

(1983) 11 KAR CK 0031
In the Karnataka High Court
Case No : W.P. No. 11117 of 1976

Dr. Thimmegowda

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 30-11-1983

Acts Referred:

Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957 — Rule 14a

Citation : (1984) 1 KarLJ 486

Hon'ble Judges : V. S. Malimath, Acting C.J.;N. Venkatachala, J

Judgement

Malimath, C.J.-This Writ Petition has come up before us on a reference made by K.A. Swamy, J. by his order dt. 19-7-1982. The learned Single Judge felt that the matter deserves consideration at the hands of the Division Bench having regard to the observations made by the Supreme Court in *State of Madras v. A.R. Srinivasan* (AIR 1966 SC 1827) which in his opinion may to some extent be inconsistent with the view taken by this Court in *T. Ramachandrappa v. State* (1967-2 Mys. L.J. 360) and the decision of the Division Bench in W.P. No. 2256/66.

2. The undisputed facts of the case may briefly be stated as follows:

The petitioner was holding the post of an Assistant Medical Officer in Primary Health Unit, Kalasa Town, Chikmagalur District, during the year 1966-67. A disciplinary enquiry was held against him in respect of five charges. The State Government which is the Disciplinary Authority under the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957 (hereinafter referred to as the Rules), entrusted the enquiry to the Vigilance Commission under R. 14-A of the Rules whereupon the enquiry was held by the Assistant Director of Vigilance-2 and inquiry Officer. The inquiry Officer made a report on 24-8-1974 holding that charges 2 and 3 are not proved and that charges 1, 4, and 5 are duly proved. The Vigilance Commissioner, after considering the report of the Inquiry Officer, made a report, agreeing with the findings of the inquiry Officer, and recommended to the Disciplinary Authority to Impose the penalty of

dismissal from service. Thereafter, the Disciplinary Authority recorded its findings on 5-12-1974 accepting the report of the Inquiry Officer and the recommendation of the Vigilance Commissioner. On 9-12-1974 a show cause notice was issued to the petitioner by the Disciplinary Authority proposing to impose the penalty of dismissal from service and requiring him to show cause within 15 days from the date of receipt of the notice as to why the proposed punishment should not be imposed on him. Along with the show cause notice, copies of the report of Inquiry Officer, the recommendation of the Vigilance Commissioner and the findings of the Disciplinary Authority were also furnished to the petitioner. The petitioner thereafter gave a detailed representation on 13-2-1975. He also sent a further representation on 10-6-1976. The State Government the Disciplinary Authority-made a final order on 16-11-1976 dismissing the petitioner from service with immediate effect. It is the said order of dismissal that is challenged by the petitioner in this Writ Petition.

3. Sri Murlidhar Rao, learned Counsel for the petitioner, formulated the following four contentions:

(i) That the order of the Disciplinary Authority is vitiated as the second representation of the petitioner dated 10-6-1976 has not been considered.

(ii) That the impugned order of the State Government is not speaking order, no reasons having been assigned for rejecting the representation of the petitioner.

(iii) That the impugned order is vitiated as the same has been passed without application of mind; and (iv) That the Disciplinary Authority was not justified in holding the petitioner guilty of charges 1, 4, and 5.

4. So far as the first contention is concerned, it is necessary to point out that the petitioner can not complain about non-consideration of his second representation dt. 10-6-1976 as the same was presented beyond the prescribed time. When the show cause notice was issued to the petitioner on 9-12-1974 he was required to submit his representation if any within 15 days from the date of receipt of the show cause notice. The petitioner did avail of that opportunity and submit his representation dt. 13-2-1975 within the time extended by the Disciplinary Authority on the request of the petitioner. The second representation of the petitioner dt. 10-6-1976 having been presented after the expiry of the extended time, the Disciplinary Authority was not under an obligation to consider that representation. Hence there is no substance in the first contention.

5. We may at this stage dispose of the last and the 4th contention of Sri. Murlidhar Rao. He contended that the Disciplinary Authority was not Justified in recording a finding that the petitioner is guilty of charges 1, 4, and 5. The findings recorded by the State Government being finding of fact. The petitioner cannot call upon us to reappreciate the material produced during the course of the enquiry and to disturb those findings of fact. We have, therefore, no hesitation in rejecting this contention as well.

6. The Second contention of Sri. Murlidhar Rao is that the impugned order is not a speaking order as it does not contain the reasons for the conclusions of the disciplinary authority and that there is nothing to indicate in the impugned order that the grounds raised by the petitioner in his representation have been considered by it. He contended that the disciplinary authority being a quasijudicial authority was under an obligation to pass a speaking order giving reasons for rejecting the contentions raised by the petitioner in his representation. In support of this contention, he firstly relied upon the decision of this Court in 1967(2) Mys. L.J. 360. What has been laid down in the said decision is that there is a mandatory duty on the part of the disciplinary authority to consider the representation of the delinquent official. The decision proceeds on the well settled principle that when the second notice is issued proposing to impose a particular penalty the delinquent official at that stage, is entitled to make representation not only in regard to the punishment proposed but also in regard to the tentative findings arrived at by the disciplinary authority.

7. It has been laid down that Imposition of penalty without consideration of the representation of the delinquent official, is not legal and cannot, therefore be sustained. It has been pointed out that it is the duty of the disciplinary authority to apply its mind and to consider the representation of the delinquent official before passing the final order imposing the penalty. Another decision on which Sri Muralidhar Rao relied upon, is the unreported decision rendered by Division Bench of this Court In Writ Appeal No. 354/1975. In that case, it was pointed out that the Government, the disciplinary authority, proceeded on the basis that at the stage of considering the representation of the delinquent official in reply to the show cause notice, there is no need to consider his plea of innocence and that only the question of punishment has to be considered. The Division Bench relying upon the decision of the Supreme Court in *Union of India v, H.C. Goel* (A.I.R. 1964 S.C. 364), pointed out that the object of the second notice is to enable the delinquent official to satisfy the disciplinary authority on both the counts, one, that he is innocent of the charges framed against him and the other, that even if the charges are held proved against him the punishment proposed to be inflicted is unduly severe. It was held on the facts of that case that there was no proper consideration by the Government of the delinquent official's elaborate plea that he was innocent of the charge framed against him. In that view of the matter, it was further held that the final order of the disciplinary authority imposing the penalty on the delinquent official is clearly unsustainable. It is clear from these two pronouncements of this Court that it has been laid down that the disciplinary authority has to consider the representation of the delinquent official both in regard to the merits of the charges levelled against him as also in regard to the penalty proposed when he is served with a notice proposing a particular punishment after tentatively recording its findings on the charges levelled against him. It has been laid down that non-consideration of the representation or non-application of mind of the disciplinary authority to the contentions raised in the representation vitiates the final order imposing the penalty.

8. Sri Narasimhan learned High Court Government Pleader appearing for the respondents, however, maintained that an obligation to record reasons cannot be spelt out from the aforesaid two pronouncements of this Court. He further relied upon a decision of the Supreme Court reported in A.I.R. 1966 S.C. 1827 between the State of Madras and A.R. Srinivasan. This decision has been followed in the subsequent decision of the Supreme Court in A.I.R. 1977 S.C. 567 between Tara Chand Khatri and Municipal Corporation of Delhi. Reliance in particular was placed by Sri Narasimhan on paragraphs 14 and 15 of the judgment, which may be extracted as follows:

"Mr. Setalvad for the respondent attempted to argue that the impugned order gives no reasons why the appellant accepted the findings of the Tribunal. Disciplinary proceedings taken against the respondent, says, Mr. Setalvad, are in the nature of quasi-judicial proceedings and when the appellant passed the impugned order against the respondent, it was acting in a quasi-judicial character. That being so, the appellant should have indicated some reasons as to why it accepted the findings of the Tribunal; and since no reasons are given the order should be struck down on that ground alone.

We are not prepared to accept this argument. In dealing with the question as to whether it is obligatory on the State Government to give reasons in support of the order imposing a penalty on the delinquent officer, we cannot overlook the fact that the disciplinary proceedings against such a delinquent officer begin with an enquiry conducted by an officer appointed in that behalf. That enquiry is followed by a report and the Public Service Commission is consulted where necessary. Having regard to the material which is thus made available to the State Government and which is made available to the delinquent officer also, it seems to us somewhat unreasonable to suggest that the State Government must record its reasons why it accepts the findings of the Tribunal. It is conceivable that if the State Government does not accept the findings of the Tribunal which may be in favour of the delinquent officer and proposes to impose a penalty on the delinquent officer, it should give reasons why it differs from the conclusions of the Tribunal, though even in such a case, it is not necessary and that the reasons should be detailed or elaborate. But whether the State Government agrees with the findings of the Tribunal which are against the delinquent officer, we do not think as a matter of law, it could be said that the State Government cannot impose the penalty against the delinquent officer in accordance with the findings of the Tribunal unless it gives reasons to show why the said findings were accepted by it. The proceedings" are, no doubt, quasi-judicial; but having regard to the manner in which these enquiries are conducted, we do not think an obligation can be imposed on the State Government to record reasons in every case."

It is clear from this pronouncement of the Supreme Court that their Lordships have held that when the State Government agreed with the findings recorded by the Tribunal in that case the order of the State Government cannot be regarded

as vitiated merely because no reasons were recorded for agreeing with the findings of the Tribunal. Their Lordships have not laid down that the representation of the delinquent official was not required to be considered by the Government or that the State Government was not under an obligation to apply its mind to the representation. The observations made by the Supreme Court cannot be understood as conveying that the Government which is the disciplinary authority, is not required to apply its mind and to consider the representation of the delinquent official in regard to the merits of the case when such representation is made in reply to the show cause notice issued by the disciplinary authority proposing a particular penalty. That the delinquent official has a right to make such a representation is fully covered by the decision of the Supreme Court reported in A.I.R. 1964 S.C. 364. That has been laid down in the two decisions of our Court referred to earlier, is that the disciplinary authority is under a mandatory obligation to apply its mind and to consider the representation of the delinquent official before passing the final order imposing the penalty. It is not possible to understand the observations of the Supreme Court as taking a contrary view and holding that there is no such obligation on the part of the disciplinary authority to apply its mind and consider the representation at that stage. All that the Supreme Court has pointed out is that it is not possible to take the view that an obligation to give reasons for agreeing with the findings of the enquiry authority can be insisted in every case. We have, therefore, no hesitation in taking the view that the principle laid down by this Court in the aforesaid two decisions that the disciplinary authority should apply its mind and consider the representation, is not in any manner inconsistent with the observations made by the Supreme Court in A.I.R. 1966 S.C. 1827. The question as to whether the disciplinary authority can be regarded as having applied its mind and considered the representation has to be decided having regard to the facts of each case. If the order imposing the penalty itself contains reasons indicating that the disciplinary authority has applied its mind and considered the representation such an order does not get vitiated on the ground that the same has been passed without application of mind and without considering the representation of the delinquent official. If, however, the final order of the disciplinary authority does not contain any reasons, it may be possible for the disciplinary authority to place material before the Court to establish that it has applied its mind and considered the representation of the delinquent official. If the Court is satisfied on consideration of the relevant material and circumstances placed before the Court that the representation has been considered and the disciplinary authority has applied its mind, the final order imposing the penalty made by the disciplinary authority cannot be annulled merely on the ground that the order itself does not contain the reasons. If the reasons are available in the order itself, it would be very easy for the disciplinary authority to establish that it has applied its mind and considered the representation. If it does not choose to give reasons, then it has to discharge the onerous responsibility of establishing that it has applied its mind and considered the representation by placing relevant material before the Court in that behalf.

9. The next question for consideration is as to whether the order of the disciplinary authority in this case, is vitiated on the ground that it has failed to apply its mind and to consider the representation of the appellant dt. 13-12-1975. For the sake of convenience, we consider it appropriate to extract the relevant portion of the final order of the disciplinary authority (Exhibit-H), as follows:

"Having regard to the findings a show cause notice was issued to Dr. Thimmegowda on 9-12-1974 to show cause why he should not be dismissed from Government service.

In reply to the show cause notice, the Accused Govt. Officer submitted the representation putting forward a number of pleas including the correctness of the findings of the enquiry officer and the penalty proposed to be imposed upon him. On receipt of the said representation of the accused Government Officer the Karnataka Public Service Commission has been consulted by the Government and it has expressed its views in its letter cited at reference No. 5 above.

ORDER NO. HMA 69 HSG 76

dt. Bangalore: 16th November, 1976

Having considered the pleas urged by the Accused Govt. Officer, in his representation cited, the Government finds no reason to disagree with the findings of the Inquiry Officer.

As already stated in Govt. Order No. HMA 69 HSG 74 dt. 5-12-1974 the charge against Dr. Thimmegowda is proved. In reply to the show cause notice, the Accused Govt. Officer raised a number of objections which are more or less the same which were raised in his written statement. The new point urged by the Accused Government Officer in reply to the show cause notice is that one Sri Gajendra Jois has not been examined by the prosecution. The non-examination of Sri Gajendra Jois has not materially affected the proceedings in view of the other evidence on record and the probabilities of the case. Secondly as regards the representation that the extreme penalty of dismissal proposed is very severe and wholly inconsistent with the allegations, the material on record indicates that the charges are proved. The penalty proposed is justified having regard to the gravity of the charge.

Therefore, the Government of Karnataka hereby order that Dr. Thimmegowda be and is hereby dismissed from service with immediate effect."

10. Sri Murlidhar Rao, learned Counsel for the petitioner, contended that the order does not contain reasons indicating that the disciplinary authority has applied its mind to the representation presented by the petitioner. He also contended that there is nothing to indicate that the State Government has applied its mind to the representation. It is necessary to note that it is clear from the preamble to the order that after the representation of the petitioner was received, a copy of the said representation was forwarded to the Karnataka

Public Service Commission to express its views in the matter and that the Public Service Commission has after considering the representation, forwarded its views to the disciplinary authority, the State Government. The preamble portion of the order further states that the Public Service Commission has been consulted and that views expressed by the Public Service Commission in regard to the representation of the petitioner have been considered by it. It is further stated that after considering the pleas urged by the petitioner, the Government finds no reasons to disagree with the Inquiry Officer. There is a further statement to the effect that most of the objections raised by the petitioner in his representation are more or less the same as those raised by him in his written statement. It is further observed that a new point urged by the petitioner is that one Gajendra Jois has not been examined by the prosecution. The disciplinary authority has stated that the non-examination of Gajendra Jois has not materially affected the proceedings in view of the other evidence on record and probabilities of the case. The petitioner has, in his representation, contended that the non-examination of Sri Gajendra Jois has prejudiced his case. It is obvious that the disciplinary authority has applied its mind to the contention of the petitioner raised in the representation in this behalf. It is, therefore, obvious that there is intrinsic material in the order itself to indicate that the disciplinary authority has applied its mind to the representation of the petitioner in regard to the non-examination of Sri Gajendra Jois. It is no doubt true that the order does not contain reasons as to why the disciplinary authority rejects the other contention raised by the petitioner in the representation and affirms the findings of the Inquiry Officer. But, we are satisfied even from the perusal of the order itself that there is intrinsic material to establish that the disciplinary authority has, in fact, applied its mind to the representation of the petitioner. The petitioner is no doubt entitled to expect the State Government to consider all the important contentions raised by him and that it is not enough if the State Government has applied its mind to only one contention of the petitioner, namely the one pertaining to non-examination of Sri Gajendra Jois. In this behalf, to establish that the State Government has applied its mind to all the important contentions raised by the petitioner in the representation, Sri Narasimhan, learned Government Pleader placed for our perusal the original files. It appears that the Public Service Commission, after considering the representation of the petitioner, suggested that penalty of compulsory retirement may meet the ends of justice. After receiving the view of the Public Service Commission, the matter was examined by the Government. The records show that the Minister for Health has recorded his note dated the 10th of November 1975. It is clear from the same that the representation of the petitioner was considered and the views of the Public Service Commission were also taken into consideration. The minutes of the Minister clearly indicate that he has applied his mind to the representation of the petitioner and recorded his opinion that there are no good reasons to accept his contentions and to reject the opinion expressed by the Vigilance Commissioner. The Minister has disagreed with the views of the Public Service Commission in the matter of imposition of penalty and has observed that the proper penalty to

be imposed having regard to the gravity of the charges proved, is one of dismissal from service. On a perusal of the note of the Minister for Health dated the 10th of November 1975 in the records, we are satisfied that the disciplinary authority has applied its mind and it has considered the representation of the petitioner and given a number of reasons for rejecting the principal contentions of the petitioner raised in the representation. We are therefore, clearly satisfied that the petitioner has failed to establish that the impugned order is vitiated on the ground that the disciplinary authority has not applied its mind and has not considered the representation of the petitioner. Hence, we are satisfied that there are no good grounds to interfere with the impugned order.

11. For the reasons stated above, this Writ Petition falls and is dismissed. No costs.