

KAUK010019482018



IN THE LABOUR COURT AND THE PRL.DISTRICT & SESSIONS COURT, UTTARA KANNADA, KARWAR.

DATED THIS THE 11th DAY OF SEPTEMBER-2023

KID NO:7/2018

PRESENT:

Sri.D.S.Vijaya Kumar,
B.Sc., LL.B.,
Prl. District and Sessions Judge,
Uttara Kannada, KARWAR.

**FIRST PARTY
WORKMAN/ CLAIMANT:**

Shankar S/o Prakash Madar,
Age:33 years, Occ: Nil,
R/o: Borgall, Taluk- Hukkeri,
Belagavi.

(By Sri. S.S.Hegde., Advocate)

Vs.

**SECOND PARTY
MANAGEMENT/RESPONDENT:**

The Management,
NWKRTC, North Canara Division,
Sirsi (Uttara Kannada)

(By. N.T.K., Advocate)

ORDERS ON ISSUE NO:2

The first party/Workman has filed this claim statement under Section 10(4-A) of Industrial Dispute Act, 1947 (By the Karnataka Amendment Act 1987) being aggrieved by the

dismissal order No: NWKT/UK/DL/C-06/AB/T-217(2017)4004 dated: 08/08/2018 passed by the second party/Management.

2. It is the case of the first party/ workman that, he was appointed as a trainee driver in the year 2017, he was trainee in the corporation and he served for the betterment of the corporation during his service sincerely and honestly till the date of his removal order. Before removal order, the second party issued a show cause notice to the first party/ workman on 1/6/2017 alleging that workman remained absent to the duty without any leave application or prior permission of the concerned authority from 18-3-2017 to till the date of issue of notice and thereby he made inconvenience in the transport transaction and has violated the recruitment rule 1982 and failed to show responsibility as an employee of the corporation. After receipt of the charge sheet first party/workman submitted his reply denying the charges leveled against him. The first party further submitted that he was not feeling well and was suffering from back pain and was under Ayurveda treatment and mediation and he has intimated the matter to his superior officers and taken the permission. When he was able to perform the duty, he joined the duty by giving joining letter and the corporation has never shown the concern about the ill health of the workman and mercilessly removed him from service. The

workman further submitted that being not satisfied with the reply to the charge sheet, the department conducted enquiry by appointing an enquiry officer. The enquiry conducted is against the principles of natural justice and in violation of Regulations 11,16,17, 18 and 19 of Regulation No. 23 of C and D Regulations 1971. It is further submitted that the enquiry officer without any base and without any knowledge of documents concluded the enquiry. There is no legal and proper evidence to show that the charges are proved. It is further submitted by the first party/ workman that the Disciplinary Authority has not applied its mind properly and has dismissed the workman from service on the basis of perverse finding of the Enquiry Officer. After dismissal of service the first party/ workman has not been employed anywhere and he has no source of income to maintain himself and his family members. The first party/workman is now aged 42 years and there are no chances of getting employment anywhere. With these grounds the first party prays to set aside the dismissal order passed by the second party/ Management and prays for reinstatement with full back wages, continuity of service with all other consequential benefits.

3. After filing the petition, notice has been issued to the second party/ management. The management has filed objection statement contending that claim petition of the first party/

workman is far from truth, averments made in the petition are false, frivolous and vexatious and thereby management has denied all the contentions taken by the first party workman in the claim petition. Further, the second party/ management has contended that the Depot Manager of Karwar Depot has submitted a report dated: 14-9-2017 regarding unauthorised absence of the claimant for duties from 25-8-2017 to 14-9-2017 without prior permission of superiors causing inconvenience in the depot duties and loss to the corporation. Thereafter, the respondent has issued call memo's dated:23-10-2017, 11-11-2017 and show cause notice on 4-11-2017. On the basis of the report, the respondent has issued Articles of charge to the claimant in respect unauthorise absence. The claimant failed to submit reply to the Articles of Charges. Hence, the respondent has decided to conduct the enquiry against the claimant. The respondent has appointed the Assistant Adm.Officer, Sirsi as an Enquiry Officer and the Enquiry Officer has issued notices of enquiry to the claimant, the same were served to the claimant. The enquiry officer has conducted the enquiry on 16-2-2018, 12-4-2018 and 25-5-2018. The claimant has availed all sorts of opportunities in the enquiry. The enquiry Officer submitted his findings on 31-5-2018 to the respondent. The respondent/ Management has sent the copy of enquiry report to the claimant along with memo and show cause notice, the claimant failed to

reply to the same. The respondent has accepted the findings of the enquiry officer and dismissed the claimant/ workman. The order of dismissal is just, fair, proper and proportionate. The claimant/ workman after dismissal is gainfully employed and getting more income than earning in the respondent. Hence, the second party/ Management prayed for rejection of the claim statement of first party/workman.

4. On the basis of above controversy, the following issues have been framed:

- 1) Whether the petitioner proves that the order of dismissal passed by the respondent is unjust and illegal?
- 2) Whether the respondent proves that the domestic enquiry conducted against the petitioner is fair and legal?
- 3) Whether the petitioner is entitled for the relief sought for ?
- 4) What Order?

5. Out of these issues, the issue No.2 was treated as preliminary issue as contemplated under Order 14 Rule 2 of C.P.C.

6. On behalf of second party/Management one Venkaraddi Somaradder is examined as MW-1 and the documents Ex.M-1 to 21 are got marked and closed its side. The

first party/ workman has not chosen to adduce any oral or documentary evidence.

7. Heard arguments of both sides.

8. My findings on the above issue No.2 is in the [Affirmative](#) for the following :

REASONS

9. **Issue No.2:** I have perused the claim petition of the first party/workman, objections filed by the second/ Management and documents available on record.

10. The first party workman was a Trainee driver in the second party corporation since 2017 is an admitted fact. The first party workman contends that, he was removed from the service by order No.NWKT/UK/DL/C-06/AB/T-217(2017)4004 dated 08-08-2018. According to the first party his removal without obtaining approval U/Sec.33(2)(b) of the Industrial Dispute Act-1947 is not valid. However at this stage, the said aspect of the matter is kept open and not considered, as the present issue is as to whether the domestic enquiry conducted against the petitioner is fair and legal only. The first party in so far as the said aspect is concerned, has put forth the defence that the domestic enquiry conducted is in violation of the principles of natural justice and regulation No.23 of C&D

regulations 1971. Therefore, now on the basis of material produced in respect of this issue, it is to be decided whether the principles of natural justice and regulation No.23 of C&D regulations 1971 have been violated or not.

11. On behalf of the second party management in order to corroborate its contention that the enquiry conducted against the first party is in accordance with the regulation as well as by adhering to principles of natural justice, it has examined its establishment superintendent as MW-1. He states that since the enquiry officer who conducted the enquiry in the case has resigned and joined other department he is deputed to give evidence. Further, he states that, in view of unauthorized absence of the first party for long period during his training period without obtaining prior permission, the notice of enquiry was served on the first party and the enquiry officer conducted the enquiry on 16-02-2018, 12-04-2018 and 25-05-2018 and the claimant has attended the enquiry and has cross examined the management witness and submitted defense statement to the enquiry officer. Thus, he was given all the opportunity in the enquiry to defend his case properly and thereafter the enquiry officer concluded the enquiry proceedings and submitted his findings on 31-05-2018 and the enquiry conducted is as per C&D regulation by following of principles of natural justice.

12. Ex.M.1 is the authorization letter issued in favour of NW-1 to represent the second respondent and give evidence on its behalf. Ex.M.2 is the report of the Depot manager, Karwar along with attendance register extract regarding unauthorized absence of the first party. Further, as per Ex.M.3 to 21 the notice issued to the first party call memo issued to the first party letter of first party in response to the show cause notice, postal acknowledgment, order of appointment of enquiry officer and service of notice of enquiry and the enquiry proceedings papers have been produced.

13. In the cross examination of MW-1, it is suggested on behalf of the first party that the first party had remained absent from duty due to ill health and he had informed the same to his superior about his absence. However, MW-1 has denied that the first party had given information about his ill health and consequent absence. At this juncture the question is whether the C&D regulation and Principles of natural justice have been adhered or not. In this connection Ex.M-11 shows that, the notice of enquiry was issued to the first party and he attended the preliminary enquiry conducted at the commencement of the enquiry, before the enquiry officer as per Ex.M-12 and in fact he has affixed the signature in Ex.M-12. Thereafter, as per Ex.M-13 the reporting officer is examined on behalf of the second party

management and in the said enquiry two documents have been marked. Ex.M-13 shows that, the first party has stated that, he does not require the assistance of any colleague for conducting the cross examination and has chosen to conduct the cross examination himself. In the said cross examination he has suggested that, he had informed the reporting officer about his ill health and availing of leave. But, MW-1 has denied the same and it is not the version of the first party that, he had submitted written leave petition. Thereafter, the second party has closed its side evidence in the enquiry proceedings and recorded the statement of the first party under rule 23(18) of C&D Regulations by pointing out the incriminating material against him and the first party has affixed the signature to the said document as well. After that, the first party has not chosen to lead defence evidence, but he has submitted defence statement dated 25-05-2018, and with the same, the second party appointed enquiry officer has concluded the enquiry proceedings and submitted report to disciplinary authority as per Ex.M-17. The said enquiry report has been served on the first party under show cause notice marked at Ex.M-18 and the postal acknowledgment is also placed on the record. Subsequent to the same after considering the report the order of removal from service as per Ex.P.21 is passed by the disciplinary authority. From the above discussion, it is seen the principles of natural justice were

complied with and the mandatory requirement of C&D Regulations 1971 of the second respondent corporation were also complied with in holding the enquiry and passing the impugned order. Therefore the contention of the first party that the enquiry conducted is not fair and legal is not substantiated in the case. Consequently issue No.2 is answered in the Affirmative.

(Dictated to the Stenographer, transcribed by her, revised and corrected by me, signed and then pronounced in the Open Court on this the 11th Day of September -2023.)

(D.S.Vijaya Kumar)
Prl.District and Sessions Judge,
Uttara Kannada, Karwar.

ANNEXURE

List of witnesses examined on behalf of the first party/workmen:

- Nil -

List of witnesses examined on behalf of the second party/management:

PW-1 : Venkaraddi Somaraddi

List of documents exhibited on behalf of the first party/workmen:

-Nil-

List of documents exhibited on behalf of the second party/management:

Ex.M.1: Authorization letter.

Ex.M.2: The report of Depot Manager, Karwar along with attendance extract dt:14-9-17.

Ex.M. 3: Copy of call memo dated 23.10.2017.

Ex.M. 4: Post acknowledgment card.

- Ex.M. 5: Copy of call memo dated 11.11.2017.
- Ex.M. 6: Show cause notice dated 14.11.2017.
- Ex.M. 7: Letter of I Party along with letter dt: 18.11.2017.
- Ex.M. 8: Postal acknowledgment card.
- Ex.M. 9 :Copy of notice of appointment of Enquiry Officer dated 28.15.2017.
- Ex.M.10: Postal acknowledgment card.
- Ex.M.11: Copy of notice dated 05.02.2018.
- Ex.M.12: Preliminary enquiry proceedings dated 16.02.2018.
- Ex.M.13: Enquiry proceedings dated 12.04.2018.
- Ex.M.14: Enquiry proceedings dated 25.05.2018.
- Ex.M.15: Defense statement dated 25.05.2018.
- Ex.M.16:Order sheet of Enquiry Officer.
- Ex.M.17: Findings of Enquiry Officer dated 31.05.2018.
- Ex.M.18: Show cause notice dated 06.06.2018.
- Ex.M.19: Past history sheet.
- Ex.M.20: Noting sheets of respondent.
- Ex.M.21: Dismissal order dated 08.08.2018.

