
(1982) 11 KAR CK 0024
In the Karnataka High Court
Case No : Writ Petition No. 9543 of 1981

Kamath

APPELLANT

Vs

Karnataka State Road Transport Corporation

RESPONDENT

Date of Decision : 26-11-1982

Acts Referred:

Citation : (1988) ILR (Kar) 839 : (1981) 2 KarLJ 129 : (1986) 2 LLJ 18

Hon'ble Judges : M. Rama Jois, J

Bench : Single Bench

Judgement

1. The petitioner, an Ex-Assistant Works Superintendent of the Karnataka State Road Transport Corporation (Corporation for short) has presented this Writ Petition praying for quashing the order made by the Deputy General Manager and Divisional Controller imposing the penalty of removal from service against the petitioner.

2. The facts of the case, in brief, are as follows : A departmental inquiry was instituted against the petitioner on 24th March 1971 alleging that certain irregularities has been committed by the petitioner which had resulted in the loss of tyres in Mercara Depot. The petitioner was also prosecuted before the Court of the Additional Munsiff and First Class Magistrate, Mercara. The subject matter of the charge against the petitioner in the said criminal case was the same as the one in respect of which the departmental inquiry was commenced against the petitioner. By the order dated 8th April, 1971 passed by the Magistrate (Annexure-B) the petitioner was acquitted of the charge. After the petitioner was acquitted, the General Manager of the Corporation made an order dropping the proceedings, a copy of which is produced as Annexure-C. It reads :

"In view of the acquittal of the delinquent Sri A. G. Kamath, Depot Manager, in the Court by the Hon'ble Additional Munsiff and I Class Magistrate, Mercara, before the departmental enquiry could be proceeded into the alleged report against him, the enquiry ordered No. MST CO EST DFL. 1808 dated 24th March, 1971 is hereby dropped. The suspension period undergone by the delinquent is

treated as duty."

After about 9 months thereafter, once again a departmental inquiry was instituted against the petitioner on the same charge as per order dated 13th March, 1973 (Annexure-D). In the inquiry the petitioner filed his final statement on 27th May, 1974. Thereafter nothing was communicated to the petitioner for over four years about the further steps taken on the basis of the inquiry report. By the order of the General Manager dated 9th May, 1979 (Annexure-A) the petitioner was promoted as Assistant Works Superintendent. The promotion order reads :

"K.S.R.T.C. CENTRAL OFFICE, BANGALORE No. KST : CO : EST : E2 : 1464 : 79-80, dated 9th May, 1979. GENERAL ESTABLISHMENT ORDER No. 4000.

Read : 1. C.R. No. 2996 dated 16th November, 1974 giving directions to fill up the promotional vacancies by granting temporary promotions according to Provisional Gradation List 1972 published by the State Government in Karnataka Gazette dated 22nd January, 1972.

2. C.R. No. 4088 dated 10th March, 1979, according approval for relaxation of Educational and Service qualifications prescribed in the Cadre and Recruitment Regulations in respect of 66 Chargemen for filling up the promotional vacancies to the post of Assistant Works Supdt./Jr. Foreman/Technical Superintendent.

Pursuant to the C.Rs. referred to above, the following Chargemen of the Mechanical Engineering Department are temporarily promoted as Asst. Works Superintendent/Junior Foreman, as detailed hereunder, with immediate effect and posted to the places shown against each of them.

Sl. No.	Name of Chargeman	Sl. No. in Place of Post to be promoted	Gr. List Working Which of 1972 posting
9.	A.G. M/54 Hassan A.W.S. Hassan Kamath Dn. Depot Hassan Dn.		

The above promotions will be effective from the dates they take over charge of the higher posts to which they are promoted and their seniority in the promoted cadre is maintained as per the Provisional Gradation List.

The promotions are temporary and subject to review at any time or after finalisation of the Provisional Gradation List.

The promotees are placed on probation in the promoted posts for a period of one year with effect from the dates they take over charge of the higher posts, during which period their performance will be watched and their confirmation in the promoted posts will be subject to satisfactory service.

The promotees are granted (7) days joining time including transit with pay, TA and DA and intervening Sundays and Holidays, if any, wherever there is change in headquarters.

Sd/- General Manager"

After about two years from the date of the said promotion, the impugned order was made by the Deputy General Manager on 18th May, 1981 (Annexure-N) imposing the penalty of dismissal from service, against the petitioner.

3. Sri S. G. Bhat, Learned Counsel for the petitioner, urged the following contentions :

(i) In view of the order made by the General Manager on 20th June, 1972 (Annexure-C), dropping the inquiry ordered earlier against the petitioner and also treating the entire period of suspension as duty, there was no legal authority for the Deputy General Manager to pass the impugned order.

(ii) After the submission of the reply to the show-cause notice by the petitioner as he was promoted to the next higher cadre by the General manager, the second inquiry against the petitioner must be deemed to have been abandoned and, therefore, there was no further power on the part of the Corporation or its officers to impose the penalty of dismissal.

(iii) Once the inquiry instituted against the petitioner was dropped and the period of suspensions was treated as duty, the matter came to an end and therefore if the said order was sought to be reviewed and the inquiry sought to be instituted in respect of the same subject matter, before reopening the matter principles of natural justice must have been complied with.

(iv) The inquiry conducted was contrary to the regulations, in that the petitioner was denied reasonable opportunity to defend himself in the inquiry.

4. Sri H. G. Balakrishna, Learned Counsel appearing for the Corporation, however, submitted, as follows : It was always open for the Corporation to hold a departmental inquiry notwithstanding the acquittal of the petitioner in the Criminal Court. Therefore even though at one stage the General Manager had dropped the inquiry, there was no legal bar to reopen the matter and to pass final orders in the inquiry. The rules of natural justice are inapplicable to such an administrative decision.

5. There can be no doubt that when an alleged act or omission by a civil servant amounts to a misconduct as well as an offence under the penal law of the land, a departmental inquiry can be held against an employee even if he had been prosecuted in Criminal Court for the offence and he had been acquitted by a Court of competent jurisdiction. (See : T. V. Gowda v. State of Mysore) W.P. No. 693 of 1970, dated 13th December, 1973. That position in law cannot and is not at all, questioned by the petitioner. The precise question that arises for consideration in this case is, can there be a second departmental inquiry in respect of the same charge of which a servant of the Corporation had been exonerated by the competent authority in a departmental inquiry. From the facts stated earlier, it may be seen that the petitioner was placed under suspension and a departmental inquiry was instituted against him by an order made on 24th

March, 1971. Simultaneously, he was also prosecuted in the Criminal Court and the subject matter of the charge was the same, namely, the loss of tyres. The petitioner was acquitted by an order of the Magistrate dated 8th April, 1971 (Annexure-B). One year and two months thereafter by an order made by the General Manager of the Corporation (Annexure-C dated 20th June, 1971) on a consideration of the order of acquittal made by the Magistrate, the inquiry ordered against the petitioner was dropped and what is more significant was the period of suspension undergone by the petitioner was treated as duty. The clear effect of such an order was the order of acquittal made by the Criminal Court itself was accepted by the authority as the basis to exonerate the petitioner of the charges levelled against him in the departmental inquiry and accordingly the inquiry was dropped. There is no power under the regulations to reopen and inquire into a charge in respect of which, inquiry was dropped on the basis of an order of acquittal made by the Magistrate or where a Corporation servant was exonerated of the charges by an order made by the competent disciplinary authority. In the absence of conferment of specific power for reopening the inquiry and on specified grounds a second inquiry is without the authority of law. Therefore I uphold the first contention of the petitioner.

6. The second contention, namely, that having regard to the facts of this case, it must be held that the respondents had abandoned the inquiry and therefore they had no authority to pass the impugned order, is also sound. The material facts are not in dispute. After the second inquiry was held, a show cause notice was issued to the petitioner and the petitioner furnished his reply to the show cause notice on 27th May, 1974 (Annexure-K). After nearly five years thereafter on 9th May, 1979 the petitioner was promoted to the next higher post by the order of the General Manager. There is no condition in the said order to the effect that the promotion was being given to the petitioner without prejudice to the imposition of any penalty in the inquiry. It is no doubt true that in the order of promotion it is stated that the promotion given under that order was temporary and subject to review. It is an usual condition imposed in all promotion orders when seniority of officers are not finalised as in such a case the promotions are liable to be reviewed after it is finalised. But the fact remains that there is no condition in the order of a promotion that in the case of the petitioner liberty to pass order in the disciplinary proceedings had been reserved. In the absence of such express reservation, it should be presumed that having regard to the work and conduct of the petitioner, not only the petitioner was considered suitable to continue in the lower post, but was also considered suitable for higher post. When the General Manager had, on consideration of the service records of the petitioner, adjudged that the petitioner was suitable for being promoted to the higher post, it pre-supposes that the explanation of the petitioner submitted in his reply to the show-cause notice weighed with the authority and, therefore, they were convinced that far from there being any ground to impose penalty the official is fit for promotion and should be promoted. Therefore it must be held that further proceedings in the departmental inquiry were abandoned and in view of it, it was

impermissible for the Deputy General Manager to pass the impugned order and impose the penalty of dismissal. This legal position is evident from the decision of the Madhya Pradesh High Court in Lal Audhraj Singh v. State of Madhya Pradesh 1968 S.L.R. 88 M.P. and also from the Division Bench decision of this Court in Andrews (P.) Vs. District Educational Officer, Bangalore and Another, For these reasons, the second contention urged for the petitioner has also got to be accepted.

7. Under the provisions of the service regulations of the Corporation, the period of suspension of a servant of the Corporation cannot be treated as duty, unless he is exonerated of the charge in the inquiry during the pendency of which he was placed under suspension. Therefore, when by the order dated 20th June, 1972 (Annexure-C) of the General Manager the suspension period was treated as duty, it means that the petitioner was exonerated of the charge and, therefore, even assuming that such an order was passed by mistake or there was any other good ground for reopening the matter, that could have been done only after complying with the rules of natural justice, as the reopening of the proceedings which had so terminated, has both civil and evil consequences as the petitioner would have to face an inquiry on a charge of which he had already been exonerated. Therefore the third contention urged for the petitioner has also to be accepted.

8. As the petitioner is entitled to succeed on the first three contentions, it is unnecessary for me to consider the fourth contention, namely, that the petitioner had been denied of a reasonable opportunity in the inquiry.

9. For the reasons aforesaid, I make the following order :

(i) Rule made absolute.

(ii) The impugned order made by the Deputy General Manager, dated 18th May, 1981 is quashed.

(iii) The petitioner shall be entitled to all the consequential benefits.