

(2014) 03 KAR CK 0174

In the Karnataka High Court

Case No : Writ Petition No. 14347 of 2010 (S-KAT)

K. Veerabhadrappa

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 07-03-2014

Acts Referred:

Citation : (2014) 3 AKR 389 : (2014) 3 KarLJ 479

Hon'ble Judges : Ravi V. Malimath, J;K.L. Manjunath, J

Bench : Division Bench

Advocate : S.V. Narasimhan, Advocate for the Appellant; S. Susheela, Additional Government Advocate, Advocate for the Respondent

Judgement

Ravi Malimath, J.—Petitioner was working as Project Director, DLDB, Kadur, during 1995 to 1998. It was noticed at the time of an inspection by his Superior Officer that the petitioner had recklessly spent the office amount without properly showing the expenditure and without proper documents to support such expenditure. It was also found that many articles allegedly purchased were not in the stock or they had not been received. Therefore, a joint enquiry was initiated against the petitioner and four other officials by issuance of articles of charge. The petitioner denied the charges. However, he did not dispute the payments for which receipts had been obtained. He contended that the amounts were paid to the respective concerns and the stock also had been received. In addition, petitioner contended that he was not asked by his Superior Officers to show supportive documents for the purchase of articles or the stock and therefore he had not shown them. On a detailed enquiry, the Inquiring Authority found that the charges 1 to 9, 11 and 12 have been proved. Consequently, a show-cause notice was issued to the petitioner. After considering the explanation furnished by the petitioner, the Disciplinary Authority passed the final order dismissing the petitioner from service and also ordered recovery of a sum of Rs. 4,21,285/- from the petitioner. Aggrieved by the order of dismissal, petitioner preferred an appeal to the Governor, which was also rejected. Hence, petitioner has filed

Application No. 2917 of 2007 before the Karnataka Administrative Tribunal, Bangalore, wherein by order dated 24-7-2009, the application was dismissed. Hence, the present writ petition.

2. Heard the learned Counsel.

3. Learned Counsel for the petitioner contends that the impugned order is bad in law and liable to be set aside. Though the Inquiring Authority committed a serious error, the same has not been considered by the Tribunal. In particular, he relies on Rule 11-A of the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957 (for short, "the Rules"), to contend that there was no proper consultation of the Karnataka Public Service Commission before imposing the penalty. Therefore, he pleads that the impugned order should be set aside.

4. On hearing the learned Counsel for the petitioner we are of the considered view that there is no merit in the contention of the petitioner. The Tribunal, while considering the plea of the petitioner/applicant, considered the issues raised by the petitioner therein. The Tribunal was of the view that the reasons assigned by the Disciplinary Authority are adequate and the conclusion arrived at is only after proper consideration of the facts and circumstances of the case. Except contending that he has not been asked to produce supportive documents of the stock, no other substantial contention has been raised by the petitioner. Therefore, the Tribunal was of the view that there is no merit in the contentions raised by the petitioner/applicant.

5. We do not find any error committed by the Tribunal calling interference in this writ petition. The primary contention of the learned Counsel for the petitioner is based on the proviso to sub-rule (3) of Rule 11-A of the Rules, which reads as under:

Provided that in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the Disciplinary Authority to the Commission for its advice on the penalties proposed to be imposed on the Government servant and such advice shall be taken into consideration before making any order imposing any penalty on the Government servant.

It is contended that before passing the order of dismissal,, the Commission should be consulted, which is mandatory and it is only on such consultation, an order imposing any penalty could be imposed on the petitioner. However, the material on record shows that the record of the inquiry has been forwarded to the Commission and it was after consideration of the advice of the Commission the order of dismissal was passed. In the circumstance; we hold that the contention of the learned Counsel for the petitioner that the proviso to sub-rule (3) of Rule 11-A of the Rules has not been complied with would be incorrect.

6. Further contention of the learned Counsel for the petitioner is that there was no proper consideration of the materials placed before the Commission for its consideration. However, the records show that there was proper consideration of

the materials placed before the Commission. The proviso indicates that the advice of the Commission should be taken into consideration before making any order imposing any penalty. Therefore, the only restriction therein is One of consideration by the Commission and thereafter to pass any order imposing any penalty on a Government servant. Based on the materials as produced, we are of the considered view that there is appropriate compliance with the proviso to sub-rule (3) of Rule 11-A of the Rules. In the circumstances, there is no merit in this petition. Petition is consequently dismissed being devoid of merits.