

(1987) 06 KAR CK 0019
In the Karnataka High Court
Case No : W.P. No. 5503/1986

Karibasappa A.E.

APPELLANT

Vs

The Karnataka State Warehousing Corporation

RESPONDENT

Date of Decision : 12-06-1987

Acts Referred:

Citation : (1987) 2 KarLJ 80

Hon'ble Judges : M. Rama Jois, J

Judgement

Rama Jois, J.-The petitioner an employee of the Karnataka State Warehousing Corporation ("the Corporation" for short) has presented this petition questioning the legality of the institution of disciplinary proceedings against him by the issue of the articles of charges dated 4th November, 1985.

2. The facts of the case, in brief, are as follow: The petitioner was working as a Warehouse Superintendent at State Warehouse, Haveri, during the year 1972. On 17th April, 1972 there was a surprise inspection of the Warehouse by the Managing Director along with the Commercial Manager, Sri C.V. Krishnan. On finding that there were serious irregularities about the stock position in the Warehouse, an order dated 21st August, 1972, was made placing the petitioner under suspension. Criminal case No. 41 of 1974 was filed against the petitioner before the Court of the Judicial Magistrate, First Class, Haveri, on a charge of misappropriation. The case ended in acquittal by the order of the Munsiff and Judicial Magistrate, First Class, Haveri, dated 20th October, 1975. Thereafter another six criminal cases were filed against the petitioner before the same Court in Criminal Cases Nos. 612 to 617 of 1975. In all those cases the petitioner was found guilty and consequently he was convicted and sentenced to undergo S.I., for one year. The petitioner preferred appeals before the District and Sessions Judge, Dharwar. During the pendency of the appeals before the Sessions Judge, on the basis of the conduct which led to his conviction, the petitioner was dismissed from service on 26-3-1980. His appeals against conviction were also dismissed. However, in revision petition presented before this Court, the orders

of the Courts below were set aside. The Special Leave Petition preferred by the State before the Supreme Court was dismissed on 10th August, 1984. Thereafter, an order dated 24-7-1985 was made reinstating the petitioner into service as the petitioner was acquitted by this Court and the Special Leave Petition was also dismissed by the Supreme Court and simultaneously, having taken a decision to hold departmental enquiry against the petitioner, placed him under suspension. Thereafter, on 4-11-1985, article of charges were served on the petitioner. The petitioner furnished his reply on 15/16-12-1985 (Ann. F). At this stage questioning the legality of the commencement of the disciplinary proceedings against the petitioner, he has presented this petition.

3. The Law regarding the competence of the Master to hold a departmental enquiry in respect of misconduct alleged against his Servant on the basis of his acts of omission or commission, even after he has been acquitted by a Criminal Court in respect of criminal charges arising therefrom and levelled against him, is well settled (See Full Bench decision of this Court in *T.V. Gowda v The Director of Government Printing Press* (I.L.R. 1975 Mys. 895 (FB))). The said view also stands confirmed by the decision of the Supreme Court in *Corporation of Nagpur v R.G. Madak* (A.I.R. 1984 S.C., 636).

4. The contention of the petitioner, however, is that the departmental enquiry was incompetent as the power conferred on the State Warehousing Corporation to hold enquiry and impose departmental punishment must be regarded as empowering the Corporation to hold only one enquiry in respect of a misconduct alleged against its servant and has no power to hold a second enquiry after there has been an earlier enquiry in respect of the same charges. The plea of the petitioner in this case is that there had been an earlier enquiry against him in the year 1973 itself in respect of the very charges which have been incorporated in the article of charges dated 4-11-1985, and, in the said enquiry, the Enquiry Officer had come to the conclusion that the petitioner was not guilty and, therefore, the second enquiry in respect of the same charges, is not correct.

5. In support of the case of the petitioner that there was an earlier enquiry, the petitioner has produced the article of charges which were served on the petitioner on 30-9-1973 (Annexure-V). From the article of charges it is seen that as many as five charges were framed against the petitioner. The petitioner filed his reply to those charges on 10th September, 1973 (Annexure-W). After the petitioner filed his reply the case was fixed for oral enquiry on 22-10-1973. It appears that, on that day, as the petitioner wanted some documents for preparing his defence, he gave an application. On 24-10-1973, a communication was given to the petitioner stating that the documents, which were sought for on 22-10-73, were sent to him and he was directed to appear for the enquiry on 5-11-1973 at 10 a.m., in the Office of the Corporation at Bangalore. The notice, which was issued to the petitioner, also stated that if the petitioner failed to appear on the said date, the enquiry would be proceeded ex-parte.

6. According to the submission made by the learned Counsel for the petitioner,

on 5-11-1973 the enquiry was concluded and, according to the information received by the petitioner, he had been exonerated of the charges by the Enquiry Officer.

7. The petitioner has further alleged that, in spite of the said enquiry, a joint enquiry was commenced against the petitioner and several other officers of the Corporation on 11-1-1974 (Annexure-Q). A copy of the intimation dated 11-1-1974 is produced as Annexure-Q. It reads:

"KARNATAKA STATE WAREHOUSING CORPORATION

9/3, Primrose Road, Bangalore-25.

READ: Resolution No. 5 of the Executive Committee Meeting held on 7-12-73."

IT WAS RESOLVED to institute an enquiry against Sri A.E. Karibasappa, Warehouse Superintendent (under suspension), the Inspecting Officers and Internal Auditors, who have inspected the State Warehouse, Haveri, during the period Sri A.E. Karibasappa was working as Warehouse Superintendent-in the matter of fraud and other irregularities committed at State Warehouse, Haveri.

IT WAS FURTHER RESOLVED to appoint S.S. Gundaiah, Secretary and Chief Administrative Officer as the Enquiry Officer.

"ORDER No. SWC. COM. HVR. ENQ 2066 71 73-74/dated 11th Jan. 1974.

Pursuant to the above cited Resolution or the Executive Committee, SRI S.S. GUNDAIAH, Secretary & Chief Administrative Officer is hereby appointed as the "ENQUIRY OFFICER to conduct Enquiry against SRI A.E. KARIBASAPPA, Warehouse Superintendent (under suspension), the Inspecting Officers and the Internal Auditors who have inspected the State Warehouse-Haveri during the period Sri A.E. Karibasappa was working as Warehouse superintendent, in the matter of Fraud and other irregularities committed at State Warehouse, Haveri. He has to frame charges, conduct the Enquiry and give his findings.

Sd/-

(VITTAL RAI)

Managing Director

SRI S.S. GUNDAIAH

Secretary & Chief Administrative Officer,

KSWC. HO. BANGALORE.

Copies to:

- 1) Sri A.E. Karibasappa, Warehouse Superintendent, (under suspension)-Haveri.
- 2) Sri M.B. Kulambi, Deputy Director-Hubli Dn. SWB, Hubli.

- 3) Sri C.V. Krishnan, Deputy Director-Vigilance H.O. Bangalore.
- 4) Sri H.V. Mahaswarappa, Asst. Director (Adm.) H.O. Bangalore.
- 5) Sri Dasaratha Rao, Internal Auditor H.O. Bangalore.

Sd/-

Managing Director

10-1-74."

As can be seen from the above communication one S.S. Gundaiah, Secretary and Chief Administrative Officer was appointed as an enquiry officer. It is also clear from the earlier documents connected with the enquiry instituted individually the said Gundaiah had framed charges and had commenced the enquiry against the petitioner. By a subsequent communication dated 25-4-1974 (Ann. R) in supersession of the appointment of Gundaiah as an Enquiry Officer, the Managing Director was appointed. But, no article of charges were prepared by the Managing Director pursuant to his appointment as the Enquiry Officer in connection with the joint enquiry. According to the petitioner, after receiving the above communication, he did not receive any further communication with reference to the joint enquiry.

8. On the basis of these facts Sri Chandrasekhara Bharathi, learned Counsel for the petitioner, strenuously contended that the present enquiry instituted is without authority of law.

9. The plea of the Corporation, however, is as follows: After the case in the first enquiry was adjourned to 5-11-1973, the petitioner made representation once again for production of certain documents. Reply was sent by the Corporation to the effect that the copies of the documents sought for by the petitioner was not relevant for the enquiry. After the receipt of the said reply, the petitioner appeared before the Enquiry Officer and gave a representation in which, apart from stating several other facts, he had categorically stated that he would never be a party to be present in the enquiry proposed to be held on 5-11-1973 and, in the same representation, he had stated that he was prepared to join duty if he was reinstated. But the petitioner was informed, by a subsequent communication, that, he would not be reinstated, unless the enquiry was completed. It was in the interregnum the Corporation took a decision to hold a joint enquiry against the petitioner and several other officers. In that behalf a resolution was passed by the Corporation on 7-12-1973 and, it was at that stage, Gundaiah, who was the Chief Administrative Officer, was appointed as an enquiry officer to hold joint enquiry. But, his appointment was superseded and the Managing Director himself was appointed, in view of the objection by one of the officers involved. Sri. M.B. Kulambi, that Gundaiah was an officer holding a lower rank to Sri Kulambi and therefore he could not be an enquiry officer. The Corporation appreciated the objection of Sri Kulambi and appointed the Managing Director as the enquiry officer.

10. At this stage, learned Counsel submitted: that the Corporation sought for legal opinion as to whether it was proper for the Corporation to hold the departmental enquiry, as, round about that time, criminal cases were pending against the petitioner, and the legal opinion dis-favoured the holding of the enquiry on the ground that the witnesses to be examined and the documents to be produced in support of the charges and in support of the cases before the criminal court were to be the same. In view of this opinion the departmental enquiry was not held. The resultant position was that no enquiry was held against the petitioner. In these circumstances, as the Corporation considered that it was in public interest to hold an enquiry into the charges levelled against the petitioner, the enquiry had been initiated with the issue of article of charges on 4-11-1985.

11. There can be, no doubt that, if an earlier enquiry had been completed and the enquiry report had been sent to the Corporation in respect of certain charges levelled against the petitioner, the regulation, empowering the Corporation to hold disciplinary proceedings, cannot be understood as empowering the Corporation to hold a second enquiry in respect of the same charges. This principle is discernible from the decision of the Supreme Court in *K.R. Deb v The Collector of Central Excise, Shillong* (A.I.R. 1971 S.C. 1447).

12. Therefore, the crucial question that arises for consideration in this case is whether a departmental enquiry had been completed against the petitioner on an earlier occasion and the Corporation was trying to hold a second enquiry against the petitioner?

13. Learned Counsel for the petitioner asserted that the earlier enquiry, which was commenced against the petitioner in the year 1973, was concluded by Gundaiah. As stated earlier the stand taken by the Corporation was that the enquiry was not at all held.

14. In support of the case of the Corporation all the documents concerning the enquiry have been produced.

15. After the petitioner was informed on 24-10-1973 that the documents, sought for, by him have been furnished and he should appear for enquiry on 5-11-1973, the petitioner addressed a letter dated 31-10-1973 to the enquiry officer demanding furnishing of several other documents. To the said representation a reply was given by the Managing Director on 3-11-1973. It reads:

"KARNATAKA STATE WAREHOUSING CORPORATION

9/3, Primrose Road, Bangalore-25.

MEMO NO. SWC. EST. 1452/73-74

Dated 3rd November, 1973.

With reference to his letter dated 31-10-1973 Sri. A.E. Karibasappa, Warehouse Superintendent (under suspension) Haveri, is directed to note the following:

Regarding Part-1, all copies of relevant documents, circulars, etc., have already been sent to him in detail, vide this Office letter No. SWC. EST. 1420/73-74 dated 24th October, 1973 and No. SWC. EST. 1423/73-74 dated 27th October, 1973. It is upto him to know whether the case is still pending against him.

Regarding paras 2, 3 and 4: he is directed to note that a copy of the Staff Regulations of this Corporation has already been sent to him, vide letter No. SWC. EST. 602/73-74 dated 29-5-1973, wherein the competency of the Executive Committee, Chairman, and the Managing Director to act in such matters is laid down. He may refer to the same to get his doubts clarified.

Regarding para-5: If he finds any doubt about the appointment of the Enquiry Officer he may question at the time of oral enquiry.

Further, he is directed to note that he should not ask for copies of documents or any other material piecemeal. All relevant documents, circulars etc., have already been sent.

He is directed to appear before the Enquiry Officer on 5-11-1973 at 10 a.m. as already intimated to him, vide this office Memo No. SWC. EST. 1420/73-74 dated 24-10-1973.

Sd. VITTAL RAI

Managing Director

Sri A.E. Karibasappa,

Warehouse Superintendent (under suspension)

SM Hittalamane Compound,

Shivabasavanagar, HAVERI.

3-11-1973."

It appears that the petitioner had expressed doubt about the appointment of Gundaiah as Enquiry Officer to hold an enquiry against him. By the above communication the Managing Director informed the petitioner that he may question the validity of the appointment of the enquiry officer at the time of oral enquiry. On 5-11-1973 the petitioner appeared before the enquiry officer and gave a representation. It reads:

"To

The Managing Director,

Karnataka Warehousing Corporation,

No. 9/3, Primrose Road,

Bangalore-560 025.

Respected Sir,

Subject: (1)

(2) My Suspension-Patently Illegal, regarding.

Contemplated and Proposed Oral Enquiry on the Fifth Day of November, 1973, at 10.00 A.M.

Reference: Head Office MEMO No. SWC. EST. 1452/1973-74, 3-11-73.

As per the Clarification of the Head Office, after going thru the Regulations carefully and metioulously, now, I have come to the very definite and unassailable conclusion and I know definitely very well that absolutely, there is no case against me still pending, in respect of any alleged Criminal offence, which is under investigation, as per the Regulation 20 of the Corporation (Staff) Regulation 1959. Hence, it goes without saying that the Regulations no where contemplate and envisage any (a) any kind of the powers of the Executive committee of the Corporation to RATIFY the actions of the then Managing Directors or the Chairman of the Executive Committee of the Corporation alone ratifying the actions of the Managing Direction; and further (b) to delegate the very Basic Powers of the Executive committee of the corporation, in favour of the referred Managing Director, which shall have to be exercised by the Executive Committee of the Corporation alone and only, under any and all circumstances for all practical purposes, for all times to come. Hence, the Deputy Managing Director cannot come into the picture at all, so as to be designated him as an ENQUIRY OFFICER, which is basically illegal, unlawful and very much opposed to the very Basic Structure of the very Regulations and therefore, the whole SUSPENSION ORDER is, in its very inception, is basically illegal, and therefore, the further actions thereon are patently illegal. Hence, in such very obvious circumstances, I very humbly submit that the illegality of keeping me under suspension may kindly be considered, and the same may kindly be brought to the kind notice of the Executive Committee of the Corporation. So. I can't and I will never be a party for the present (and also any and all future enquiries in this behalf) proposed ILLEGAL ORAL ENQUIRY, on 5-11-1973, with all its actions, reactions, repercussions, reflections and attendant future consequences. The same may kindly be noted and I may be excused, in the absence of most relevant documents which are not sent.

In such very obvious circumstances, and for the very valid, legal and factually truthful reasons, I can't be and shall not be kept under suspension any more. I, therefore, very humbly request you. Sir, to kindly advise the Executive Committee of the Corporation in the matter, so as to re-instate me forthwith immediately and quite emergently and save me and also be saved from all future botherations; since my aged parents are crying like anything, for no fault and no sin of mine. I shall be ever grateful to you, Sir.

"If directed, I will come in person to the Head Office in order to receive the

ORDER reinstating me to my original post, either on 8th or 9th of this month. Otherwise, if the Head Office feel that the ORDER will have to be sent to Haveri, the same may kindly be sent to my Haveri address.

With kindest regards and respects, I remain.

Thanking you, Sir.

Yours faithfully,

Sd/-

Camp. Bangalore

5-11-73....."

As can be seen from the above representation that the petitioner pointed out the various irregularities in holding of the enquiry. He also questioned as to under what circumstances and authority the Deputy Managing Director became an enquiry officer. He stated that he would not be a party to such an illegal enquiry sought to be held by Sri Gundaiah and that he may be excused for doing so. The resultant position was that no enquiry was held on 5-11-1973. Even thereafter the petitioner continued to make representation for furnishing certain documents. A reply dated 27-11-1973 was given to the petitioner by the Managing Director pointing out that the copies of the documents sought for by him were unconnected with the enquiry. A copy of the said communication is produced in the records. It reads:

"MYSORE STATE WAREHOUSING CORPORATION

9/3, Primrose road, Bangalore-25.

MEMO NO. SWC. EST. PER/.....73-74/dt. Novr. '73. "With reference to his letter dated 10-11-1973, Sri. A.E. Karibasappa, Warehouse Superintendent (under suspension) is hereby informed that the copy of the letter addressed by Sri. Veerappa Purad of Haveri to the Managing Director is enclosed herewith as requested by him. Regarding the supply of the copies of the letters mentioned in his letter dated 10-11-73, he is directed to note that they are not concerned with the enquiry to be conducted against him.

Sd/-

Managing Director

Sri A.E. Karibasappa

Warehouse Supdt. (Under suspension),

State Warehouse, Haveri."

On 24-11-1973 itself other reply was given to the petitioner with reference to the letter dated 22-11-73 to the effect that his request for re-instatement could not

be considered unless the enquiry was completed. The said letter reads:

"MYSORE STATE WAREHOUSING CORPORATION

9/3, Primrose Road, Bangalore-25.

MEMO No. SWC. EST/1635/73-74 dt. 24th Novr. 1973.

With reference to his letter dated 22-11-73, Sri. A.E. Karibasappa, Warehouse Supdt. (under suspension) is directed to note that his request for reinstating him to the Post of the Warehouse Superintendent cannot be considered unless the enquiry is completed.

Sd/-

Managing Director

24-11-1973.

To:

Sri A.E. Karibasappa,

Warehouse Supdt. (under suspension)

State Warehouse, Haveri."

Shortly thereafter, on 7-12-1973, the Corporation resolved to institute a joint enquiry against the petitioner and few other officers. This is evidenced by the resolution reads:

"ADM & COM Sections.

IT WAS RESOLVED TO INSTITUTE AN ENQUIRY AGAINST SRI. A.E. KARIBASAPPA, WAREHOUSE SUPERINTENDENT (UNDER SUSPENSION) THE INSPECTING OFFICER & INTERNAL AUDITORS WHO HAVE INSPECTED THE STATE WAREHOUSE HAVERI DURING THE PERIOD SRI. A.E. KARIBASAPPA WAS WORKING AS WAREHOUSE SUPERINTENDENT IN THE MATTER OF FRAUD AND OTHER IRREGULARITIES COMMITTED AT STATE WAREHOUSE, HAVERI.

IT WAS FURTHER RESOLVED TO APPOINT SRI. S.S. GUNDAIAH, SECRETARY & CHIEF ADMINISTRATIVE OFFICER AS ENQUIRY OFFICER".

Thereafter, M.B. Kulambi, who was a Deputy Director at Hubli made the representation on 21-2-1974 stating that Gundaiah could not be appointed as an enquiry officer as he was an officer holding a lower rank than Kulambi it is in these circumstances, the Corporation resolved to appoint the Managing Director as the enquiring authority in supersession of its resolution appointing Gundaiah as the enquiry office. On the first occasion the Corporation thought of changing the enquiry officer only in respect of Kulambi and when it realised that as the enquiry was a joint enquiry change must be in respect of all officers and not in respect of only one officer, the Corporation passed a resolution on 10-4-1974

stating that the Managing Director would be the Enquiry Officer to conduct the joint enquiry against the petitioner and other officers. The said resolution reads:

"In the light of the suggestion of the Board made in its meeting held on 30-3-1974 to have only one Enquiry Officer in respect of all the officials involved. IT WAS RESOLVED TO APPOINT THE MANAGING DIRECTOR AS ENQUIRY OFFICER TO CONDUCT THE ENQUIRY AGAINST ALL THE OFFICIALS INVOLVED IN HAVERI FRAUD CASE".

16. Learned Counsel for the Corporation submitted that at this stage the Corporation entertained some doubt as to the propriety of holding of departmental enquiry when criminal cases were pending in respect of acts which constituted the basis for framing charges in the criminal court as well as in the departmental enquiry, the Corporation sought for legal opinion and the legal opinion received by the Corporation was that in fact there was no legal bar for holding the enquiry, the departmental enquiry should not be held during the pendency of the criminal trial particularly when the witnesses to be examined and the documents to be produced both in the departmental enquiry and the criminal trial were the same. On the basis of this legal opinion a resolution was passed on 29-3-1975 to stop the enquiry till the criminal case, which was in an advance stage of trial, was decided. The said resolution reads:

"EC. MEETING 29-3-75 (Addl. Subject) Enquiry against the warehouse Superintendant, Haveri and other Inspecting Officers.

This matter was informally discussed in one of the previous Executive Committee Meetings about taking legal opinion as to whether to continue with the Enquiry against Sri A.E. Karibasappa, warehouse Superintendant-Haveri (under suspension), and other Inspecting Officers, or to keep it pending till the Court decided the criminal case that is now pending before the Magistrate's Court, Haveri. The matter was got examined by the Advocate and he has opined that in the circumstances of the case, it is not advisable to proceed with the Departmental Enquiry against the warehouse Superintendant and other Inspecting Officers who are likely to be examined as witnesses in the Criminal case, though there is no legal bar for proceeding with such enquiry. Since some of the important charges in the Enquiry are also subject matters of the Criminal investigation and the same facts on which the Criminal case is now pending in the Court, contradictions on the findings of the Enquiry Officer and the Court, is not desirable. Therefore, it is for the consideration of the Executive Committee whether to wait till the criminal case is decided in the Magistrate's Court as one of the cases is in advanced stage of trial.

Sd/-

MANAGING DIRECTOR."

From the above it is clear that in view of the resolution dated 7-12-1973 to hold a joint enquiry against the petitioner and others, the earlier individual enquiry

instituted against the petitioner was not continued and in view of the aforesaid resolution to await the decision of the criminal case pending before the Court, the joint enquiry was also not continued. Therefore all that can be stated in the present case is though enquiry had been instituted against the petitioner earlier, in the first instance, individually and, in the second instance, jointly against the petitioner and others. actually no enquiry was held and a decision was taken by the Corporation to keep the matter pending till the final decision of the Criminal Court.

17. After the criminal matter reached finality with the dismissal of the Special Leave Petition filed by the Corporation before the Supreme Court, the Corporation again sought for a legal opinion as to whether the departmental enquiry could be conducted against the petitioner. The legal opinion was that there was no bar for holding the departmental enquiry if the Corporation considered that it was a fit case to do so.

18. Having regard to the facts and circumstances of the case it appears to me that the contention of the petitioner that this is a second enquiry instituted against him after the matter had been concluded in an earlier enquiry and, consequently, the present enquiry was without jurisdiction, is not tenable. The history of the case set-out earlier would indicate that actually, except framing the charges in the first enquiry, no enquiry was held against the petitioner, and so far as the second enquiry was concerned, no article of charges were framed.

19. Therefore, whether, in the light of the acquittal of the petitioner in the order made in the revision petition by this Court and confirmed by the Supreme Court by dismissing the Special Leave Petition filed by the Corporation against the said order of this Court, the departmental enquiry should be held or not is a matter for administrative decision of the Corporation. But there is no jurisdictional bar for holding the enquiry in view of the ratio of the decision of the Supreme Court (2) and the Full Bench decision of this Court in T.V. Gowda's case (1).

20. In the result, I make the following:

ORDER

The Writ Petition is dismissed leaving open all other objections of the petitioner. The petitioner shall be at liberty to raise all such objections before the inquiring authority.