap in the evidence left by the Management, during the enquiry proceedings. If the power to remit were to be interrupted in such a vast manner then the power to remit would permit the Management to fill up all the gaping holes left by it in the enquiry proceedings. A departmental enquiry is akin to a trial. Therefore, the enquiry proceedings should be fair both to the Management and to the Delinquent Officer. Thus, the power to remit cannot be interpreted so broadly as to arm the Management with the power to fill up the lacunae left by it during the Enquiry proceedings. Such interpretation would bestow a uncontrolled colossal power upon the Management, and would leave the Delinquent Officer powerless in challenging the punishment order.

19. The issue before this Court is whether the Disciplinary Authority is justified in remitting the enquiry back to the Enquiry Authority or not?

20. As mentioned above, the Disciplinary Authority was of the view that an opportunity to produce MW-1 for cross-examination should have been given by the Enquiry Officer. Moreover, the Management should have been given an opportunity to produce other relevant witnesses in order to establish its case. However, as neither of these two opportunities were given to the Management, the enquiry had to be remitted back to the Disciplinary Authority.

21. Upon an order issued by this Court, the respondents have produced the order

sheets of the Enquiry Officer which is relevant for the decision of this case.

22. A bare perusal of the order sheet clearly reveals that Mr. B.M. Ramachandraiah was examined as MW-1 on 5.9.2014. His examination-in-chief was marked as Ex. P-1. Subsequently on 9.10.2014, neither the witness, nor the Presenting Officer was present before the Enquiry Officer. Therefore, the enquiry was fixed for 29.10.2014. On 29.10.2014, again MW-1 was absent, and an assurance was given by the Presenting Officer that on the next date, MW-1 would be present so that he can be cross-examined by the delinquent officer. However, even on 11.11.2014, MW-1 was absent. At this juncture, the Presenting Officer has prayed for a fourth opportunity for producing MW-1. However, as three opportunities had already been granted, and considering the fact that an undertaking was given by the Presenting Officer on 29.10.2014 to produce the witness on the next date, the Enquiry Officer declined the request of the Presenting Officer, and refused to give any further dates for producing the said witness.

23. Furthermore, according to the order sheet dated 18.11.2014, while the petitioner had submitted his written statement, the other co-delinquent officer had sought time to submit his written statement. Hence, the enquiry was adjourned till 16.12.2014. On 16.12.2014, both the co-delinquent officer, and the Presenting Officer submitted their written statements.

24. A bare perusal of the order sheet further reveals that at no point of time did the Presenting Officer make a request that the management be permitted to produce other relevant witnesses in order to establish its case against the delinquent officers.

25. Therefore, the reasons given by the Disciplinary Authority that an opportunity had to be given for cross-examining MW-1 by the delinquent officer, and that the Management should be given a chance to produce other relevant witnesses, is belied by the order sheet of the Enquiry Officer itself. Thrice the management was given a chance to produce its witness so that he could be subjected to cross-examination; thrice the management had singularly failed to do so. Therefore, the Disciplinary Authority is not justified in claiming that the Enquiry Officer should have given further chance to the management to produce the said witness. After all, Enquiry Officers cannot be expected to wait endlessly for the management to produce its witnesses. Moreover, since no request was made by the Enquiry Officer to produce other relevant witnesses, the Enquiry Officer cannot be blamed for closing the enquiry. Therefore, the second reason given by the Disciplinary Authority that an opportunity should have been given to produce other relevant witnesses is a reason not supported by the order sheet. If the Management had chosen not to produce any relevant witnesses in order to further establish its case, again the Enquiry Officer cannot be blamed for closing the enquiry. Hence, both the reasons given by the Disciplinary Authority are without any justification. The reasons seem to be merely an excuse to reopen a departmental enquiry against the petitioner, and that too, after a lapse of two

years. The delay on the part of the Disciplinary Authority for two years is also inexplicable. Therefore, this Court is of the opinion that the Disciplinary Authority is unjustified in reopening an enquiry which had come to its natural conclusion.

For the reasons stated above, this Writ Petition is, hereby, allowed. The impugned order dated 14.1.2016 is set aside. No order as to costs.