

M.Ramd Vs. Apsrtc, Rep.by Its Divisional Manager (D

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Court : Andhra Pradesh

Decided On : Feb-05-2014

Judge : R.Kantha Rao

Appellant : M.Ramd

Respondent : Apsrtc, Rep.by Its Divisional Manager (D

Judgement :

THE HON'BLE Sr.JUSTICE R.KANTHA RAO WRIT PETITON No.16277 of 2001
05-02-2014 M.Ramd....Petitioner APSRTC, rep.by its Divisional Manager
(Dy.CTM) Nizamabad Division, Nizamabad and another....Respondents Counsel
for the Petitioner: Sr.V.NARSIMHA GOUD Counsel for the respondent:
Sr.H.VENUGOPAL, Standing Counsel for APSRTC : : ?.

Cases Referred: 1.

(2008) 8 SCC236THE HON'BLE Sr.JUSTICE R.KANTHA RAO WRIT PETITION
No.16277 of 2001

ORDER

: Heard the learned counsel appearing for the petitioner and the learned counsel
appearing for the respondents.

This writ petition is filed under Article 226 of the Constitution of India seeking a
Writ of Mandamus, declaring the impugned proceedings No.Steno/19(75)/95-

SM(O) NZB, dated 13.10.1998 in so far as imposing punishment of reducing the pay of the petitioner by one incremental stage for a period of one year which also have its effect on postponing of future increment, as arbitrary, unjust and in violation of Articles-14, 16 and 21 of the Constitution of India.

The brief facts necessary for considering the writ petition may be stated as follows: Three villagers of Puppalapally of Nizamabad District lodged a complaint against the petitioner who was working as Conductor in APSRTC stating that on 19.04.1994 while conducting the bus on the route Nizamabad-Keshpalli via Puppalapally, the petitioner failed to operate the bus touching Puppalapally village either in upward or downward journey.

Based on the said complaint, the Depot Manager, Nizamabad placed the petitioner under suspension and ordered enquiry against him and issued a charge sheet framing the following charge.

".for having failed to operate the bus to Puppalapally village on 19.04.1994 at 11.00 hours while you were conducting the bus on the route Nizamabad-Keshpalli via Puppalapally even though it was mentioned in the service instruction card to touch Puppalapally village in both up and down journies which constitutes misconduct under Reg.28 (xxxi) & (xxxii) of APSRTC Employees (Conduct) Reg.1963."

For the above charge, the petitioner submitted his explanation to the effect that in the instructions given in the route map MTD141card, the trip to Puppalapally while operating the service in downward journey on the route of Nizamabad and Keshapally was not mentioned, and therefore, the service has not touched the said village.

The respondents did not accept the explanation offered by the petitioner and a domestic enquiry was ordered against the petitioner.

In the said enquiry, the three villagers who gave complaint against the petitioner were examined as witnesses and they stated that the bus service for which the petitioner was conducting touched their village Puppalapally in upward journey, but

did not touch the said village in the downward journey.

They also stated specifically that under mistaken notion they lodged the complaint and therefore, they wanted to withdraw the same.

According to the petitioner, in the couRs.of enquiry against him, MTD141card was not produced.

However, the 2nd respondent-Enquiry Officer without furnishing the copy of enquiry report and without calling for the comments on the enquiry findings, straight away found the petitioner guilty for the charge levelled against him and issued show cause notice to the petitioner intimating that he was proposing to reduce the pay by two incremental stages which will have effect on future increments besides treating the period of suspension as not on duty.

The petitioner submitted that due to non-furnishing of the enquiry report, he could not be able to submit his explanation and therefore, the 2nd respondent had passed the final order on 22.06.1995 imposing the punishment as proposed in the show cause notice.

Feeling aggrieved, the petitioner preferred an appeal before the 1st respondent on 15.09.1995 against the order of the 2nd respondent dated 22.06.1995, but the 1st respondent having kept pending the appeal for three yeaRs.on 13.10.1998 passed orders modifying the punishment as that of reducing the pay by one incremental stage for a period of one year which shall also have its effect on postponing of his future increments and communicated the said order to the petitioner through proper channel in the year 2000.

The said order is challenged in the present writ petition.

The respondents filed counter contending that it is specifically recorded in the operational timing chart i.e.MTD141chart that the bus has to touch Puppalapally village in the upward trip and also in the downward trip also.

According to the respondents, the Station Manager has gone through the records and verified the timings chart and found that it was clearly recorded to touch the

village Puppalapally in downward journey.

It is further contended by the respondents that if the petitioner desires to have a copy of the enquiry report, he would have obtained it either from the Unit Officer or from the Enquiry Officer by submitting requisition.

Admittedly, the bus in which the petitioner was serving as conductor touched Puppalapally village in upward journey even according to the Department and also as deposed by the witnesses, but did not touch the village in the downward journey.

The said fact is not disputed by the respondents.

The specific contention of the petitioner is that as per the operational timing chart (MTD- 141).it is not recorded that the bus should touch the village of Puppalapally in downward journey.

But according to the respondents, the records have been verified by the Station Manager and it was found that it was clearly recorded in the chart that the bus has to touch the village Puppalapally in the downward journey also.

The contention of the petitioner is that the MTD-141 chart was not produced in the couRs.of enquiry.

His main contention is that copy of the enquiry report was also not furnished to him by the Enquiry Officer.

From the plea taken by the respondents in their counter that if the petitioner desires to have a copy of the enquiry report, he would have obtained it either from the Unit Officer or from the Enquiry Officer by submitting a requisition.

However, the respondents have not furnished the copy of the enquiry report even along with the counter affidavit.

It is obvious that the copy of the enquiry report was not furnished to the petitioner.

Unless the enquiry report is produced, the contention urged by the petitioner that there is no mention in the MTD-141 chart about touching of village Puppalapally in downward journey cannot be appreciated.

By not filing the enquiry report even along with the counter affidavit, the respondents were unable to demonstrate before this Court that MTD-141 chart was produced in the couRs.of enquiry and therein there was mention about the touching of village Puppalapally in the downward journey.

In support of his contentions, the learned counsel appearing for the petitioner placed reliance in State of Uttaranchal v.

Kharak Singh¹ wherein the Supreme Court held as follow: ".On receipt of the enquiry report, before proceeding further, it is incumbent on the part of the disciplinary/punishing authority to supply a copy of the enquiry report and all connected materials relied on by the enquiry officer to enable him to offer his views, if any.

There is no evidence to show that after submission of the report of the enquiry officer to the disciplinary authority, the respondent herein was furnished with the copy of the said report along with all the relied upon documents.

When all these infirmities were specifically pleaded and brought to the notice of the appellate authority (i.e.Forest Conservator).he rejected the same but has not pointed out the relevant materials from the records of the enquiry officer and disciplinary authority to support his decision.

Hence, the appellate authority has also committed an error in dismissing the appeal of the respondent.

The High Court has therefore rightly interfered and quashed the orders passed by the Divisional Forest Officer as well as the order passed by the Conservator of Forests."

In the instant case also, the petitioner has specifically contended that during couRs.of enquiry, the operational timing chart i.e.MTD-141 chart was not produced

and the report of the enquiry officer was also not furnished to him.

To find out as to whether the charge leveled against the petitioner has any substance, MTD-141 chart has to be perused.

According to the petitioner, the said chart was not at all produced.

Obviously, the enquiry report was also not furnished to the petitioner which fact can safely be inferred from the counter affidavit filed by the respondents.

The petitioner therefore was not given a reasonable opportunity of put forth his case on the findings recorded against him by the enquiry officer.

Since the impugned proceedings of the disciplinary authority as well as appellate authority are made in utter violation of principles of natural justice, fair play in action affecting the rights of the petitioner, I am inclined to allow the writ petition.

For the reasons stated supra, the impugned proceedings of the disciplinary authority dated 22.06.1995 as well as the appellate authority dated 13.10.1998 are liable to be quashed and are accordingly quashed.

The Writ Petition is accordingly allowed.

No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed in consequence.

_____ R.KANTHA RAO,J Date: 05.02.2014

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