
(1996) 07 AP CK 0015

In the Andhra Pradesh High Court

Case No : Writ Petition No. 6691 of 1988

S. Pushpa Raj, Tyre Mechanic

APPELLANT

Vs

Depot Manager, APSRTC and Others

RESPONDENT

Date of Decision : 24-07-1996

Acts Referred:

Andhra Pradesh State Road Transport Corporation Employees (Conduct) Regulations, 1963 — Regulation 28

Citation : (1996) 3 ALD 586 : (1996) 3 ALT 455

Hon'ble Judges : S.R. Nayak, J;P. Venkatarama Reddi, J

Bench : Division Bench

Advocate : S. Ravindranath, for the Appellant; A. Vyjayanthi, for the Respondent

Final Decision : Allowed

Judgement

S.R. Nayak, J.—The petitioner has assailed the validity of the Appellate Order dated 31-12-1987 passed by the Divisional Manager, Nizamabad affirming the order of the Depot Manager, APSRTC, Armour dated 4-7-1987 reverting the petitioner from the post of Tyre Mechanic to the post of Cleaner as a measure of punishment for an alleged misconduct.

2. The petitioner, while working as Tyre Mechanic, was charge-sheeted for an alleged misconduct, a "misconduct" as defined in Clause (ix)(a) of Regulation 28 of the APSRTC Employees' Conduct Regulations, 1963. The petitioner submitted his explanation. Not being satisfied with the explanation, the domestic enquiry was conducted against the petitioner. The Disciplinary Authority passed the order on 4-7-1987 reverting him to the post of cleaner as a measure of punishment. From the records, it seems that at that stage the petitioner without exhausting the alternate appellate remedy under the Regulations, approached this Court by filing Writ Petition No. 16719 of 1987 and this Court disposed of the writ petition without granting any relief, but reserving liberty to the petitioner to prefer appeal to the second respondent who is specified as the appellate authority under the Regulations. The petitioner preferred an appeal to the second respondent. The

appeal was also dismissed. Hence this writ petition.

3. The learned Counsel appearing for the petitioner firstly contended that the charges framed against the petitioner are quite vague and incapable of being understood comprehensively in order to offer an effective explanation or reply and on that count alone the action of the disciplinary authority should be held to be illegal. Secondly, the learned counsel submitted that the allegations in charge No. 2, even if it is held to be proved, does not constitute misconduct within the meaning of that term as defined in Clause (ix)(a) of Regulation 28. Thirdly, the learned counsel would contend that in the absence of any substantial evidence to support the charges, the disciplinary authority is not justified in imposing a major penalty like reversion. The learned Standing Counsel appearing for the Corporation has, on the other hand, supported the impugned action. The Departmental Enquiry File is not produced before us.

4. We find considerable force in the contentions of the learned counsel for the petitioner.

5. The charge Nos. 1 and 2 framed against the petitioner read as under:

"1. For having failed to improve the tyre performance right from the beginning i.e., from the date of your reporting at Armoor Depot, most of the tyres have not obtained targeted mileage which resulted serious loss to the Corporation which constitutes misconduct under Regulation No. 28(ix)(a), (b) and (xix) of APSRTC Employees" (Conduct) Regulations, 1963.

2. You have worked during the month of October, 1986 21 days and November, 1986 21 days which resulted in increase of New Tyres Scrap and decreases on overall tyre mileage. This shows your gross negligence in performing your duties which constitutes misconduct under Regulation No. 28(ix)(a) of APSRTC Employees (Conduct) Regulations, 1963."

6. When an employer proposes to initiate departmental/domestic enquiry on a charge of misconduct, not only the charge-sheet should be given to him in writing but also the charge should not be vague. If this is not done, it can be said that the rules of natural justice have not been followed. Vague can be considered as the antonym of definite. The charge-sheet must be specific and must set out all the necessary particulars. The particulars thus set out combined together should constitute a particular misconduct. Charge need not be framed with the precision of charge in criminal proceedings, but it must not be vague or so general as to make it impossible of being traversed. The test is whether the charges convey to the employee concerned the exact nature of the alleged misconduct in a way that would enable him to meet the charge. Now, look at Charge No. 1. It is as vague as it could be. Details of the tyres which have failed to achieve targeted mileage and how the petitioner's conduct in not achieving the target are not set out in the charge. It also does not disclose quantum or extent of loss suffered by the Corporation on account of the alleged negligence of the petitioner. Therefore, we hold that charge No.1 is very vague and it fails to

convey to the petitioner the exact nature of the alleged negligence on his part.

7. Charge No. 2, even if it is accepted as true, will not constitute misconduct within the meaning of Clause (ix)(a) of Regulation 28. Clause (ix)(a) of Regulation No. 28 reads as under:

"gross negligence resulting in or likely to result in serious loss to the Corporation or inconvenience to the public or both."

Charge No. 2 states that the petitioner worked only for a period of 21 days during the month of October, 1986 and 21 days during the month of November 1986. It does not state that the petitioner remained absent on the remaining days of those two months without proper sanction of leave or unauthorisedly. However, an allegation of unauthorised absence from duty was set against the petitioner both by the Disciplinary Authority and the Appellate Authority. An allegation which is not an integral part of the charge framed against a delinquent employee will not be a valid basis for imposing penalty and if such a course is permitted, it will violate principles of natural justice and fair play. Therefore, the allegation of unauthorised absence to which reference is made by the Disciplinary Authority as well as by the Appellate Authority in their award should be eschewed, and if that allegation is eschewed, charge No. 2, as it is, does not constitute misconduct within the meaning of that term as defined in Clause (ix) (a) of Regulation 28.

8. Now advertent to the last contention of the learned counsel for the petitioner, we may state that the explanations of the petitioner to the charge-sheet did not receive proper and fair consideration at the hands of the Disciplinary Authority and the Appellate Authority. Both the disciplinary authority and the appellate authority have casually adverted to the explanations without recording specific finding on the defence put forth by the petitioner except stating generally that the petitioner has not offered any satisfactory reply. Fair play in action requires that the disciplinary authority shall consider the defence of the delinquent with open mind and judiciously. Evidence of Sri T. Rajaram, management witness, is quite scanty and vague. There is no other evidence to bring home the charges.

9. In the result for the aforementioned reasons, the impugned action of the respondents cannot be sustained. Accordingly, the writ petition is allowed and the impugned order is quashed. The petitioner is entitled to all the reliefs, pecuniary and otherwise flowing from the quashing of the impugned order. No costs.