

KAMS060001382022



**BEFORE THE INDUSTRIAL TRIBUNAL AT MYSURU
DATED THIS THE 15th DAY OF NOVEMBER 2025**

Present:- Smt. Sandhya Rao P, B.Sc.,LL.B.,
Presiding Officer,

Ref.No.36/2022

First Party: **Sri.S.Ananda**
Driver, KSRTC,
Badge No.1784,
Kollegal Depot.
(By **Smt.Manjula G.A.**, Advocate)

-Vs-

Second Party: **The Divisional Controller,**
KSRTC, Chamarajanagar Division,
Chamarajanagar.
(By **Sri.A.B.Nagaraju**, Advocate)

ORDERS ON PRELIMINARY ISSUE

This is a Reference made by the Government of Karnataka with regard to the punishment order passed by the second party against the first party vide order dated 30.04.2018, by reducing two annual increments of the first party with cumulative effect and further that the first party was entitled to annual increment

on notional basis for the purpose of revision of pay and annual increment and further that he was not entitled for back wages from the date of his appointment till the date of this punishment order.

2. The first party in his claim statement has contended that he was appointed as a driver in the second party corporation by virtue of the appointment order dated 27.09.1991. He was on probationary period for 2 years. Thereafter vide order No.278/2018 dated 28.09.2018. His services were made permanent w.e.f. 06.05.1997. Such being the case, on 11.11.1998, the first party was issued charge sheet alleging that first party had produced before the Corporation a fake transfer certificate along with his application No.236872, seeking appointment for the post of driver. The enquiry officer appointed to conduct enquiry had after the completion of enquiry, submitted his enquiry findings on 06.06.2005, holding that the first party was guilty of the charges. Thereafter, the second party issued the 2nd show cause notice to the first party on

06.06.2006 and the same was duly replied to by the first party. Subsequently, the second party passed the impugned punishment order dated 30.04.2018 as stated supra. The first party therefore, contended that the second party after an inordinate and unexplained delay of over 20 years had imposed the punishment in respect of the alleged misconduct that it is stated to have taken place during the period 1991-1994. The second party has not explained the said delay and hence the same defeats and as such the same defeats the very object of disciplinary enquiry and amounts to gross abuse of power. The first party was nearing retirement when the disproportionate and stale punishment order was imposed. Moreover, even during the enquiry, the first party was not provided with a reasonable opportunity to present his case and to cross-examine the management witnesses effectively. The explanation provided by the first party were summarily rejected by the enquiry officer and no consideration was given to the mitigating circumstances. The enquiry proceedings were conducted in violation of the certified standing order applicable to the second

party corporation. The further party further in support of his contention, relied upon the decisions of Hon'ble Apex Court in 1) ***P.V.Mahadevan V/s. M.D.T.N. Housing Board (2005) 6 SCC 636***; 2) ***Sur Enmel and Stamping Works Ltd v/s. Their workman -AIR 1963 SC 1914***; 3) ***Coimbatore District Central Co-op Bank V/s. Employees Association- AIR 2003 SC 103***; and 4) ***Workmen of Firestone Tyre & Rubber Co. V/s. Management -(1973) 1 SCC 813***.

3. Per contra, the second party contended that the first party at the time of submitting his application to the second party corporation for appointment as driver, had submitted the transfer certificate. However, on enquiry being made, it was found that the first party submitted a false transfer certificate. Hence, the second party has issued articles of charge to the first party calling upon him to submit his explanation to the charges alleged therein. However, the first party had failed to submit his explanation. After the domestic enquiry was initiated to look into the matter, the first party duly participated in the said enquiry. The enquiry officer provided sufficient opportunity to the

first party to defend his case. The enquiry officer further has conducted the enquiry in accordance with the C & D regulations of the Corporation and also by following the principles of natural justice. Thereafter, the enquiry officer based on the evidence brought on record, gave his finding holding that the first party was guilty of the charges leveled against him. On receipt of the said report, the second party management had before passing the punishment order issued the show cause notice to the first party and by following the principles of natural justice and after looking into the history sheet of the first party, had issued the punishment order against the first party workmen. Thus the enquiry conducted and the punishment order passed by the second party management is fair and proper.

4. In view of the aforementioned rival contentions of the parties raised in respect of the domestic enquiry, the following preliminary issue came to be framed :

“Whether the Domestic Enquiry conducted against the First Party was fair, proper and valid ?”

5. When the matter was posted for evidence of second party on preliminary issue, the second party examined its establishment supervisor R. Praveen as MW-1 and got marked Ex.M-1 to M-15 on its side.

6. Heard arguments of both parties and perused the materials on record.

7. This Tribunal answer's the above preliminary issue in the **Negative** for the following:

REASONS

8. In order to prove that the domestic enquiry conducted by it was fair and proper, the 2nd party had before this Tribunal gotten examined Sri.R.Praveen, Establishment Supervisor as MW-1 and got marked Ex.M-1 to M-15.

9. From the evidence of MW-1 and the documents produced, it is apparent that, the second party had issued articles of charge

to the first party for having submitted a fake transfer certificate along with his application for appointment as driver. The second party did not reply to the charges leveled against him and therefore the enquiry officer was appointed by the second party vide Ex.M-4 dated 11.11.1998.

10. Pursuant to the aforesaid order of appointment of enquiry officer, notice of enquiry came to be issued. The preliminary enquiry was held by the enquiry officer on 30.07.1999, vide Ex.M-6. However, a perusal of the said preliminary enquiry clearly indicates that during enquiry, the first party had stated before the enquiry officer that he had not understood the charges leveled against him and therefore, he had not submitted his reply to the charges.

11. The order sheet of the enquiry proceedings has been marked at Ex.M-10. As discussed above the preliminary enquiry was conducted as per Ex.M-6, on 30.07.1999. However, the order sheet of the enquiry officer at Ex.M-10, indicates that the preliminary enquiry was conducted on 20.01.2005.

Furthermore, the order sheet does not reveal that the first party was provided the document sought for by him nor does it reveal that he was provided an opportunity to submit his reply to the articles of charges. Moreover, the order sheet reveals that no effort was made by the enquiry officer to explain to the first party the charges leveled against him. Despite the first party asking for copies of documents mentioned in the charge sheet, he was not provided with the same. That apart, no opportunity was provided to the first party to submit his reply. Furthermore, on the same day, the reporter was examined by the second party and documents were marked.

12. It is further seen that, as per the order sheet Ex.M-10 on 10.02.2005, the presenting officer examined MW-1 before the enquiry officer, however, the deposition provided before this Tribunal at Ex.M-6 reveals that MW-1 was examined on 30.07.1999 itself and cross-examined on the very same day. The deposition further reveals that, on 20.07.2001, the reporter was examined and on the same day and the said witness was cross-examined by the first party. However, the order sheet does not

reflect the same and the enquiry proceedings as per Ex.M-10 appears to have commenced in the year 2004. From the aforesaid discussion, it is apparent that, there is no clarity with regard to when the witnesses were examined, as the dates regarding examination of witnesses in the ordersheet at Ex.M-10 and the depositions at Ex.M-7 differ from one another. Further, it is seen from Ex.M-9 that, on 01.08.2003 and 18.05.2004, clarification of the first party was obtained by the enquiry officer. The said proceedings are not at all reflected in the order sheet at Ex.M-10.

13. MW-1 is not the enquiry officer in the present case. During the course of cross-examination, MW-1 admitted that no materials were placed before this Tribunal to indicate that the efforts were made to secure the enquiry officer to adduce evidence in the present case. Furthermore, no documents have been placed before this Tribunal to establish that the enquiry officer was unable to adduce evidence.

14. Furthermore, during the course of arguments, the counsel for the first party has vehemently contended that the alleged misconduct in the present case is said to have taken place between 1991-94. However, the punishment order was imposed only in the year 2018, i.e., after 20 years. It is not in dispute that the charge sheet in the instant case was issued to the first party in the year 1998. The enquiry was concluded in the 2006 and enquiry findings submitted.

15. In ***State of Andhra Pradesh V N. Radhakishan, AIR 1998 SC 1833***, the Supreme Court in paragraph 19 has held that:

"It is not possible to lay down any pre-determined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated each case has to be examined on the facts and circumstances in that case. The essence of the matter is that the court has to take into consideration all relevant factors and to

balance and weight them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularly when delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether delay has vitiated the disciplinary proceedings the Court has to consider the nature of charge, its complexity and on what account the delay has occurred. If the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the

rules. If he deviates from this path he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take its course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the court is to balance these two diverse considerations."

16. In the instant case, the second party while leading evidence, has not explained the reasons for the delay in concluding of the disciplinary enquiry. Furthermore, the counsel for the 1st party from the admissions elicited from MW-1 and the documents marked has been successful in establishing the discrepancies in the enquiry conducted, the lack of opportunities provided to the first party to put forth his case and the callous attitude in which the enquiry was conducted by the enquiry officer, by throwing out the window the rules and regulations while conducting the enquiry.

17. The aforesaid decision was relied upon the Hon'ble Apex Court in the case of ***P.V. Mahadevan Vs M.D..T.N.. Housing Board, 2005 (6)SCC 636***, which was relied upon by the representative of the first party during the course of his arguments.

18. In the instant case, it is seen that during the course of preliminary enquiry, the first party has categorically stated before the enquiry officer that he had not understood the charges and further, he had not received the documents and hence, he had not submitted his reply. However, the record reveals that the enquiry officer had not explained the charges to the first party employee and not furnished him with the documents related to the charges framed against him and moreover, he was not provided with an opportunity to submit his reply to the charges. The records further reveal that on the day the preliminary enquiry was conducted, the presenting officer examined the witnesses on behalf of the management and first party cross-examined the said witness. These aspects aspects

clearly indicate that first party was not provided sufficient opportunity during the course of enquiry.

19. Furthermore, the Representative of the first party relied upon the decision in the case of **State Bank of Patiala Vs S.K. Sharma, (1996)3 SCC 364** and contended that where violation of natural justice has occurred, the inquiry is vitiated even if there is evidence on record. He further also relied upon the decision in the case of **Sur Enamel & Stamping Works Ltd V/s. Their workmen, AIR 1963 SC 1914**, to substantiate the aforesaid point. The Hon'ble Apex Court in the said decision has categorically held as follows:

“ An enquiry cannot be said to have been properly held unless,

- (i) the employee proceeded against has been informed clearly of the charges levelled against him,*
- (ii) the witnesses are examined--ordinarily in the presence of the employee-in respect of the charges,*
- (iii) the employee is given a fair opportunity to cross-examine witnesses, (iv) he is given a fair opportunity to examine witnesses including himself in his defence if he so wishes on any relevant matter, and*
- (v) the enquiry officer records his findings with*

reasons for the same in his report. In the present case the persons whose statements made behind the backs of the employees were used by the enquiring authority were not made available for cross-examination but it would appear that they were not even present at the enquiry. It does not even appear that these reports were made available to the employee at any time before the enquiry was held. Even if the persons who made the reports had been present and the employee given an opportunity to cross-examine them, it would have been difficult to say in these circumstances that was a fair and sufficient opportunity. But in this case it appears that the persons who made the reports did not attend the enquiry at all. From whatever aspect the matter is examined it is clear that there was no enquiry worth the name and the Tribunal was justifies in entirely ignoring the conclusion reached by the domestic Tribunal”.

20. If the principles laid down in the aforesaid decision is applied to the facts and circumstances of the present case, it is seen that in the instant case, no fair opportunity to cross-examine the management witness was provided to the first party witnesses. The witnesses not mentioned in the charge

sheet were examined by the management. Enquiry was conducted with by the enquiry officer, without providing all documents to the first party and opportunity to submit his reply. Moreover, the order sheet in the instant case reveal a picture different from that of the documents of enquiry produced before this Tribunal. The enquiry documents clearly indicate that enquiry conducted by the enquiry officer in the instant case is in violation of KSRTC (C & D) Regulations.

21. The first party has been successful in projecting before this Tribunal the prejudice caused to him during the course of enquiry. On the other hand, the second party has failed to establish before this Tribunal the circumstances for the delay of 8 years in concluding the enquiry. The evidence of MW-1 does not clarify the discrepancy in the order-sheet and the documents furnished before this Tribunal. The facts of the case make it difficult to conclude that fair and sufficient opportunity was provided to the first party during the course of enquiry to defend his case. Under such circumstances and in view of the

aforesaid discussion, this Tribunal is of the opinion that, the enquiry conducted by the second party is not fair and proper. Accordingly, this Tribunal answers the Preliminary Issue in the **Negative** and proceeds to pass the following-

ORDER

The Domestic Enquiry conducted against the first party is not fair, proper and valid.

Consequently, the case is posted for 2nd party evidence on merits.

(Dictated to the Stenographer, transcribed by her, then corrected, signed and pronounced by me in the open court on this the 15th day of November, 2025)

sd/-
(SANDHYA RAO P)
Presiding Officer,
Industrial Tribunal, Mysuru