

(1999) 08 AP CK 0120

In the Andhra Pradesh High Court

Case No : Writ Petition No. 12832 of 1992

S.F. Hussain

APPELLANT

Vs

APSRTC, Hyd. and others

RESPONDENT

Date of Decision : 26-08-1999

Acts Referred:

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

Citation : (1999) 6 ALD 759 : (1999) 5 ALT 664

Hon'ble Judges : B. Sudershan Reddy, J

Bench : Single Bench

Advocate : Mr. A.K. Jaya Prakash Rao, for the Appellant; Mr. C.V. Ramulu, SC for APSRTC, for the Respondent

Judgement

1. Heard Sri A.K Jaya Prakash Rao, the learned Counsel for the petitioner and Sri C.V. Ramulu, the learned Standing Counsel for the Andhra Pradesh State Road Corporation.

2. The petitioner in the instant writ petition challenges the order passed by the Appellate Authority dated 14-6-1991 in so far as it concerns with the imposition of punishment reverting the petitioner as Assistant Depot Clerk permanently. The petitioner also questions the order passed by the Reviewing Authority confirming the order passed by the Appellate Authority, through proceedings dated 30-6-1992.

3. Facts in brief may be noticed before advertng to the question that would arise for consideration. The petitioner was served with a charge-sheet dated 11-1-1990, while he was working as Depot Clerk under the control and jurisdiction of the 4th respondent. The following charges were levelled against him:

"Charge No. 1:

For having failed to discharge his legitimate duties which has resulted in shortage

of T & P items, which is misconduct in terms of Regulation 28(ix)(a) of Andhra Pradesh State Road Transport Corporation Employees (Conduct) Regulations, 1963.

Charge No.2:

For having failed to inspect the T & P Room regularly which has resulted in theft of Tape Recorder which is misconduct in terms of Regulation 28(ix)(a) of Andhra Pradesh State Road Transport Corporation Employees (Conduct) Regulations, 1963.

Charge No. 3:

For having failed to hand-over the keys daily to Security Branch which is misconduct in terms of Regulation 28(ix)(a) of Andhra Pradesh State Road Transport Corporation Employees (Conduct) Regulations, 1963.

Charge No.4:

For having keeping the T & P Room Keys with him which is mis-conduct in terms of Regulation 28(ix) (a) of Andhra Pradesh State Road Transport Employees (Conduct) Regulations, 1963,

Charge No.5:

For having failed to check the materials regularly in the T & P room which is misconduct in terms of Regulation 28(ix)(a) of Andhra Pradesh State Road Transport Corporation Employees (Conduct) Regulations, 1963.

Charge No. 6:

For having found 18 items of Tools and Plants Room short when Audit took place which is mis-conduct in terms of Regulation 28(ix)(a) of Andhra Pradesh State Road Transport Corporation Employees (Conduct) Regulations, 1963."

The petitioner submitted a detailed explanation in the matter. An Enquiry Officer was appointed to make an enquiry into the charges levelled against the petitioner. The Enquiry Officer submitted his report stating that all the charges framed against the petitioner are held proved. The Disciplinary Authority issued a further show-cause notice to the petitioner along with the copy of the Enquiry Officer's report asking for the explanation of the petitioner. The Disciplinary Authority, having considered the explanation of the petitioner, passed an order on 19-8-1991 removing the petitioner from service. The petitioner preferred an appeal against the said order and the Appellate Authority, having heard the appeal, upheld the order passed by the Disciplinary Authority and modified the punishment and reduced the same to that of reversion from the post of Depot Clerk to the post of Assistant Depot Clerk permanently with immediate effect and ordered his reinstatement into service duly treating the period of his absence from duty with effect from the date of suspension till the date of his joining the duty as "not on duty". The Reviewing Authority confirmed the order passed by

the Appellate Authority.

4. In this writ petition, Sri A.K. Jayaprakash Rao, the learned Counsel for the petitioner contends that the enquiry report is submitted by an officer other than the one who made the enquiry in the matter, and therefore, no reliance could be placed by the Disciplinary Authority on the enquiry report submitted by the Enquiry Officer. In the counter-affidavit filed by the respondents, it is explained in categorical terms that the Enquiry Officer was appointed by designation and not by name. No individual as such has been appointed to make the enquiry, but an officer has been appointed by designation. It is not as if an Officer inferior in rank and not a designated officer has submitted the report. However, Sri A.K. Jayaprakash Rao, the learned Counsel has not really pressed this contention. Even otherwise, the enquiry report and the proceedings, in my considered opinion, do not suffer from any legal or jurisdictional infirmities.

5. The learned Counsel for the petitioner next contends that neither the Disciplinary Authority nor the Appellate Authority has taken into consideration the evidence and the material available on record. It is urged by the learned Counsel that the Authorities have not even adverted to the evidence given by the petitioner in support of his case. I have carefully gone through the order passed by the Disciplinary Authority as well as the Appellate Authority. The order passed by the Disciplinary Authority would disclose that the entire material available on record has been taken into consideration in arriving at the conclusion with regard to each and every charge framed against the petitioner. The evidence given by one K. Gourishankar, M.N. Swamy, K. Hussain and K.B. Reddy has been taken into consideration and subjected to meticulous analysis by the Disciplinary Authority. However, the learned Counsel for the petitioner submits that the evidence given by them does not support any of the allegations levelled against the petitioner. According to the learned Counsel for the petitioner, the evidence has not been properly appreciated and some portions of the evidence given by them escaped the attention of the Disciplinary Authority. According to the learned Counsel for the petitioner, it is a case of non-consideration of evidence. I find it very difficult to accede to the submission. It appears that the Disciplinary Authority not only considered the evidence available on record but also conducted a spot inspection in reaching the conclusion that it is the petitioner, who is responsible for missing of the Tape Recorder. The Disciplinary Authority came to the conclusion that the petitioner has been voluntarily negligent in discharging his legitimate duties, which has resulted in shortage of certain items.

6. The contention put-forth by the learned Counsel for the petitioner that the Disciplinary Authority failed to take into consideration the evidence given by the petitioner, is also not correct. In fact, it is required to notice that during the course of the enquiry, the petitioner herein stated that his reply to the charge-sheet may be treated as his evidence. Therefore, evidence as such has been given by the petitioner. This statement given by the petitioner in reply to the charge-sheet has been taken into consideration by the Disciplinary Authority.

Every conceivable aspect of the defence has been taken into consideration and in the process, the Disciplinary Authority observed that the plea put-forth by the petitioner was contradictory. The Disciplinary Authority refused to accept the contention of the petitioner that he was over-burdened with the duties of Depot Clerk (Oil) and the Depot Clerk (T&P). It was his case that the Depot Manager threatened him to take the charge of Depot Clerk (T & P) on pain of suspension in case of refusal and under compulsion, he agreed to undertake the said job. This plea has been rejected by the Disciplinary Authority. It is observed by the Disciplinary Authority that the 1st duty of every Depot Clerk is to check the T & P items daily with reference to the register mentioned for that purpose. But the petitioner failed to do so, and he has admitted in the explanation to the charge-sheet that he used to check now and then the T & P items whenever the T & P were required by the garage staff. The Disciplinary Authority noticed that during the course of enquiry, the petitioner stated that he was in the habit of checking the T & P room once in two days. Both the pleas and the statement made by the petitioner were compared by the Disciplinary Authority and came to the conclusion that the pleas were self- contradictory. It is also observed by the Disciplinary Authority that the 2nd duty of the Depot Clerk is to check the T & P room daily, and the petitioner failed to discharge his duty. The Disciplinary Authority had also taken note of the fact that an incident of theft had occurred on 3-7-1989 in the Tools and Plant Room (T & P Room) of the very same department, and the petitioner, under those circumstances, ought to have been more careful in discharging his legitimate duties. The Disciplinary Authority also observed that the 3rd duty of the Depot Clerk is to handover the key of T & P Room daily in the Security Branch Room, as a security measure, but the petitioner failed to do so, which he has admitted in his explanation. The defence of the petitioner that his predecessor instructed and advised him not to handover the key of T & P Room in the Security Branch Room daily in order to secure the items without handing over the key of T & P Room in the Security Branch Room, has not been accepted. Under those circumstances, the Disciplinary Authority came to the conclusion that the petitioner is guilty of all the charges, and on account of his negligence, the Corporation has lost its property. It is not necessary to refer to each of the charges and the findings recorded by the Disciplinary Authority. Suffice it to notice that the Disciplinary Authority adverted to every conceivable aspect of the matter and the evidence available on record and recorded findings in respect of each charge. The petitioner's explanation to the charge-sheet, which he wanted to treat as statement, has also been taken into consideration while arriving at the conclusions. The Disciplinary Authority accordingly came to the conclusion that the petitioner willfully kept the T & P Room's key with him with a mala fide intention and his explanation in the matter is an afterthought. The Disciplinary Authority accordingly came to the conclusion that the petitioner was negligent in discharging his duties and failed to guard the property of the Corporation diligently. The petitioner failed to take precautionary measures to avoid theft of articles from the T & P Room.

7. In the above circumstances, it cannot be said that the Disciplinary Authority failed to take into consideration the evidence and material available on record.

8. It is one of those rare cases, where the Appellate Authority adverted to each and every ground of appeal and elaborately considered the matter once again as if it was a original proceeding. The Appellate Authority adverted to each of the charges and material available on record and arrived at its own independent conclusions. The petitioner has been provided with a reasonable opportunity of being heard in the matter. The Appellate Authority appears to have even conducted spot inspection of the room where the articles including the tape-recorder were found missing. Such an inspection was held by the Appellate Authority with a view to ascertain and find out the correctness of the defence put-forth by the petitioner. Upon such spot inspection and perusal of the photographs of the location of the T & P Room, the Appellate Authority found that it is the petitioner, who was responsible for the missing of the tape -recorder and other tools and plant items. The Appellate Authority accordingly held that the petitioner is guilty for the items found missing from his care and custody. It is a categorical finding by the Appellate Authority that the petitioner is responsible for missing of the items, especially the tape-recorder and other items. However, the Appellate Authority, having regard to the facts and circumstances of the case and in view of the long service rendered by the petitioner to the organisation, thought it fit to modify the punishment and accordingly altered the punishment to that of reversion from that of removal. The order passed by the Appellate Authority would show the intense application of mind. The Appellate Authority in fact took a lenient view and in its discretion, thought it fit to modify the punishment and accordingly modified the same. The charges framed against the petitioner are serious in nature. Ultimately, it was found that the property belonging to the Corporation was lost on account of the negligence on the part of the petitioner. Tie petitioner alone was found responsible for the missing of the articles.

9. It is not possible for this Court to appreciate the evidence on record. Sri Jayaprakash Rao, the learned Counsel for the petitioner, however, made an attempt to read the evidence available on record and the statements purported to have been given by the witnesses examined on behalf of the Corporation. Such a course is not permissible. A bare reading of the orders passed by the Disciplinary Authority as well as the Appellate Authority would, in unmistakable terms, disclose the consideration of evidence available on record. Therefore, this Court cannot go into the evidence once again and substitute its own findings for that of the Authorities.

10. It is true, as contended by the learned Counsel for the petitioner, that the Reviewing Authority has not passed any elaborate order. But, the Reviewing Authority concurred with the order passed by the Appellate Authority and gave its own findings for such concurrence. It does not suffer from any infirmity.

11. The punishment inflicted upon the petitioner cannot be said to be totally disproportionate to the proved misconduct. At any rate, it cannot be said to be

shockingly disproportionate to the proved misconduct.