

(2017) 01 KAR CK 0025

In the Karnataka High Court

Case No : Writ Petition No. 1831 of 2017 (GM-KLA)

C. Krishnamurthy

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 25-01-2017

Acts Referred:

Constitution of India, 1950 — Article 226

Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957 — Rule 14-A(2)(d)

Citation : (2017) 3 AirKarR 48 : (2017) 2 KantLJ 193

Hon'ble Judges : H.G. Ramesh and John Micheal Cunha, JJ.

Bench : Division Bench

Advocate : Sri H.C. Shivaramu, Advocate, for the Petitioner; Government Advocate served, for the Respondent

Final Decision : Disposed Off

Judgement

H.G. Ramesh, J.(Oral) - In this writ petition, petitioner has sought for quashing of the enquiry report dated 26-10-2016 (Annexure-P) submitted by Additional Registrar of Enquiries-10, Karnataka Lokayukta, Bangalore, and also to quash the recommendation dated 4-11-2016 (Annexure-Q) of Upa-lokayukta, State of Karnataka.

2. The petitioner was subjected to a Disciplinary Inquiry on the following charge:

"That Sri Krishnamurthy, the DGO while working as the Assistant Executive Engineer, KHB, Davangere, the KHB notified to acquire 360 acres of land in Kundawada Village by fixing the value at Rs. 5 lakhs per acre but, without paying the fixed compensation directly to the owners of the land, DGO managed to get the landowners entitled for compensation to Bangalore and caused to pay compensation at Rs. 4,10,000/- per acre to the owners instead of Rs. 5,00,000/- by taking their signatures to cheques of Corporation Bank of Anandrao Circle Branch in Bangalore and thus caused loss to several owners of acquired land failing to maintain absolute integrity besides devotion to duty and acted in a

manner unbecoming of Government servant and thus committed misconduct as enumerated under Rule 3(I)(i) to 3(I)(iii) of Karnataka Civil Services (Conduct) Rules, 1966."

The Inquiry Officer has held that the charge is proved as per the enquiry report dated 26-10-2016 (Annexure-P). Upa-lokayukta, after considering the enquiry report, has recommended as per Annexure-Q, dated 4-11-2016 as follows:

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9. Hence, considering the findings of the Inquiry Officer and also, having regard to the nature and the gravity of the misconduct alleged against the DGO, it is hereby recommended that the DGO -Sri Krishnamurthy, Assistant Executive Engineer, Karnataka Housing Board, District Project Office, Davanagere, be punished with the penalty of "dismissal from service" in exercise of powers under Rule 8(viii) of the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957.

10. Further, if the DGO is not prosecuted, he may be prosecuted for cheating the farmers and also, steps be taken for recovery of the amount.

11. Action taken in the matter is to be intimated to this Authority.

Connected records are enclosed herewith."

3. We have heard Sri H.C. Shivaramu, learned Counsel appearing for the petitioner and perused the record. He submitted that the recommendation of Upalokayukta is almost like a final order, and therefore, is unsustainable in law.

4. The recommendation is made by Upa-lokayukta as per Rule 14-A(2)(d) of the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957; the Rule reads as follows:

"14-A. (2)(d) After the inquiry is completed, the record of the case along with the findings of the Inquiring Officer and the recommendation of the Lokayukta or the Upa-lokayukta as the case may be, shall be sent to the Government."

5. By considering a regulation which is similar to the rule extracted above, this Court in Shankarappa v. Karnataka Power Transmission Corporation Limited, Bangalore and Another Writ Petition No. 23485/2015 D.D. 24.11.2016, has held that Upa-lokayukta is required to send his recommendation along with the record of the case and the findings of the Inquiry Officer to the Disciplinary Authority. In the said decision, it is held that the decision of a Division Bench of this Court in The Karnataka Power Transmission Corporation Limited v. Javarai Gowda and Another ILR 2015 Kar 1615 is per incuriam. Further, it is stated in the said decision that the Disciplinary Authority is at liberty to disagree with the findings recorded by the Inquiry Officer and/or the recommendation of Upa-lokayukta by giving reasons to record its own findings. The recommendation given under the above extracted Rule is not declared as final under any provision of law. Therefore, the apprehension of the petitioner that the recommendation of Upa-

lokayukta is the final order in the matter is not correct. It is for the Disciplinary Authority to consider the matter and to make a final order. With this observation, the writ petition is disposed of.