

KAHS010026522016



Presented on : 23-06-2016
Registered on : 23-06-2016
Decided on : 19-06-2025
Duration : 8 years, 11 months, 26 days

IN THE COURT OF PRINCIPAL DISTRICT &
SESSIONS JUDGE, HASSAN.

Dated this the 19th day of June 2025

PRESENT

Smt. Hemavathi, BBM. LL.B.
Principal District & Sessions Judge,
Hassan.

IID No.2/2016

First Party:

U.D. Narayanappa,
S/o late Dasappa,
Aged about 56 years,
R/a Hundiganalu Village,
Javagal Hobli & Post 573125,
Arasikere Taluk,
Hassan District.

(Represented by Sri. S.P. Ramesha, Advocate)

Vs.

- Second Party:
1. The Chief Manager (Traffic),
Appellate Authority,
K.S.R.T.C.
Central Offices,
K.H. Road,
Shanthinagar,
Bengaluru – 560 027.
 2. The Divisional Controller,
Disciplinary Authority,
K.S.R.T.C.,
Hassan Division,
Hassan 573 201.

(Represented by Sri. J.P.L., Advocate,)

AWARD

This petition is filed by the first party under Section 10(4-A) read with Section 2A of the Industrial Disputes Act 1947 ('hereinafter referred as 'ID Act') praying to set aside the order of dismissal bearing No.KST/HD/DO/TRA/ACCT/30/15/258/ 2016-17 dated 07.05.2016 passed by the second party No.2/ corporation as well as the appellate authority bearing No.KST/CO/Traffic/Appeal/1275/2016-17 dated 06.06.2016 passed by the second party No.1/ corporation and direct the second party to reinstate him into the

service with full back wages from the date of dismissal till the date of reinstatement and such other appropriate order deems fit.

2. Brief facts of the case is that,

First party being a permanent employee of second party/ corporation working as a Driver. Since the date of his appointment, he was discharging the duty diligently and effectively to the satisfaction of his superiors and he had put more than 25 years of uninterrupted service with the second party. He had maintained excellent service records. When he was discharging his duties as a Driver at Hassan Depot-I, Hassan Division, on the basis of the accident report submitted by the investigating officials, second party No.2/ corporation kept him under suspension vide order dated 10.06.2015. Subsequently, after lapse of more than 5 months issued article of charge on 14.11.2015. He had submitted detailed reply to the article of charge and explained the circumstances under which

the said accident had occurred and denied the entire charges levelled against him and also sought for exonerating him from the alleged charges. But the second party No.2/ corporation has dissatisfied with the explanation, appointed the enquiry officer to hold an enquiry on the alleged charges. But the said enquiry officer conducted a force enquiry and submitted a report holding that the charges levelled against the first party are proved. The said findings of the enquiry officer served on him along with the show cause notice dated 15.04.2016, for which he had submitted detailed reply. By over looking his entire defence, second party No.2 has blindly accepted the findings of the enquiry officer and dismissed him from the service vide order dated 07.05.2016, which is challenged here. As per the Regulation of 23 of KSRTC Servants (Conduct and Discipline) Regulation, 1971 is to be conducted, but the provisions of the same has not been fully complied with. He was not supplied with all the copies of the documents and an opportunity to avail

the assistance of a coworker to defend his case effectively. The enquiry officer has conducted preliminary enquiry on 04.12.2015. On that day, he was present and denied the charges levelled against him. Thereafter, the said case was adjourned to 15.12.2015. On that day, he and reporting officials were also present. The reporting official has produced as many as 15 documents and got marked Exs.M.1 to M.15. Thereafter, first party has cross examined the reporting official on the same day without the assistance of coworker. The enquiry officer has not given an opportunity to the first party to lead his defence evidence. The enquiry officer is very much biased and prejudiced against him resulting in recording a perverse finding against him. The proceedings of the enquiry officer as well as report of enquiry officer clearly manifest that the domestic enquiry has not conducted in accordance with regulation and it is not in compliance of the rules of natural justice. So the order of enquiry officer is not sustainable and liable to be set aside.

3. Second party appeared through their counsel and filed counter statement stating that the claim statement filed by the first party is not maintainable either in law or on facts. The first party while working as a Driver under second party/ corporation has committed negligence in his duty. Hence, as per the rules, action has been taken against him and they have followed the principles of natural justice before taking any action against him. First party while working as a Driver of Bus bearing registration No.KA.13.F.2116 had caused the accident on 10.06.2015. Shanthigrama Police have registered the case in Crime No.145/2015 against him. The accident caused due to his negligence, so he caused loss to the second party corporation. The second party has served the offence memo, charge sheet against the first party as his reply was not satisfactory. It was rejected and proceeded to take disciplinary enquiry against him, appointed enquiry officer, who conducted domestic enquiry and submitted the report. The first party has

given ample opportunity in every stage of proceedings by enquiry officer and submitted the report. Hence, the order of enquiry officer is fair, proper and dismissal of first party based on the order of enquiry officer is also in accordance with law. Hence, prayed to dismiss the claim statement and prayed to permit the second party to conduct new departmental enquiry afresh if it is found that departmental enquiry is not legal and fair.

4. On the basis of the claim statement and objection, the following issues and additional issue are framed:

- 1) *Whether the first party – workman has proved that impugned order passed by second party – corporation is liable to be set aside?*
- 2) *Does first party prove that, he is entitled to reinstate with continuity of service and entitled for consequential benefits including full back wages as prayed?*
- 4) *What order or award?*

Additional Issue:

- 1) *Whether the second party proves that the domestic enquiry conducted by them against the first party is fair and proper?*

The additional issue has been treated as preliminary issue.

5. Second party corporation in order to prove that domestic enquiry held against the first party/ workmen through its enquiry officer is fair and proper got examined one S.R. Chandrashekhara, Divisional Controller as M.W.1 and got marked Exs.M.1 to M.36 and closed its side. To rebut the said evidence, first party/ workman has not adduced any evidence. On the other hand, his counsel submitted that he has no evidence.

6. Heard both sides.

7. My findings on the above additional issue/ preliminary issue is in the negative for the following:

REASONS

8. On perusal of the order of claim statement and counter statement of the parties, it is very clear that the first party while working as a Driver with second party No.2, the vehicle which he was driving met with an accident and police have registered the case in Crime No.145/2015 against him. In view of that the disciplinary proceedings was taken up against him and the enquiry officer submitted a report on 16.03.2016 holding that the charges levelled against him are proved.

9. Ex.M.1 is the article of charge dated 14.11.2015 issued by second party to the first party. Ex.M.2 is the reply by the first party to the second party. Ex.M.3 is the opinion of reporter. Ex.M.4 is the report by the Divisional Controller, Hassan Division to Director, K.S.R.T.C. Central Offices, Bengaluru informing the FIR lodged against the first party. Exs.M.5 to Ex.M.14 documents relating to charge sheet

submitted against the first party. Ex.M.15 is the log sheet, Ex.M.16 is the trip sheet of the vehicle. Ex.M.17 is the interim compensation payment receipt. Ex.M.18 is the order of appointing enquiry officer. Exs.M.19 to M.21 are the notices of enquiry. Ex.M.22 is the preliminary enquiry of first party. Ex.M.23 is the deposition of witness of second party. Ex.M.24 is the defence statement. Ex.M.25 is the enquiry report. Ex.M.26 is the order sheet maintained by the enquiry authority. Ex.M.27 is the show cause notice. Ex.M.28 is the reply of first party. Ex.M.29 is the history sheet of first party. Ex.M.30 is the job card. Ex.M.31 is the order sheet of disciplinary authority. Ex.M.32 is the order of disciplinary authority. Ex.M.33 is the postal acknowledgment. Ex.M.34 is the proceedings of appellate authority. Ex.M.35 is the payment cheque of first party. Ex.M.36 is the copy of award passed in MVC No.872/2015.

10. It is the argument of the learned counsel for the first party that second party witness M.W.1 in his cross examination admitted that he has not taken any written explanation from the first party and he has violated the Regulation 23(16) to (18) of KSRTC Servants (Conduct and Discipline) Regulation, 1971. As per the said Regulation, after evidence, the disciplinary authority has to be given an opportunity to the first party to lead evidence if any. So it proves that the enquiry officer has not followed the Regulation 23 of the KSRTC Servants (Conduct and Discipline) Regulation, 1971. Further Ex.M.26 is the order sheet maintained by the enquiry officer clearly discloses that the reasonable opportunity is not given to the first party. Hence, domestic enquiry conducted by the enquiry officer is not fair and not in accordance with the principles of natural justice.

11. The learned counsel for the second party has argued that the enquiry officer has followed the procedure as provided

under the Regulation 23 of the KSRTC Servants (Conduct and Discipline) Regulation, 1971 and in all the hearing dates, first party was present. He received all the documents and list of witnesses. He had taken the assistance of defence assistant on his behalf. Ex.M.20 clearly reveals that he had received all the documents. He was given full opportunity to cross examine the witnesses. Thereafter, the final order was passed. There are no grounds made out to set aside the said domestic enquiry proceedings.

12. The learned counsel for the first party has relied upon the order dated 28.06.2008 in *Writ Petition No.12639/2005 (L-KSRTC) (Sri Rajanna Vs. The Management of KSRTC Bengaluru)* wherein the Hon'ble High Court of Karnataka has observed that "if there is clear violation of Regulation No.23(17) and (18) of the KSRTC Servants (Conduct and Discipline) Regulation, 1971, the departmental enquiry held is not proper and fair". He has also relied upon the order dated 27.07.2011 in

Writ Petition No.6713/2010 (L-KSRTC) (M.R. Lokesh Vs. The Divisional Controller, KSRTC Bengaluru Rural Division) wherein the Hon'ble High Court of Karnataka has observed that "if domestic enquiry is conducted without extending opportunity to the delinquent official as required by Regulation 23 of KSRTC Servants (Conduct and Discipline) Regulation, 1971, the said enquiry is not fair and proper".

13. Here Ex.M.26 is the order sheet maintained by the enquiry officer during the course of domestic enquiry proceedings against the first party. It reveal that the preliminary enquiry was fixed on 01.12.2015. On 27.11.2015, it was ordered to issue notice to the first party. But on 01.12.2015, he was absent before the enquiry officer. Hence, it was adjourned to 04.12.2015. On that day, he was present and the preliminary enquiry was conducted. He denied the allegations made against him and he was given an opportunity to appoint defence assistant. Again the case was adjourned to 09.12.2015. On that

day, first party and reporter were present. As he did not appoint co-worker/ defence assistant, on his request adjourned to 15.12.2015 and he was directed to bring the defence assistant on that day. In the order sheet dated 15.12.2015, it is mentioned that the first party along with the defence assistant/ co-worker and reporter were present. Reporter was examined as M.W.1 and he was also cross-examined. The case was adjourned for defence statement of first party on 22.12.2015. On that day, first party submitted his defence statement. In the order sheet dated 22.12.2015, it is mentioned that he has submitted that he has nothing to say. Hence, the case was reserved for order. M.W.1 in his cross examination deposed that as per the K.S.R.T.C. Regulation, after closure of disciplinary authority, an opportunity has to be given to the first party to lead his evidence, if any and also stated that he has not taken any explanation from the first party and further admitted that he has

violated the Regulation 23(16) to (18) of KSRTC Servants (Conduct and Discipline) Regulation, 1971 in this case.

14. Regulation 23(6) (8) (16) to (18) of the KSRTC Servants (Conduct and Discipline) Regulation, 1971 reads thus:

“23. Procedure for imposing major penalties:-

(1) xxxxx

(2) xxxxx

(3) xxxx

(4) xxxx

(5) xxxx

(6) *The Disciplinary Authority shall, where it is not the Inquiring Authority, forward to the Inquiring Authority:-*

(i) a copy of the articles of charge and the statement of imputations of misconduct or misbehavior;

(ii) a Copy of the written statement of defence, if any, submitted by the Corporation servant;

(iii) a copy of the statement of witnesses, if any, referred to in Sub- Regulation (3);

(iv) a copy of the order appointing the “Presenting Officer”.

(7) xxx

(8) The Corporation servant may take assistance of any other Corporation servant from the same Division or Unit where the accused corporation servant is working, to present the case on his behalf but may not engage a legal practitioner for the purpose.

(9) xxxx

(10) xxxx

(11) xxxx

(12) xxxx

(13) xxxx

(14) xxxx

(15) xxxx

(16) *When the case of the Disciplinary Authority is closed, the corporation servant shall be required to state his defense, orally or in writing, as he may prefer. If the defence is made orally, it shall be recorded and the Corporation servant shall be required to sign the record. In either case a copy of the statement of defence shall be given to the Presenting Officer, if any, appointed.*

(17) *The evidence on behalf of the Corporation servant shall then be produced. The Corporation servant may examine himself in his own behalf if he so prefers. The witnesses produced by the Corporation servant shall then be examined and shall be liable to cross-examination, re-examination and examination by the Inquiring Authority according to the provisions applicable to the witnesses for the Disciplinary Authority.*

(18) *The Inquiring Authority, may, after the Corporation servant closes his case, and shall, if the Corporation servant has not examined himself, generally question him on the circumstances, appearing against him in the evidence for the purpose of enabling the Corporation servant to explain any circumstances appearing in the evidence against him.*

(19) xxxx

(20) xxxx

(21) xxx

(22) xxxx

(23) xxxx

(24) xxxx

(25) xxxx

(26) xxxx”.

15. On going through Ex.M.26, it is very clear that along with the article of charge, statement of imputation of

misconduct/ misbehavior has not been supplied. Even it does not disclose who was appeared as co-worker or defence assistant to the first party. After he furnished his defence statement, he was not given an opportunity to lead evidence and the substance of enquiry was also not been explained to him. Hence, it establishes that there is clear violation of Regulation 23 of KSRTC Servants (Conduct and Discipline) Regulation, 1971 and the first party has not given an opportunity as provided under the said Regulation. The decision relied upon by the counsel for the first party is applicable to the present case.

16. In view of the aforesaid discussions and also the principles laid down in the decision relied upon by the counsel for the first party, I opine that the procedure adopted by M.W.1 is not in accordance with the Regulation 23 of KSRTC Servants (Conduct and Discipline) Regulation, 1971. Hence, enquiry conducted by M.W.1 against the first party is not fair and

proper. Accordingly, I answer preliminary issue/ additional issue No.1 in the negative. Hence, I proceed to pass the following:

ORDER

The departmental enquiry dated 07.05.2016 conducted by the second party against the first party is not fair and proper. So the departmental enquiry is hereby set aside.

The matter is remitted back to the second party for consideration afresh after giving fair opportunity as provided under Regulation 23 of the KSRTC Servants (Conduct and Discipline) Regulation, 1971 to the first party.

No order as to costs.

(Dictated to the Stenographer Grade-I, transcribed by her, corrected and then pronounced by me in Open Court on this the 19th day of June 2024)

(Hemavathi)
Principal District & Sessions Judge,
Hassan.

ANNEXURE**Witnesses examined for the first party: NIL****Witnesses examined for the second party:**

MW.1: S.R. Chandrashekhar

Documents marked for the first party: NIL**Documents marked for the second party:**

- Ex.M.1 : Copy of charge sheet
- Ex.M.2 : Reply of first party
- Ex.M.3 : Report
- Ex.M.4 : FIR
- Ex.M.5 : Accident report form
- Ex.M.6 : Statement of first party
- Ex.M.7 : Statement of conductor
- Ex.M.8 : Sketch
- Ex.M.9 : FIR
- Ex.M.10 : PM report
- Ex.M.11 : IMV report
- Ex.M.12 : Complaint
- Ex.M.13 : Crime details form
- Ex.M.14 : Spot mahazar
- Ex.M.15 : Log sheet
- Ex.M.16 : Trip sheet of the vehicle
- Ex.M.17 : Receipt
- Ex.M.18 : Copy of order
- Ex.M.19-21 : Notice of enquiry
- Ex.M.22 : Preliminary enquiry of first party

- Ex.M.23 : Deposition of witness of second party
Ex.M.24 : Defence statement
Ex.M.25 : Enquiry reported
Ex.M.26 : Order sheet
Ex.M.27 : Show cause notice
Ex.M.28 : Reply of first party
Ex.M.29 : History sheet of first party
Ex.M.30 : Job card
Ex.M.31 : Order sheet of disciplinary authority
Ex.M.32 : Order
Ex.M.33 : Postal acknowledgment
Ex.M.34 : Proceedings of appellate authority
Ex.M.35 : Payment cheque of first party
Ex.M.36 : Copy of award in MVC 872/2015

(Hemavathi)

Principal District & Sessions Judge,
Hassan.