

(1995) 08 KAR CK 0056
In the Karnataka High Court
Case No : Writ Petition No. 21541 of 1992

Gopalakrishna Bhat

APPELLANT

Vs

Chairman, Coffee Board

RESPONDENT

Date of Decision : 22-08-1995

Acts Referred:

Army Act, 1950 — Section 164

Citation : (1996) ILR (Kar) 90 : (1995) 4 KarLJ 32

Hon'ble Judges : M.F. Saldanha, J

Bench : Single Bench

Advocate : Y. Hariprasad, for the Appellant; N.B. Bhat and P.K. Bhat for R-1 and Babu Heddur Shetty, for R-2, for the Respondent

Judgement

Saldanha, J

1. This Petition has been preferred by a dismissed officer of the Coffee Board and the challenge is basically directed against the order of the Appellate Authority who in this case happens to be the Deputy Secretary to the Government of India in the Ministry of Commerce. The petitioner was charged with certain misconduct in relation to the stock cards that pertained to the coffee that was in his custody in so far as it was alleged that these cards had not been properly maintained and the second charge which was very serious was to the effect that on a check being done by the authorities, that approximately 12,175 Kgs of coffee valued at about Rs. 2.49 Lakhs was found to be short. A charge sheet was served on the petitioner and an enquiry was instituted which culminated in a Report from the Enquiry Officer holding both the charges having been established. The copy of the Report was furnished to the petitioner and he was given an opportunity to represent against it after which the Disciplinary Authority passed an order concurring with the findings of the Enquiry Officer and holding that having regard to the fact that the charges were serious and that substantial loss had been caused to the Coffee Board, that the petitioner, was liable to be dismissed from service, An appeal was preferred against this order and the Deputy Secretary,

Government of India rejected the appeal after which the petitioner has filed the present Petition assailing the decisions in question.

2. The petitioner's learned Advocate has advanced several submissions touching the merits of the matter which I do not propose to deal with having regard to the ultimate order that this Court proposes to pass. These submissions basically touch the evidence that has been recorded in this case and the learned Advocate's effort was basically to convince the Court that the Enquiry Officer has erred in recording adverse findings against the petitioner as far as this aspect of the matter is concerned. Since the Disciplinary Authority will have to consider the case de novo, I do not propose to make a single comment regarding the evidence.

3. The second head of attack is that under the Rules that are in force, and particularly Rule 12, the employee concerned is required to be given notice setting out the penalty proposed to be imposed and calling upon him to submit within 15 days of the receipt of notice whatever representations he desires to make against the proposed penalty. The contention is that no such notice was given and that consequently, the subsequent order is vitiated. As far as this ground of attack is concerned, the learned Advocate who represents the Board points out to me that after the 42nd amendment to the Constitution, the requirement of a second show cause notice is no longer an essential procedural necessity and that further more, that in the present case, the copy of the Enquiry Officer's Report was furnished to the petitioner and he was asked to represent against it. The argument is that the petitioner was given an opportunity to have a say and that therefore, the contention, highly technical. To my mind, there is considerable force in this defence because the petitioner was given an opportunity to file his representation which he has in fact done and even though he was not specifically informed that the Authority proposes to dismiss him from service if the charges were held established, to my mind there was substantial compliance of the requirements of the Rules and in any event, in these circumstances the subsequent orders would not be vitiated merely on this ground.

4. The more substantial argument canvassed by the petitioner's learned Advocate is that the Appellate Authority who is required to perform the functions of an Appeal Court is therefore required to review the order passed by the Disciplinary Authority in the light of the grounds on which the appeal has been filed, does not appear to have discharged these functions strictly as there is no indication from the wording of the order that this has in fact been done by him. The submission is that the law is now well-settled and reliance is sought to be placed on an earlier Decision of this Court reported in *M. Ravindra Vs. Chairman, Coffee Board*, Board wherein this Court had occasion to consider the law on the point and to hold that an Appellate Authority cannot merely rubberstamp the Disciplinary Authority's order even if it agrees with that order and that there must be evidence of independent application of mind. The learned Advocate who

appears on behalf of the Appellate Authority has pointed out that this was not an order where there was divergence of opinion between any of the three Authorities. He draws my attention to the fact that there is a very elaborate order passed by the Enquiry Officer which runs into almost 100 pages where the evidence and other aspects have been considered threadbare and that this has been followed by a reasonably elaborate order of the Disciplinary Authority which has agreed with the findings of the Enquiry Officer. The learned Advocate therefore submits that where the Appellate Authority found no ground to disapprove of any of the findings that had earlier been recorded and where the Authority had concurred with the earlier findings and orders, that there was no requirement of law to reproduce once again all that material. The further submission was that the Appellate Authority if it fully concurs with the earlier findings is not required to indicate through any separate procedure of reasoning that those findings are correct particularly if the original process of reasoning appears to be faultless. The argument advanced on behalf of the Appellate Authority is reasonably correct but the requirement of law particularly in serious cases of the present type extends a little further. In cases where the Appellate Authority is disposing of the cases through a speaking order, that order must necessarily reflect to the satisfaction of all concerned including the Court that may be reviewing that order, that the Appellate Authority has in fact examined the material placed before it and more importantly that this has been done in the light of the grounds that have been canvassed in the Appeal Memo. The last aspect of the matter is crucial and even if a detailed order is unnecessary as is the consensus of the various Courts, the fact still remains that the Appellate Authority's order must reflect total application of mind. It must reflect that a proper judgment has been done with regard to all the material and there is absolutely no harm thereafter in affirming the earlier findings if they are in order. The only handicap in the present case is that the Appellate Authority's order is very cryptic, that it falls short of this last requirement and even though I agree with the submissions canvassed by the learned Advocate, when these very principles are applied to the order, it is difficult to uphold the Appellate Authority's order. The Appellate Authority in this case has not even so much as indicated that the record of the case has been evaluated and that the grounds canvassed in the appeal have been considered and rejected. The order is a very short one and the first two paragraphs are virtually the recitals and paragraph 3 ends with a consideration of the quantum of punishment. It is in view of the fact that the law now requires that the orders particularly in Disciplinary Proceedings must be self-contained and self-sustainable and that they cannot be supplemented or propped up through arguments or affidavits, that this Court will have to uphold the challenge to the Appellate Authority's order and quash it on the ground that it does not display total and correct application of mind. It is also not a speaking order in the true sense of the term and therefore virtually indefensible. That order is accordingly quashed.

5. The learned Advocate who appears on behalf of the Board stoutly defended

the order of the Disciplinary Authority and the order of the Appellate Authority. I have given my finding with regard to the last order and nothing needs to be added to it. In view of the fact that the order of the Disciplinary Authority merges in the order of the Appellate Authority, no separate grounds are required to be elucidated in so far as if the appellate order fails the Disciplinary Authority's order will also have to go. It is necessary to point out that one cannot adopt absolutely mechanical approach even in these matters because one of the submissions on behalf of the Board is that if in a particular case, upto a certain point of the proceedings if the enquiry has proceeded correctly and on various procedural grounds or requirement of law the subsequent order comes to be quashed, that it would not be doing complete Justice if the whole of the proceedings were to be set aside from that point of view. It may be necessary to consider as to whether the matter requires to be quashed piecemeal or completely or whether the matter requires to be remanded to proceed from a particular stage of the proceedings. As far as this last aspect is concerned, the Disciplinary Authority has to a large extent reproduced the charges, the contentions of the parties and thereafter short circuited the reasoning by stating that the Authority agrees with the findings of the Enquiry Officer. The Enquiry Officer is a fact finding Authority and he submits to the Disciplinary Authority what in his opinion is the result, of the enquiry. It is thereafter that the Disciplinary Authority is required to independently evaluate the merits of the matter in the light of the material placed before him. Under these circumstances to my mind, merely stating that the Disciplinary Authority, agrees with the findings and a cryptic reference to the fact that a consideration of the record leads to a particular conclusion is insufficient. The reasons, main and cogent ones must necessarily be set out.

6. In support of his contention, the respondents learned Advocate placed reliance on two Decisions of the Supreme Court, the first of them reported in S.N. Mukherjee Vs. Union of India, wherein the Supreme Court did have occasion to observe that at the post decisional stage, it is unnecessary for the confirming authority to record reasons. As far as this Decision is concerned, one needs to take special note of the fact that in the very case the Supreme Court has reiterated the position that an Administrative or a Disciplinary Authority who exercises quasi judicial functions must give reasons for the decisions. An exception has been made in the case of Section 164 of the Army Act in so far as the Supreme Court has held that in such special proceedings that emanate that some of the normal requirements are dispensed with. To my mind, that Decision will not justify the present order. The other Decision is Union of India (UOI) and Others Vs. K. Rajappa Menon,

In a very short Judgment, where the challenge was with regard to the fact that the Disciplinary Authority has not given individual findings in respect of each head of charge, the Supreme Court had occasion to deal with Rule 1713 which required that the Disciplinary Authority had to record a finding on "each charge". The Supreme Court rejected the challenge on this ground by holding that where

the Disciplinary Authority records a composite finding in respect of all heads of charge, such individual finding is unnecessary as it is implicit that each of the heads has been considered. It is only a passing reference that is made wherein the Supreme Court held that there is no obligation on a Disciplinary Authority to write an order like a Judicial Tribunal. However, the Supreme Court did not hold that in serious cases which result in dismissal from service and the consequences are grave, that either a Disciplinary Authority or an Appellate Authority is exonerated from the legal requirement of passing a proper speaking order.

7. In view of the aforesaid position, and principally because of the legal infirmities that they suffer from, the orders passed by the Disciplinary Authority and the Appellate Authority are required to be quashed and set aside. This Court is not dealing with the case on merits because that is an entirely different aspect. As far as that is concerned the proceeding is relegated to the stage at which the Report of the Enquiry Officer was submitted and the petitioner is given an opportunity to file his representation to the Disciplinary Authority against the proposed punishment of dismissal from service which had in fact been imposed on him earlier. The petitioner may file his representation within the prescribed period of time and the Disciplinary Authority shall thereafter reconsider the matter and pass appropriate orders. If the order passed against the petitioner is adverse, it shall not be given effect to until the disposal of his appeal provided he files an appeal within the prescribed time.

8. As a necessary consequence of the quashing of the two orders, the petitioner will be required to be reinstated in service. This order will take effect from 1.9.1995. Since however the aspect regarding the charges that were levelled against him is still to be finally adjudicated upon, the petitioner shall receive his salary and allowances with effect from 1.9.1995 and all other questions regarding arrears etc. shall be decided by the Disciplinary Authority in the proceedings.

9. The Petition partially succeeds. Rule is made Absolute to this extent. No order as to costs.