

(1965) 03 KAR CK 0018
In the Karnataka High Court
Case No : Writ Petition No. 985 of 1964

Clifford (V.C.)

APPELLANT

Vs

Government of India and Others

RESPONDENT

Date of Decision : 11-03-1965

Acts Referred:

Defence Service (Classification, Control and Appeal) Rules, 1952 — Rule 18, 23

Citation : (1967) 1 LLJ 376 : (1967) 1 LLJ 374 : (1966) 2 MysLJ 70

Hon'ble Judges : M. Sadasivayya, J;K.R. Gopivallabha Ayyangar, J

Bench : Division Bench

Judgement

Sadasivayya, J.—The petitioner was working as an assistant master at King George's School at Bangalore, in the service of Government of India, Defence Department. Certain charges had been framed against the petitioner in respect of some alleged misconduct on his part, the details of which it is not necessary to enter into at present. A board of enquiry had been appointed to hold an enquiry in respect of those charges which had been framed against the petitioner. In the month of November 1962, the Board gave its findings as per Annexure N 12 (to be found in the paper book supplied by the petitioner at p. 60). Thereafter, a show-cause notice dated 7 December, 1962 was served on the petitioner requiring him to show cause as to why he should not be removed from service. To that show-cause notice, the petitioner had sent a reply. Then, respondent 2, viz. The chief of the General Staff, Army Head Quarters, passed the order of removal dated 10 July, 1963 as per Annexure A; by that order, the penalty of removal from the service of the Government (with effect from 10 July, 1963), was imposed on the petitioner. Thereafter, on 30 December, 1963 the petitioner preferred an appeal against the order of his removal. That appeal was filed under rule 18 of the Civilians in Defence Service (Classification, Control and Appeal) Rules, 1952 (hereinafter referred to as the rules). That appeal was rejected on 13 April, 1964 by respondent 1, viz., Government of India, through the Secretary, Defence Department, as per Ex. (a). The material portion of that exhibit is as follows :

"Delhi Telephone 35297. No. 05032/III/VCC/GS/MT 7 Army Head Quarters General Staff Branch, D.H.Q.P.O., NEW DELHI-11.

13 April, 1964.

To

Sri V. C. Clifford. c/o. Smt. MI Clifford, M.A., St. John's High School, Bangalore-5.

Subject : Appeal.

I am directed to refer to your appeal dated 30 December, 1963, addressed to the Secretary, Ministry of Defence, regarding reinstatement in service, and to say that the Government has examined your case carefully but regret that there is no reason to interfere with the orders already conveyed to you under Army Headquarters letter of even number dated 10 July, 1963.

Sd. Chief of the General Staff."

2. The petitioner has filed the present writ petition attacking the enquiry proceedings, the order of the termination of his services and the order passed by the appellate authority, on various grounds. He has sought for a writ of certiorari quashing the order of his removal, and a writ of mandamus requiring the respondents to reinstate the petitioner and to pay him all the arrears of salary as from the date of his suspension.

3. Two counter-affidavits have been filed by the Government Pleader (Central Government) on behalf of respondents 3 and 6. We have heard Sri S. B. Jahagirdar, the learned advocate for the petitioner, and Sri B. S. Keshava Ayyangar, High Court Government Pleader (Central Government). For the reasons which will be presently set out, it appears to be sufficient for the present purposes, to confine ourselves to the order as per Ex. (a) which has been passed by the appellate authority. Having regard to the view which we propose to take, we do not consider it necessary to go into the other contentions which have been raised by Sri Jahagirdar in regard to the enquiry proceedings and the order of removal from service that has been passed in consequence of the finding by the board of enquiry.

4. It will be noticed that Ex. (a), dated 13 April, 1964, purports to be a communication by the Chief of the General Staff to the petitioner, intimating the fact that the Government had examined the case of the petitioner, but found no reason to interfere with the orders that had already been passed. We enquired of the learned advocate for the petitioner, as to whether he had not been given a copy of any order purporting to have been passed by the appellate authority, containing the conclusions reached by it in regard to the petitioner's appeal and the reasons for such conclusions. We were told by the learned advocate for the petitioner, that even though the petitioner had applied for a copy such an order (if any), he was not furnished with any such copy. On our questioning the respondents' advocate (Central Government Pleader), we were informed by him

that the order passed by the Government in regard to the appeal which the petitioner had filed, did not contain anything more than what is to be found in Ex. (a). The resultant position, therefore, is that the petitioner's appeal has been dismissed with the bald statement of the appellate authority, to the effect that it had examined his case carefully and did not find any reason to interfere with the orders that had been made by the original authority. It is with the validity or otherwise of this order, that we are at present concerned.

5. It is needless to state that in dealing with the petitioner's appeal the appellate authority was performing a quasi-judicial function. Having regard to the contentions which had been raised by the appellant, the appellate authority had to consider and determine the correctness or otherwise of the order under appeal, in the light of the requirements of the relevant provisions of the rules; the mere subjective satisfaction of the appellate authority about the correctness or otherwise of the order under appeal was not, by itself, sufficient. This court had occasion to consider this aspect of the matter in a number of writ petitions. In *V. J. Fernandez v. State of Mysore* (Writ Petition No. 846 of 1962), the order passed by the appellate authority was as follows :

"ENDORSEMENT.

Reference to your appeal, dated 27 November, 1961, it is hereby informed that the General Manager (appellate authority) has considered your case thoroughly and sees no reason to revise the orders already passed in your case, and has therefore rejected your appeal under reference.

(Signed) ----,

Deputy General Manger."

6. In allowing that writ petition and quashing abovesaid order, this Court has observed as follows :

"In dealing with that appeal, the appellate authority was performing a quasi-judicial function and it was bound to consider the grounds urged in the appeal memorandum and to set out its reasons for arriving at any particular conclusion. An order rejecting the appeal by making a bald statement that the appellant's case had been thoroughly considered and that there was no reason to revise the orders already passed, is one which cannot be sustained; that is in no way consistent with its character as a quasi-judicial order. In such a case, not only will the appellant be entitled to know the grounds on which the contention raised by him have been rejected, but also the superior Courts should be in a position to satisfy themselves, that the inferior tribunal has properly exercised its appellate jurisdiction. However briefly it may be, such grounds or reasons should be set out in the order."

7. Again another Division Bench of this High Court *B. S. Kulkarni v. State of Mysore* (Writ Petition No. 446 of 1962), has stated as follows :

"No reasons are given for rejecting the appeal. It is not known whether the appellate authority has examined the various contentions raised by the petitioner. The petitioner has a right of appeal under law. The appellate authority had to consider all the contentions raised by the petitioner and had to give a considered order. What is required under law is an objective consideration and not a subjective satisfaction of the appellate authority. there is no denying of the fact that the order is not a speaking order. In these circumstances, the appellate order which is impugned in this proceeding cannot be sustained."

8. To the same effect are also the observations made by this Court in Mohin Ahmed v. State of Mysore (Writ Petition No. 469 of 1962).

9. The order of the appellate authority in the present case, as communicated in Ex. (a) to the petitioner, does not satisfy the tests that have been laid down in the decisions referred to above. The central Government Pleader drew our attention to rule 23, the relevant portion of which runs as follows :

"23. In case of an appeal against an order imposing any penalty specified in rule 13 the appellate authority shall consider -

(a) whether the facts on which the order was based have been established;

(b) whether the facts established afford sufficient ground for taking action; and

(c) whether the penalty imposed is adequate, inadequate or excessive; and after such consideration pass such order as it thinks proper :

Provided . . ."

10. He sought to contend that it would be enough if the appellate authority had complied with the requirements of rule 23. Even if this proposition of his were to be accepted, we find that there is no material which can assure us that the provisions of rule 23 have been complied with by the appellate authority in the present case. The language of rule 23 shows that it is mandatory for the appellate authority to consider the factors that have been set out in Cls. (a), (b) and (c) of that rule. It is further clear that it is only after such consideration, that the appellate authority will be competent to pass such orders as it thinks proper. The order passed by the appellate authority in the present case, does not give any indication of any of these factors having been considered by it. It was sought to be contended by the learned advocate for the respondents that from the statement in the order to the effect that the Government had examined the case carefully, it was implicit that all the requirements set out in rule 23 had been taken into consideration. It seems to us, that such a proposition is not wholly innocuous and its acceptance would have far reaching consequences which may really come in the way of this Court effectively exercising its supervisory jurisdiction in respect of quasi-judicial tribunals. On the other hand, it seems to us, that it is quite necessary that the order passed by the quasi-judicial tribunal should contain in itself, the necessary material to assure the superior Courts that the tribunal had satisfied the requirements of the relevant provisions pertaining

to the exercise of its jurisdiction, whether appellate or otherwise. When, in the present case, the order of the appellate authority gives absolutely no indication of that authority having borne in mind the requirements of rule 23, that order cannot be said to be one in accordance with rule 23. The said order satisfies neither the tests laid down in the cases above referred to, nor the requirements of rule 23. It is liable to be quashed.

11. We, accordingly, quash the order passed by the appellate authority rejecting the petitioner's appeal. The appellate authority will now proceed to deal afresh, with the petitioner's appeal and dispose it of expeditiously and in accordance with law.

12. Sri Jahagirdar for the petitioner submitting before us that his client may be permitted to take before the appellate authority certain new points which, according to Sri Jahagirdar, arise from the statements made in the counter-affidavits of the respondents. This is a matter in regard to which we do not wish to express any opinion, expect to state that the petitioner may, if he is so advised, make that prayer before the appellate authority. No order as to costs.