

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

W.P. No. 8551 of 2013

ORDER:

Heard learned Counsel for the Petitioner and the
Learned counsel for the respondents.

2. This writ petition is filed praying to issue a Writ of Certiorari, to quash the impugned order of Termination from service issued in Proc.No.E2/1(34)/2009-ZHB, dated 23.09.2009 and 2nd respondents proc.No. PA/675 (45)/2010 -RM:MR dated 26.02.2011 is so far as not granting the continuity of service, attendant benefits, as arbitrary & unjust and consequently direct the respondents into service with continuity of service, attendant benefits and back wages.

3. The case of the Petitioner in brief, is as follows:

a) Petitioner joined the respondent's corporation as Conductor on 14.08.2008 through due process of selection but however, the appointment of the petitioner is treated as Contract Conductor which is a violation under the provisions of APSRTC Employees (Recruitment) Reg. 1966.

b) While Working under the 3rd respondent, petitioner fell sick on the count of Chicken Gunia from 21.05.2009 and the same had been intimated to the 3rd respondent, requesting grant of leave.

c) The Petitioner was instead issued charge sheet dated 10.06.02009 on alleged charge of absence from duties unauthorizedly from 21.05.2009 to 10.06.2009.

d) Without granting any further opportunity to the petitioner, the final show cause notice has been issued on the petitioner and the impugned orders of termination from service by the 3rd respondent had been issued on the petitioner.

e) Neither the Enquiry Report nor the Show Cause Notice had been served to the petitioner by the 3rd respondent. Aggrieved, petitioner had filed an appeal before the Dy. Chief Traffic Manager, Sangareddy who had rejected the petitioner's appeal vide order dated 28.08.2010 and thereafter, petitioner preferred a revision before the 2nd respondent.

f) The 2nd respondent vide order dated 26.02.2011 passed the order of re-engagement dated 26.02.2021 as afresh, due to which, the entire service of the petitioner had been forfeited, denying the continuity of service and also the other benefits. Hence the Writ Petition is filed.

4. The case of the Respondents in brief, is as follows:

a) Writ Petition is not maintainable as the petitioner had failed to avail the alternative remedy i.e., to approach the Labour Court.

b) Petitioner had been engaged as a Conductor in the Respondent Corporation on contract basis in the year 2008 vide proceedings dated 02.08.2008 and there had been violations of Recruitment Regulations.

c) The petitioner while working as Traffic Inspector-2 had been terminated from service due to unauthorized absenteeism from duties from 21.05.2009 to 10.06.2009 without prior intimation or any sanction of leave causing inconvenience to travelling public and respondent corporation.

d) Thereafter, the petitioner had been issued with the charge sheet dated 10.06.2009 which had been acknowledged by the petitioner but no explanation had been submitted.

e) Enquiry Officer after issuing notices to the petitioner had conducted ex-parte enquiry, as the petitioner had not appeared before the Enquiry Officer and after due enquiry, petitioner had been removed from service vide proceedings dated 23.09.2009.

f) Against the same, petitioner had preferred an Appeal which had been rejected on 28.08.2010 and thereafter the petitioner had preferred a Review Petition before the 2nd respondent. The 2nd respondent on Humanitarian Grounds, ordered for reinstatement of petitioner into service as afresh vide orders dated 26.02.2011.

g) Regularization of services will be done, subject to vacancies in that region and is subject to punishments and disciplinary action. The service of the petitioner had been regularized from 01.05.2014 and hence the petitioner cannot claim the relief of reinstatement of service and other benefits.

h) The Apex Court of India in the case of APSRTC vs. AUM Rao and others, held that the Employee cannot seek continuity of service as a matter of right. Hence the Writ Petition is devoid of merits and is liable to be dismissed.

PERUSED THE RECORD.

5. The order impugned dated 23.09.2009 vide proceedings No.E2/1(34)/2009-24D, passed by the 3rd Respondent i.e., Depot Manager, Zaheerabad, reads as under:

It is alleged and reported by the Assistant Manager (Traffic) of Zaheerabad Depot vide reference second cited that **you have absented to the duties unauthorisedly with effect from 21.05.2009 to 10.06.2009 without any intimation or prior sanction of leave** due to which much inconvenience was experienced by the traffic wing in the operation of service and also caused much inconvenience to the traveling public.

As per the terms of Service Contract engagement, your services stand terminated without any further notice, if you indulge in any activity detrimental to the interest of the Corporation. The contract employee shall adhere to the disciplines while performing duty. His

conduct should not tarnish the image of the Corporation.

Therefore, invoking Clause No.6 of the said agreement, your services are hereby TERMINATED with immediate effect.

6. The relevant portion of the proceedings dated 28.08.2010 vide No. PA/20/66/2010-DY.CTM/MR of the Deputy Chief Traffic Manager, Medak Region, Sanga Reddy in rejecting the appeal preferred by the Petitioner as time barred is extracted hereunder :

“Perused the case. Perused the evidences available on record. This is the case of unauthorised absenteeism wherein the appellant has absented to his from 21.05.2009 to 10.06.2009 and also till 15.09.2009 without any intimation or prior sanction of leave for which he was charge sheeted. An enquiry in the case was conducted and he was Terminated from the services of the Corporation. Reasonable opportunity has given to the appellant to improve his attendance and to prove his loyalty and integrity to the Corporation, but he failed to do so **and frequently found absent without intimation and being found an unprofitable employee of the Corporation.** The contention of the appellant in his appeal petition is not convincing, since

he has not attended APSRTC Hospital, Tarnaka if he was actually sick.

All principles of natural justice are followed in this case in initiating the disciplinary action. I agree with the findings of the Enquiry Officer and punishment imposed by the Depot Manager, ZHD is appropriate in this case. **Further, the punishment in the instant case has been initiated on 23.09.2009 and the appellant has submitted his appeal petition on 25.05.2010 more beyond the stipulated period of two months cannot be entertained. The appeal is time barred.**

Therefore, I hereby come to the conclusion and order that the appeal submitted by Sri M.P.Kumar, C.20725, Ex.Contract Conductor of Zaheerabad Depot is REJECTED.

Further appeal in this case lies with the Regional Manager, MR within two months from the date of receipt of this order".

7. The relevant portion of the proceedings of the Regional Manager, Medak Region, Sanga Reddy vide Proceedings No.PA/675(45)/2010-RM; HR, dated 26.02.2011, rejecting Petitioner's Review Petition preferred against the orders issued by the Depot Manager, dated 23.09.2009 and rejection of appeal preferred by the Petitioner vide Orders of Deputy Chief

Traffic Manager, Medak Region, dated 28.08.2010 is extracted hereunder:

After giving careful consideration to the evidence available on record together with the circumstances of the case it is evident that the offense committed by the Petitioner is serious in nature. However since he is a Contract Conductor, lenient view is taken purely on humanitarian grounds to consider his review petition and to re-engage him into service as afresh contract conductor duly forfeiting his Security Deposit.

Therefore, I hereby come to the conclusion and order that the orders of termination from service given by the Depot Manager, Zaheerabad are set aside and the Petitioner is re-engaged into service with immediate effect. On re-engagement he is posted to Sangareddy Depot. The Depot Manager, Sangareddy shall collect the fresh Security Deposit from the above contract employee as per the procedure in vogue, the Petitioner should report to the DM, Sangareddy within seven days from the date of receipt of this order, failing which the orders given will be deemed as canceled.

Therefore, the Review Petition submitted by Sri M.P.Kumar, C.20725, Ex-Contract Conductor of Zaheerabad Depot is CONSIDERED to this extent.

Acknowledge the receipt.

8. The Acknowledgment as per the original record pertaining to the show cause notice of termination No.E2/1(34)/09-2HB, dated 15.09.2009 as exhibited on the traffic Notice Board. On perusal of the Original record as Acknowledged extracted below is evident:

"ACKNOWLEDGMENT

The SCN of Termination No. E2/1(34)/09-ZHB, dated 15.09.2009 is exhibited on the traffic notice board for a period of Seven (7) days from 16.09.2009 to 22.09.2009 duly obtaining two witnesses of in service employees.

| | | |
|--------------|-----------|-------------|
| | Signature | |
| M.G. Rasooof | Name | G. Navendar |
| 252756 | Staff No. | 800831 |
| Cond. | Designa. | Cond. |
| ZHB Depot | Unit | ZHB." |

DISCUSSION AND CONCLUSION:

9. A bare perusal of the original record clearly evidences the fact of the Petitioner receiving and acknowledging the charge sheet on 13.07.2009 and there is no acknowledgement issued by the Postal Department on record, pertaining to service of Enquiry Notice dated 02.08.2009, on the Petitioner. The original

record reveals service of the charge sheet dated 10.06.2009 on the Petitioner, of having dispatched the same, by RPAD to the Petitioner's residential address. There is no acknowledgement of the Postal Department pertaining to service of Enquiry Report upon the Petitioner.

i. A bare perusal of the order impugned dated 23.09.2009 vide Proceedings No.E2/1(34)/2009-2HB of the 3rd Respondent clearly indicates that the Petitioner was charge sheeted on the ground that the Petitioner absented for his duties w.e.f. 21.05.2009 to 10.06.2009 without any intimation or prior sanction of leave. The charge framed against the Petitioner is as follows :

"For your absence to your duties unauthorisedly from 21.05.2009 to 10.06.2009 which constitutes misconduct as per the Column No.5 in Terms and Conditions of Contract Service agreement".

ii. The observation at para '4' of the proceedings of the Regional Manager, Medak Region, dated 26.02.2011, that the Enquiry Officer sent enquiry notices to the given residential address of the Petitioner by RPAD, is contrary to the record,

because the original record does not evidence any acknowledgement card of Postal Department to the effect on record as acknowledged by the Petitioner pertaining to the Enquiry Notice, but the record shows the acknowledgement card of charge sheet, as having been served by the Postal Department through RPAD upon the Petitioner and it is an admitted fact as borne on record that an Ex-parte Enquiry had been conducted against the Petitioner and the order impugned dated 23.09.2009, which is a final order of termination of contract is passed against the Petitioner by the Depot Manager, Zaheerabad terminating the services of the Petitioner with immediate effect invoking Clause No.6 of the agreement entered into by and between the Petitioner and the Respondent Authority had been passed by the Depot Manager, Zaheerabad, the 3rd Respondent herein and the Regional Manager, Medak Region, Sanga Reddy, however in the review petition filed by the Petitioner reviewed the same and passed orders vide Proceedings No.PA/675(45)/2010-RM MR, dated 26.02.2011, observing, that since Petitioner is a

contract conductor, a lenient view is taken purely on humanitarian grounds to consider Petitioner's Review Petition and to reengage the petitioner into service as a fresh contract conductor duly forfeiting Petitioner's security deposit duly setting aside the final termination order dated 23.09.2009, though the appeal preferred against the said final order of termination dated 23.09.2009 to the Appellate Authority had been rejected as time barred by the Deputy Chief Traffic Manager, Medak Region, Sangareddy, who is not impleaded as a party Respondent in the present Writ Petition.

10. The Counsel for the Petitioner places reliance on the following judgments and the relevant extracts of the said judgments are extracted hereunder :

I. "The Judgment of the Apex Court of India in Civil Appeal No. 4531 of 2007, dated 13.08.2008 between State of Uttaranchal and Others Vs. Kharak Singh which had held as follows :

"11) From the above decisions, the following principles would emerge:

- i) The enquiries must be conducted bona fide and care must be taken to see that the enquiries do not become empty formalities.
 - ii) **If an officer is a witness to any of the incidents which is the subject matter of the enquiry or if the enquiry was initiated on a report of an officer, then in all fairness he should not be the Enquiry Officer, If the said position becomes known after the appointment of the Enquiry Officer, during the enquiry, steps should be taken to see that the task of holding an enquiry is assigned to some other officer.**
 - iii) In an enquiry, the employer/department should take steps first to lead evidence against the workman/delinquent charged, give an opportunity to him to cross-examine the witnesses of the employer. Only thereafter, the workman/delinquent be asked whether he wants to lead any evidence and asked to give any explanation about the evidence led against him.
 - iv) **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.**
- 14) A reading of the enquiry report also shows that the respondent herein was not furnished with the required documents. The department's witnesses were not examined in his presence. Though the respondent who was the writ petitioner specifically stated so in the affidavit before the High Court in the writ proceedings, those averments were specifically controverted in the reply affidavit filed by the department. Mere denial for the sake of

denial is not an answer to the specific allegations made in the affidavit. Likewise, there is no evidence to show that after submission of the report by 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 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."

II. The Judgment reported in (2012) 5 Supreme Court Cases, 242 between Vijay Singh and State of Uttar Pradesh and Others in particular paragraph Nos. 11, 13, 14 and 15.

"11. Admittedly, the punishment imposed upon the appellant is not provided for under Rule 4 of Rules 1991. Integrity of a person can be withheld for sufficient reasons at the time of filling up the Annual Confidential Report. However, if the statutory rules so prescribe it can also be withheld as a punishment. The order passed by the Disciplinary Authority withholding the integrity certificate as a punishment for delinquency is without jurisdiction, not being provided under the Rules 1991, since the same could not be termed as punishment under the Rules. The rules do not empower the Disciplinary Authority to impose "any other" major or minor punishment. It is a settled proposition of law that punishment not prescribed under the rules, as a result of disciplinary proceedings cannot be awarded.

13. The Authority has to act or purport to act in pursuance or execution or intended execution of the Statute or Statutory Rules. (See: Poona City Municipal Corporation v. Dattatraya Nagesh Deodhar, The Municipal Corporation, Indore v. Niyamatulla; J.N. Ganatra v. Morvi Municipality, Morvi; and Borosil Glass Works Ltd. Employees Union v. D.D. Bambode")
14. The issue involved herein is required to be examined from another angle also. Holding departmental proceedings and recording a finding of guilt against any delinquent and imposing the punishment for the same is a quasi-judicial function and not administrative one. (Vide : Bachhittar Singh v. State of Punjab; Union of India v. H.C. Goel; Mohd. Yunus Khan v. State of U.P.; Coal India Ltd. & Ors. v. Ananta Saha)
15. Imposing the punishment for a proved delinquency is regulated and controlled by the statutory rules. Therefore, while performing the quasi-judicial functions, the authority is not permitted to ignore the statutory rules under which punishment is to be imposed. The disciplinary authority is bound to give strict adherence to the said rules;. Thus, the order of punishment being outside the purview of the statutory rules is a nullity and cannot be enforced against the appellant."

III. The learned counsel for the petitioner also relied on the judgment of the Hon'ble Apex Court of India in Civil Appeal No. 2982 of 1989 dated 17.03.1993 between Union of India & Others Vs. Giriraj Sharma, wherein it is observed that the respondents therein had

overstayed his leave period though not willfully and petition was allowed with a direction to impose minor punishment to the respondents therein.

11. The Counsel for the Respondent places reliance on the judgments :

- i. Judgement in (2019) 14 SCC 663 in case of APSRTC vs. AUM Rao and Others, dt. 07.12.2018.
- ii. Judgement in W.P.No.20566 of 2012, dt. 20.02.2020.
- iii. Order in W.A.No. 183 of 2022, dt. 15.03.2022.

12. This Court opines that the Judgments relied upon by the Counsel for the Respondents do not apply to the facts of the present case because the Petitioner herein has challenged termination order and also the orders granting fresh appointment as Contract Conductor and hence this Court is of the firm opinion that the Petitioner is entitled to Computation of Past Service and also the relief prayed for in the present Writ Petition for the following reasons :

- I. **"This Court opines that the question whether "unauthorized absence from duty amounts to failure of devotion to duty or behavior unbecoming of an**

Government servant cannot be decided without deciding the question whether the absence is willful or because of compelling circumstances. *If the absence is the result of compelling circumstances under which it was not possible to report or perform duty, such absence cannot be held to be willful. Absence from duty without any application or prior permission may amount to unauthorized absence, but it does not always mean willful. There may be different eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his/her control like illness, accident, hospitalization etc., but in such a case the employee cannot be held guilty of failure of devoting to duty or behavior unbecoming of a Government servant. But in the present case admittedly as borne on record the petitioner remained exparte and did not participate in the enquiry therefore the question whether the petitioner's absence is willful or because of compelling circumstances had not been decided on merits".*

II. The specific plea of the Petitioner in the Appeal submitted before the Deputy Chief Traffic Manager, Medak Region, Sanga Reddy against the orders of the Depot Manager, Zheerabad i.e., the 3rd Respondent, dated 23.09.2009, is extracted hereunder :

"In the present appeal the appellant has stated that on 21.05.09 he fell ill suffering from high fever and vomiting. He attended depot, met to the TI on duty and

as suggested by him his room mates taken him to Govt. Hospital, ZHB and admitted. As there were no one to take care of his ill-health at ZHD he was shifted to his home at Sangareddy in an unconscious condition. His family members looking his serious health condition immediately taken him to Govt. Hospital, Sangareddy and admitted. After necessary medical examinations at Govt. Hospital, SRD found he affected from Chicken Guinea. Due to joint, body pains and fever he was not able to stand and walk a distance and was in preventive care and control of the Physician Specialist. He stated that he sent intimation of his ill-health to the Depot and submitted medical certificates issued by the Physician specialist at Govt. Hospital, SRD from time to time though the period is treated as absent. He stated that apart from the above, he was effected from Jaundice also and taken herbal treatment. In View of the above reasons he unable to attend his duties and reported sick and the sick is genuine. He stated that after slight from health he attended depot on 22.07.2007 to resume duties duly obtaining medical fit certificate, but he was not taken on duty and advised orders will be sent to his residential address. Later the Depot Manager issued Termination Orders. He at last requested to consider his appeal and reinstate him into service".

13. The judgment of the Apex Court reported in (2012) 3 SCC 178 between Krushnakant B.Parmar v

Union of India and another. Paras 16, 19 and 25 reads

as under:

"16. The question whether 'unauthorised absence from duty' amounts to failure of devotion to duty or behaviour unbecoming of a Government servant cannot be decided without deciding the question whether absence is willful or because of compelling circumstances.

19. In a Departmental proceeding, if allegation of unauthorised absence from duty is made, the disciplinary authority is required to prove that the absence is wilful, in absence of such finding, the absence will not amount to misconduct.

25. In the result, the appeal is allowed. The impugned orders of dismissal passed by disciplinary authority, affirmed by the Appellate Authority; Central Administrative Tribunal and High Court are set aside. The appellant stands reinstated. Taking into consideration the fact that the Charged Officer has suffered a lot since the proceeding was drawn in 1996 for absence from duty for a certain period, we are not remitting the proceeding to the disciplinary authority for any further action. Further, keeping in view the fact that the appellant has not worked for a long time we direct that the appellant be paid 50% of the back wages but there shall be no order as to costs.

14. The Apex Court in its judgment reported in Olga Tellis & Others v. Bombay Municipal Corporation at para 32 observed as under :

“32.....The sweep of the right to life conferred by Article 21 is wide and far reaching. It does not mean merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of the death sentence, except according to procedure established by law. That is but one aspect of the right to life. An equally important facet of that right is the right to livelihood because, no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live. And yet, such deprivation would not have to be in accordance with the procedure established by law, if the right to livelihood is not regarded as a part of the right to life. That, which alone makes it possible to live, leave aside what makes life liveable, must be deemed to be an integral component of the right to life. **Deprive a person of his right to livelihood and you shall have deprived him of his life.....**”

15. On perusal of original record this Court is of the firm opinion that admittedly as borne on record it was an Exparte Enquiry conducted against the Petitioner since there is no postal acknowledgement available on record evidencing the Service of Enquiry Notice upon the Petitioner prior to proceeding with the enquiry against the Petitioner nor there is evidence of service of enquiry report as well upon the Petitioner nor there is participation of the Petitioner in the enquiry proceedings. This Court opines that the petitioner has a right to receive a copy of the enquiry officer's report before the disciplinary authority arrives at its conclusion with regard to the guilt or innocence of the petitioner with regard to the charges levelled against him. That right is a part of the petitioner's right to defend himself against the charges leveled against him and the denial of the same to the petitioner is denial of a reasonable opportunity to the petitioner to prove his innocence and is a breach of principles of natural justice.

16. The Apex Court in a judgment reported in the case of Managing Director, ECIL, Hyderabad v B.Karunakar

reported in 1993(4) SCC page 727 at page 28, 29

observed as follows:

“28. The position in law can also be looked at from a slightly different angle. Article 311(2) says that the employee shall be given a “reasonable opportunity of being heard in respect of the charges against him”. The findings on the charges given by a third person like the enquiry officer, particularly when they are not borne out by the evidence or are arrived at by overlooking the evidence or misconstruing it, could themselves constitute new unwarranted imputations. What is further, when the proviso to the said Article states that “where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed”, it in effect accepts two successive stages of differing scope. Since the penalty is to be proposed after the inquiry, which inquiry in effect is to be carried out by the disciplinary authority (the enquiry officer being only his delegate appointed to hold the inquiry and to assist him), the employee's reply to the enquiry officer's report and consideration of such reply by the disciplinary authority also constitute an integral

part of such inquiry. The second stage follows the inquiry so carried out and it consists of the issuance of the notice to show cause against the proposed penalty and of considering the reply to the notice and deciding upon the penalty. What is dispensed with is the opportunity of making representation on the penalty proposed and not of opportunity of making representation on the report of the enquiry officer. The latter right was always there. But before the Forty-second Amendment of the Constitution, the point of time at which it was to be exercised had stood deferred till the second stage viz., the stage of considering the penalty. Till that time, the conclusions that the disciplinary authority might have arrived at both with regard to the guilt of the employee and the penalty to be imposed were only tentative. All that has happened after the Forty-second Amendment of the Constitution is to advance the point of time at which the representation of the employee against the enquiry officer's report would be considered. Now, the disciplinary authority has to consider the representation of the employee against the report before it arrives at its conclusion with regard to his guilt or innocence of the charges.

29. Hence it has to be held that when the enquiry officer is not the disciplinary authority,

the delinquent employee has a right to receive a copy of the enquiry officer's report before the disciplinary authority arrives at its conclusions with regard to the guilt or innocence of the employee with regard to the charges levelled against him. That right is a part of the employee's right to defend himself against the charges levelled against him. A denial of the enquiry officer's report before the disciplinary authority takes its decision on the charges, is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice.

In the present case the copy of the Enquiry Report has not been furnished to the Petitioner.

17. This Court in a judgment reported in **Raghubir Singh V. General Manager, Haryana Roadways, Hissar at paras 30 in Civil Appeal No.8434/2014**, observed as follows :

30. The appellant workman is a conductor in the respondent-statutory body which is an undertaking under the State Government of Haryana thus it is a potential employment. **Therefore, his services could not have been dispensed with by passing an order of termination on the alleged ground of**

unauthorised absence without considering the leave at his credit and further examining whether he is entitled for either leave without wages or extraordinary leave. Therefore, the order of termination passed is against the fundamental rights guaranteed to the workman under Articles 14, 16, 19 and 21 of the Constitution of India and against the statutory rights conferred upon him under the Act as well as against the law laid down by this Court in the cases referred to supra. This important aspect of the case has not been considered by the courts below. Therefore, the impugned award of the Labour Court and the judgment & order of the High Court are liable to be set aside.

In the present case the leave of the Petitioner at his credit nor Petitioner's entitlement for either leave without wages or extraordinary leave was considered by the Disciplinary Authority prior to passing of the two orders impugned in the present Writ Petition.

18. The erstwhile High Court in the judgment dated 27.09.2010 in Prameela and others v APSRTC, Hyderabad and others reported in 2011(3) ALD 641 at para 13 observed as under: “..

"...Hence, it is expected of every disciplinary authority to carefully assess the quantum of guilt held established against the delinquent employee and then consider the appropriate punishment that is to be imposed. The choice of punishment, hence, has to meet the standards of fairness. It shall not be too harsh or excessive or too lenient. It should be fair, adequate and proportionate. This exercise, apparently was not carried out by either the disciplinary or the Appellate Authority. However, in my opinion, for that part of the misconduct held established against Sri Pandu, perhaps, imposition of a minor punishment of reduction of pay by two stages would have met the ends of justice".

In the present case this Court opines that quantum of guilt assessed and established against the Petitioner is not an order passed on merits and is also not an order passed in compliance of principles of natural justice by the Respondent Authority, since the Petitioner did not participate in the enquiry proceedings, it is an Exparte Enquiry conducted against the Petitioner, since the Petitioner had not been served with Enquiry Notice nor Enquiry Report by RPAD by the Postal Department and therefore the punishment

imposed against the Petitioner did not meet the standards of fairness.

19. The judgment of the Apex Court reported in 2014(9) SCJ page 91 between Raghbir Singh v General Manager, Haryana Roadways, Hissar. Para 35 reads as under:

"35. Having regard to the facts and circumstances of this case, we are of the view that it is important to discuss the Rule of the 'Doctrine of Proportionality' in ensuring preservation of the rights of the workman. The principle of 'Doctrine of Proportionality' is a well recognized one to ensure that the action of the employer against employees/workmen does not impinge their fundamental and statutory rights. The above said important doctrine has to be followed by the employer/employers at the time of taking disciplinary action against their employees/ workmen to satisfy the principles of natural justice and safeguard the rights of employees/workmen.

In the present case admittedly there is no finding on the point whether absence of the Petitioner during the period 21.05.2009 to 10.06.2009 is willful or

because of compelling circumstances by the Respondent Authority.

20. Vide the impugned order dated 23.09.2009 vide proceedings No.E2/1(34)/ 2009-2HB of the Depot Manager, Zaheerabad the services of the Petitioner were terminated with immediate effect on the alleged ground that the Petitioner absented to the duties unauthorisedly w.e.f. 21.05.2009 to 10.06.2009 without any prior sanction of leave or without any intimation in an Exparte Enquiry conducted against the Petitioner without serving copy of Enquiry Notice or Enquiry Report upon the Petitioner denying reasonable opportunity to the Petitioner of being heard in clear violation of principles of natural justice. This Court opines that in the present case the Respondents have neither followed standard of fairness nor adopted a fair procedure nor followed the principles of natural justice nor followed the Rule of Doctrine of Proportionality and therefore the orders impugned are vitiated and are liable to be set aside.

21. Taking into consideration the above referred facts and circumstances of the case and the law laid down by the Apex Court in State of Uttaranchal and Others vs. Kharak Singh in Civil Appeal No.453 of 2007, dated 13.08.2008 relied upon by the Counsel for the Petitioner and referred to and extracted above and also the principles of law laid down in all the judgments of the Apex Court referred to, and extracted and discussed above, this Court opines that the Respondent Authority through an Exparte Enquiry, conducted in clear violation of principles of natural justice without even serving copy of the Enquiry Notice nor the Enquiry Report through RPAD upon the Petitioner should not have arrived at a conclusion unilaterally holding that the Petitioner absented to the duties unauthorisedly w.e.f. 21.05.2009 to 10.06.2009 without any intimation or prior sanction of leave, without even deciding the question whether Petitioner's absence is willful or because of compelling circumstances and ought not have passed the impugned orders dated 23.09.2009, 28.08.2010 and 26.02.2011 against the Petitioner

herein mechanically in a routine manner without application of mind, in clear violation of principles of natural justice and also in violation of Rule of Doctrine of Proportionality and therefore the Writ Petition is allowed as prayed for and the impugned final order of termination from service issued to the Petitioner vide Proceedings No.E2/1(34)/2009-2HB, dated 23.09.2009 of the 3rd Respondent and Proceedings No.PA/675(45)/2010-RM MR, dated 26.02.2011 of the 2nd Respondent are quashed and the Petitioner stands reinstated with all consequential benefits of continuity or service and 50% of the back wages keeping in view the fact that the Petitioner has not worked for a long time. It is however made clear that it is open to the Respondents, if the Respondents so desire to initiate proceedings afresh and conduct the disciplinary enquiry in conformity with Principles of Natural Justice and fair play, duly serving the copy of the Enquiry Notice and also Enquiry Report to the Petitioner duly taking into consideration the view taken by the Apex Court and also the principles of law laid down in the various

judgements of the Apex Court referred to and extracted above. However, there shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand dismissed.

SUREPALLI NANDA, J

Date: 05.06.2023

Note: L.R. copy to be marked

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IN THE HIGH COURT OF TELANGANA AT HYDERABAD

W.P. No. 8551 of 2013

Between:

M.Prashant Kumar

... Petitioner

And

RTC and others

... Respondents

JUDGMENT PRONOUNCED ON: 05.06.2023

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

1. Whether Reporters of Local newspapers : yes
may be allowed to see the Judgment?
2. Whether the copies of judgment may be
marked to Law Reporters/Journals? : yes
3. Whether Their Lordships wish to
see the fair copy of the Judgment? : yes

SUREPALLI NANDA, J

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

W.P. No. 8551 of 2013

% 05.06.2023

Between:

M.Prashant Kumar

..... Petitioner

And

\$ RTC and others

... Respondents

< Gist:

> Head Note:

! Counsel for the Petitioner : Mr V.Narsimha Goud

^ Standing Counsel for Respondent s: N.Praveen Reddy

? Cases Referred:

1. (2012) 5 SCC 242
2. (2012) 3 SCC 178
3. 2014(9) SCJ 91
4. 1986 AIR 180
5. 1993(4) SCC 727
6. 2014 (4) SCT 263
7. 2011 (3) ALD 641