

(2001) 07 KAR CK 0046
In the Karnataka High Court
Case No : Writ Petition No. 33262 of 1994

V.S. Sajjan

APPELLANT

Vs

Karnataka State Road Transport Corporation, Bangalore and
another

RESPONDENT

Date of Decision : 24-07-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2001) ILR (Kar) 4507 : (2001) 4 KCCR 2605

Hon'ble Judges : H.L. Dattu, J

Bench : Single Bench

Advocate : Sri S.V. Narasimhanfor Sri B. Prabhu Devaru, for the Appellant; Sri P.R. Ramesh, for the Respondent

Final Decision : Dismissed

Judgement

The Court

1. An officer employee of the Karnataka State Road Transport Corporation ("Corporation" for short), being aggrieved by the order made by the disciplinary authority of the Corporation dated 27-9-1993 (Annexure-K to the writ petition) and the orders made by the Appellate Authority dated 19-9-1994 (Annexure-M to the writ petition), is before this Court in a petition filed under Articles 226 and 227 of the Constitution, inter alia seeking a writ to quash the impugned orders and to direct the respondent-Corporation to reinstate the petitioner into service with all consequential service and monetary benefits.

2. The facts in nutshell are:

Petitioner had joined the services of the respondent-Corporation as Assistant Mechanical Engineer and subsequently he was promoted to the post of Divisional Mechanical Engineer. In that capacity, he worked in the Corporation during the period 1973 to 1979. Later he was promoted as Divisional Controller and was posted to Bellary Division of the respondent-Corporation, and worked in that

place during the period 11-5-1990 till 2-4-1991, By an order made on 1-4-1991, petitioner was promoted as Regional Manager, Hubli Region, Hubli, by the respondent-Corporation and he was relieved as a Divisional Controller, Bellary Division, on 2-4-1991 itself. At this stage, it is pertinent to state that, apart from other statutory duties and functions, the Divisional Controller will also be exercising his powers as disciplinary authority in some of the cases against the employee officers and workmen working in his Division.

3. Petitioner while he was working as a Regional Manager at Hubli Division, was served with a charge memo dated 18-9-1992 containing certain acts of misconduct said to have been committed by the petitioner on the eve of his transfer to Hubli Region on promotion. According to the disciplinary authority, the acts of misdemeanour alleged in the charge memo would constitute acts of misconduct within the meaning of sub-regulation (1) of Regulation 3 of Karnataka State Road Transport Corporation Servants (C & D) Regulations, 1971. The charge memo contained three charges. They are as under:

"Articles of Charge

1. I, T. Dhandashekar, Managing Director of KSRTC, am satisfied on the basis of the materials placed before me that there are grounds to enquire into the truth of imputations of misconduct reported against you. Sri V.S. Sajjan in the matter of disposal of default cases on the eve of your transfer to Hubli Region on promotion. In exercise of the powers conferred on me by Regulation 19(2) read with Regulation 23(2) of the KSRTC Servants (C & D) Regulations, 1971, I charge you for the following acts of misconduct committed by you while working in Bellary Division in the year 1991.

2. Charges

I. Gross misconduct by deliberately disobeying the circular instructions issued vide No. 536, dated 29-7-1983 by disposing of 14 default cases (the details of which are furnished in the statement of imputations) of the employees of Bellary Division after receipt of order of transfer on promotion to Hubli Region duly recording ante-date you have thereby abused your official position to subserve the interests of the wrong-doers besides betraying the confidence reposed in you by the Corporation, which act of your exhibits lack of integrity.

II. Culpable negligence by failing to verify the orders passed by you in the notings and the orders typed for communication which were not in conformity with the orders passed in respect of 79 default cases which were hurriedly disposed of on the eve of your transfer. You have thereby exhibited dereliction in the discharge of your official duty besides exhibiting lack of devotion to duty.

III. Misdemeanour by deliberately failing to dispose of 14 default cases even though the findings were received from the Inquiring Authorities much earlier to 2-4-1991. You have thereby disobeyed the circular instructions issued vide No. KST:CO:ADM:RULES: 1834:84-85, dated 22-10-1984, besides abdicating your

responsibility the subserve the interests of the defaulters concerned, which act of yours exhibits unworthy conduct.

3. The above acts of misdemeanour constitute acts of misconduct within the meaning of sub-regulation (1) of Regulation 3 of the KSRTC Servants (C & D) Regulations, 1971".

4. The charge memo also contained the statement of imputation, list of witnesses and list of documents on which the disciplinary authority would substantiate and prove the allegations made in the charge memo before the enquiry officer.

5. Petitioner, after receipt of the charge memo had replied the same by his explanation letter dated 9-11-1992. In that, he not only denied the allegations made against him in the charge memo but also offered his explanation, justifying his action which the disciplinary authority has construed as acts of misdemeanour coming within the meaning of the expression "misconduct".

6. The disciplinary authority not being convinced with the defence of charge-sheeted officer and further not being satisfied with the explanation offered, had appointed a retired District Judge as an inquiry officer to inquire into the allegations and accusations contained in the charge memo. Before the inquiry officer, the management had examined one Sri B.M. Ramachandraiah, the Security Officer, who had conducted investigation into the allegation made against the charge-sheeted officer as its only witness. Through him, they had also got marked certain documents as exhibits in support of their charges. This witness had been cross-examined by the defence representative of the delinquent officer. The charge-sheeted officer had examined himself and had also produced nearly 54 documents in support of his defence. Both sides had also filed their written arguments in support of their case and defence.

7. The enquiry officer with the available oral and documentary evidence on record and after carefully considering the same, has come to the conclusion that the delinquent officer is guilty of all the charges alleged in the charge memo, On the first charge, his finding is that, the charge-sheeted employee had disobeyed the orders and noted the disposal of cases after he received the orders of transfer and thereby abused his official position and betrayed the confidence reposed by the Corporation on him as alleged in the charge memo. On the second charge he holds that, the charge of culpable negligence by failing to verify the orders passed in the noting and the mistake in the orders communicated in respect of 79 cases which were hurriedly disposed off has been established against him by the Management. On the third charge, the inquiry officer holds, petitioner is guilty of the third charge also, wherein it is alleged that the delinquent officer deliberately failed to dispose off 14 cases, even though the findings were received from the inquiry officer much earlier to 2-4-1991 and thereby abdicated his responsibility.

8. The inquiry officer thereafter had submitted his report together with the

records of the enquiry proceedings and other documents to the disciplinary authority. The disciplinary authority after considering the report of the inquiry officer and records of the proceedings, had issued a show-cause notice dated 1-6-1993 along with a copy of the inquiry officer's report inter alia directing the delinquent officer to show cause why he should not accept the findings of the inquiry officer and impose major penalty as provided in the regulations. The charge-sheeted officer by his reply letter dated 28-6-1993, had pointed out various irregularities in the procedure while holding the enquiry proceedings and had further stated that the findings of the inquiry officer is not based on any evidence either oral or documentary. The charge-sheeted officer goes to the extent of saying that the findings of the inquiry officer is wholly perverse, since it is based on mere suspicion.

9. The disciplinary authority after considering the reply filed by the delinquent officer to the show-cause notice dated 1-6-1993, and also the findings of the inquiry officer proceeds to pass an order dated 27-9-1993, dismissing the delinquent officer from the services of the Corporation in exercise of his powers under Regulation 19(2) of the (C & D) Regulations, 1971, read with amended Schedule 1992. The order made by the disciplinary authority is as under:

"ORDER

In exercise of the powers conferred under Regulation 19(2) of the KSRTC Servants (C & D) Regulations, 1971, read with amended Schedule 1992, annexed thereto, I, J.K. Arora, Managing Director, the Disciplinary Authority, hereby order that Sri V.S. Sajjan, Chief Mechanical Engineer (M), be and is hereby dismissed from the services of KSRTC with immediate effect".

10. Petitioner had challenged the aforesaid order of dismissal passed by Sri J.K. Arora, who was the then Managing Director/Disciplinary Authority, by filing an appeal before the Board of Directors of respondent-Corporation as provided under Regulation 31 of the (C & D) Regulations, 1971. The Board consisting of Sri P.D. Shenoy, the Chairman and Managing Director and five others, in its 313th Meeting held on 25-7-1994, have rejected the appeal by their Resolution No. 6980. The order made by the Board is as under:

"Resolution No. 6980.--(a) The question of considering the appeal of Sri V.S. Sajjan is not tenable, and it is not proper and fair to interfere with the orders passed by the Disciplinary Authority bearing No. KST.CO.DFL. 866.93-94, dated 27-9-1993, dismissing him from the services of the Corporation. The dismissal order dated 27-9-1993 passed by the Disciplinary Authority against the appellant is confirmed.

(b) The appeal of the appellant is rejected".

11. It is the aforesaid orders made by the Disciplinary Authority dated 27-9-1993 and the Appellate Authority/Board of Directors dated 19-9-1994, which have brought the petitioner to this Court, being aggrieved by the same.

12. The learned Counsel Sri S.V. Narasimhan, appearing for petitioner has raised the following two legal issues for consideration and decision of this Court. They are:

I. The order made by the Board which is the Appellate Authority under C & D Regulations of the Corporation is vitiated since the Chairman and Managing Director of the Corporation, who had imposed punishment of dismissal from the services of the Corporation had taken part while determining the appeal filed by the delinquent officer. This contention of the learned Counsel cannot be accepted for more than one reason.

13. The well-settled principles are, it is contrary to natural justice for an adjudicator to take part in the determination of an appeal against his own decision unless the Statute expressly authorises him to do so. The general rule is that, one who has made a decision having a judicial flavour must not participate in the appeal filed against that decision. This principle will not apply to the fact situation in this case, for the reason, the records produced by the learned Counsel for the respondent-Corporation would clearly demonstrate that, it is one Sri J.K. Arora, who was the Chairman and Managing Director of the Corporation during the period 1993 had passed the impugned order of dismissal from service and when the appeal filed by the delinquent officer was decided by the Board of Directors of the Corporation, which is the Appellate Authority, one Sri P.D. Shenoy, was the Chairman and Managing Director of the Corporation, who in fact had presided over the proceedings of the 313th meeting of the Board, in which meeting a Resolution No. 6980 came to be passed, rejecting the petitioner's appeal. Therefore, the orders made by the Board cannot be either characterised as "biased" or contrary to rules of natural justice. Accordingly, the contention canvassed by learned Counsel for petitioner is rejected since the same is contrary to the fact situation.

14. Nextly, the learned Counsel Sri S.V. Narasimhan contends that, the findings of the inquiry officer is perverse and based on such perverse findings, the inquiry officer could not have imposed any punishment much less a punishment of dismissal from service of the Corporation. In support of this statement, the learned Counsel invites my attention to some portion of the evidence adduced by the parties before the inquiry officer and submits that, the evidence adduced by the management should be such that, it should point to the guilt of the delinquent with some degree of definiteness. Since that is lacking in the instant case, the findings recorded by the inquiry officer is perverse. In aid of this submission, the learned Counsel invites my attention to the observations made by the Apex Court in *Kuldeep Singh Vs. The Commissioner of Police and Others*, . In the said decision, the Court has stated as under:

"6, It is no doubt true that the High Court under Article 226 or this Court under Article 32 would not interfere with the findings recorded at the departmental enquiry by the disciplinary authority or the enquiry officer as a matter of course. The Court cannot sit in appeal over those findings and assume the role of the

Appellate Authority. But this does not mean that in no circumstance can the Court interfere. The power of judicial review available to the High Court as also to this Court under the Constitution takes in his stride the domestic enquiry as well and it can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse or made at the dictates of the superior authority.

7. In *Nand Kishore Prasad Vs. State of Bihar and Others*, , it was held that the disciplinary proceedings before a domestic Tribunal are of quasi-judicial character and, therefore, it is necessary that the Tribunal should arrive at its conclusions on the basis of some evidence, that is to say, such evidence which and that too, with some degree of definiteness, points to the guilt of the delinquent and does not leave the matter in a suspicious state as mere suspicion cannot take the place of proof even in domestic enquiries. If, therefore, there is no evidence to sustain the charges framed against the delinquent, he cannot be held to be guilty as in that event, the findings recorded by the enquiry officer would be perverse.

8. The findings recorded in a domestic enquiry can be characterised as perverse if it is shown that such findings are not supported by any evidence on record or are not based on the evidence adduced by the parties or no reasonable person could have come to those findings on the basis of that evidence. This principle was laid down by this Court in *State of Andhra Pradesh Vs. Sree Rama Rao*, , in which the question was whether the High Court under Article 226 could interfere with the findings recorded at the departmental enquiry. This decision was followed in *Central Bank of India Ltd. Vs. Prakash Chand Jain*, and *Bharat Iron Works Vs. Bhagubhai Balubhai Patel and Others*, . In *Rajinder Kumar Kindra Vs. Delhi Administration through Secretary (Labour) and Others*, , it was laid down that where the findings of misconduct are based on no legal evidence and the conclusion is one to which no reasonable man could come, the findings can be rejected as perverse. It was also laid down that where a quasi-judicial Tribunal records findings based on no legal evidence and the findings are its mere ipse dixit or based on conjectures and surmise, the enquiry suffers from the additional infirmity of non-application of mind and stands vitiated.

9. Normally the High Court and this Court would not interfere with the findings of fact recorded at the domestic enquiry but if the finding of guilt is based on no evidence, it would be a perverse finding and would be amenable to judicial scrutiny.

10. A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with".

15. Keeping in view this well-settled legal principles, I have carefully perused the findings of the inquiry officer. In my opinion, it is based on proper appreciation of both oral and documentary evidence on record. The evidential material produced by the management in support of the charges are such that, they definitely point to the guilt of the delinquent officer in respect of the charge against him with some degree of definite-ness. Therefore, in my opinion, the learned Counsel for the petitioner is not justified in characterising the findings of the inquiry officer as perverse. Accordingly, even this contention of the learned Counsel is rejected.

16. These are the only two contentions/legal issues canvassed by learned Counsel for petitioner. Since I have negated both of them, petitioner is not entitled to the relief sought in the writ petition.

17. Accordingly, the following:

ORDER

I. Writ petition is dismissed. Rule discharged.

II. In the facts and circumstances of the case, parties are directed to bear their own costs. Ordered accordingly.