

(2016) 03 KAR CK 0288

In the Karnataka High Court

Case No : Writ Petition No. 12561/2016 (S-KAT)

Anna Rao S. Muttathi

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 21-03-2016

Acts Referred:

Citation : (2016) 03 KAR CK 0288

Hon'ble Judges : Jayant M. Patel and B.V. Nagarathna, JJ.

Bench : Division Bench

Advocate : Sathish K., Advocate for M.S. Bhagwat, Advocate, for the Appellant;
H.B. Mahesha, HCGP, for the Respondent

Final Decision : Disposed off

Judgement

Jayant M. Patel, J.—1. The present writ petition is directed against order dated 27/11/2015, passed by the Tribunal whereby, for reasons recorded in the order, the Tribunal has dismissed the application.

2. We have heard learned counsel appearing for the petitioner and the learned Government Pleader appearing for respondent Nos. 1 and 2.

3. The first contention raised by the learned counsel for the petitioner was that the Tribunal has not considered the important aspect that there should be a finding recorded by the Disciplinary Authority that there is grave misconduct committed by the Government servant. He submitted that unless there is such a conclusion recorded by the Disciplinary Authority, penalty cannot be imposed upon a Government servant, who has retired from service. Learned counsel, in support of his contention relied upon the decision of this Court in case of D. Narasimha Murthy v. State of Karnataka in W.P. No. 31414/2010 decided on 02/12/2010.

4. The examination of the aforesaid contention reveals that the charge was with regard to a grave misconduct, including that of huge financial loss caused to the Government. In the enquiry, the ultimate conclusion was that the charges were

proved. Thereafter, second show-cause notice was issued and the petitioner submitted written statement/representation. After considering all the material on record, it was found that the charges were proved. It would necessarily mean that the charge of grave misconduct, which was proved before the Enquiry Officer was also found to be proved by the Disciplinary Authority, hence the conclusion was that of a grave misconduct having been committed by the petitioner. Under these circumstances, it is not possible to accept the contention that as there was no finding recorded specifically of any grave misconduct therefore, the order of imposition of the penalty is vitiated. In our view, even if the principle stated in the decision of this Court in the case of D. Narasimha Murthy (*supra*), is noted, the same would be of no help to the petitioner.

5. Learned counsel in furtherance to the submission also, relied upon a decision of the Apex Court in D.V. Kapoor v. Union of India and others [, AIR 1990 SC 1923], for contending that if any penalty is to be imposed upon a retired Government servant, there should be gross misconduct.

6. As such, the case before the apex Court in the case of D.V. Kapoor (*supra*), was a misconduct on the basis of absenteeism. Such is not the fact situation in the present case. Further, in the present case, as observed earlier, the charge was of a gross misconduct committed resulting into huge financial loss to the Government. Hence, the said decision is also of no help to the learned counsel for the petitioner.

7. Learned counsel next contended that the Enquiry Officer ought not to have permitted production of photocopy of the document and unless the original was produced or the original was compared with the photocopy, the production of such document was impermissible and therefore, there is illegality committed in holding enquiry and consequently, the penalty imposed based on such enquiry report cannot be maintained.

8. We may record that the aforesaid contention is considered by the Tribunal in paragraph 8 of the impugned order and the Tribunal has rightly found that the strict principle of rule of evidence or the law of evidence as are applicable in the civil and criminal Court proceedings are not applicable to the departmental enquiry as only the broad principles of natural justice are applicable to the enquiry. Further, when the production or utilization of the photocopy was not objected to or challenged during the course of the enquiry, it would not now lie in the mouth of the petitioner to contend that photocopy could not have been produced. In any case, no prejudice is satisfactorily demonstrated before the Tribunal. Under these circumstances, we find that the view taken by the Tribunal cannot be said to be erroneous on the aspects of production of photocopy, which has been considered by the Enquiry Officer in the enquiry report. Hence, the contention raised on behalf of the petitioner cannot be accepted.

9. Learned counsel next contended that in the impugned order of Disciplinary Authority, there should be a clear finding recorded that the written statement or

the representation submitted by the petitioner in response to the second show-cause notice is not satisfactory then only the penalty could be imposed. He submitted that in the absence thereof, the order of the penalty could be vitiated. The said contention is examined in light of the reasons recorded by the Disciplinary Authority, the relevant portion of which, reads as under:--

"The delinquent officer Sri. Annarao S. Muthathi under above read Sl. No. (9) letter have submitted the written statement. On going through in detail the written statement submitted by delinquent, the enquiry officer relating to the charges all the documents and statement of witnesses are being examined and as per the rules have conducted the departmental enquiry, against Sri. Annarao S. Muthathi, Exe. Engineer (Retired) all the charges are being proved, government took a decision to impose penalty, under above Read Sl. No. (10) govt. letter the KPSC concurrence was sought The KPSC finally giving its clarification, under Sl. No. (13) letter, from Sri. Annarao S. Muthathi, E.E.(Retd) to recover a sum of Rs. 6,01,173.00 and in his pension remaining 50% to be deducted permanently, for the government proposal gave its consent."

10. The aforesaid shows that the written statement submitted by the delinquent officer is considered and thereafter, the Disciplinary Authority has found that the charges being proved, the decision is taken to impose penalty. Under these circumstances, it cannot be said that there is non consideration of the written statement. The contention raised that there should be a clear finding recorded that the written statement/representation is not satisfactory, is misconceived because what is required is consideration of the written statement and not the rejection of the written statement or the statement being unsatisfactory, as sought to be canvassed. Hence, the contention cannot be accepted.

11. Learned counsel lastly contended that there is a long time gap between the second show-cause notice, the reply submitted and the penalty imposed. It was submitted that the reply to the second show-cause notice was given by the petitioner in the year 2003, whereas, penalty is imposed in the year 2009 vide order dated 13/07/2009 and hence, the order of imposition of penalty can be said to be as not only vitiated but would also be unreasonable and arbitrary.

12. We are not at all impressed by the submission for the simple reason that it transpires from the impugned order of penalty itself that after the reply was submitted, there was correspondence between the Government and Public Service Commission wherein, queries were raised by the Public Service Commission to which, the Government responded and thereafter, the Public Service Commission vide letter dated 13/05/2009 finally granted approval. It is after the approval so granted by the Public Service Commission, immediately within a period of two months the order has been passed. Therefore, when there were sufficient reasons for the delay in imposition of the penalty, it cannot be said that the order is vitiated or would be rendered unreasonable as sought to be canvassed. Apart from the above, no material is placed on record to show that any prejudice is caused to the petitioner during the period of delay and

therefore, such delay cannot be ignored.

13. No other contention is raised. If the aforesaid aspects are considered along with the ultimate decisions taken by the Tribunal for dismissal of the application, we do not find that any case is made out for interference. Hence, the petition is disposed.