

(1981) 08 KAR CK 0013
In the Karnataka High Court
Case No : WP 8897/78

Koraga Shetty, B.A.

APPELLANT

Vs

Dy. Commr. of Kodagu and Others

RESPONDENT

Date of Decision : 05-08-1981

Acts Referred:

Karnataka Municipalities (Conditions of Service of Officers and Servants) Rules, 1972
— Rule 191(4)

Citation : (1982) 1 KarLJ 96

Hon'ble Judges : M. Rama Jois, J

Judgement

1. The petitioner who was an Octroi-cum-Revenue Inspector on the establishment of the Town Municipal Council, Virajpet, has questioned the legality of the initiation of a second departmental enquiry by the Deputy Commissioner, Coorg, in respect of the same charges which had been the subject matter of an earlier enquiry.

2. The writ petition has come up for orders. As the petitioner has already retired from service and during the pendency of the writ petition, he has not been getting his pension and other retirement benefits, by consent of both the counsels this petition is taken up for final hearing.

3. The facts of the case, in brief, are as follows:

The petitioner was working as an Octroi Superintendent at Virajpet Municipality. A departmental enquiry was initiated against him on the charges enumerated in Ex. "B".

4. The Block Development Officer, Ponnampet was appointed as an enquiry officer. After holding enquiry, the enquiry officer came to the following conclusion:

FINDINGS

Charge-1: In case of charge 1, two witnesses namely Ramakrishna, Clerk and P.R. Abubekar, Octroi Peon of Town Municipal Council, Virajpet were examined

and their statements recorded. The two receipts were issued by the clerk and counter checked by the Octroi Inspector. The evidence says that the second receipt was issued after two hours. Though there is no direct evidence that the Octroi Inspector made the party to pay the Octroi for 10 days and he has not admitted the fault in his statement dated 29-9-1975, however it is felt there is some truth in allegation because of issue of 2 receipts in different time of 2 hours.

Charge-2: The prosecuting side was not able to furnish the correct figure of smuggled cases detected by Sri B.A.K. Shetty. The defence counsel has filed in the open Court that Sri B.A.K. Shetty got reward in detecting smuggling cases and also order of the High Court of Karnataka, -Bangalore, No. 587/1973, wherein he was rewarded for detecting smuggling cases. However, I feel from the argument from the prosecuting side that he was not keen in detecting cases.

Charge-3: The defence counsel argued that the weight of each bundle was correctly 20 kgs. when B.A.K. Shetty was Octroi Inspector and on many occasions it was also countersigned by the Chief Officer. Subsequent to his suspension the merchants might have increased the weight of the bundle because of needs of people and sales. It was counter argued by the prosecuting side and hence it stands as doubtful case against B.A.K. Shetty.

Charge-4: This is an internal dispute between Octroi Inspector Sri B.V.K. Shetty and P.P. Govinda, Octroi Peon. Both have lodged the complaint against each other on 22-11-1973. It is seen that a memo was issued in No. CC 30/73-74 dated 23-11-1973 calling for the explanation of Sri B.A.K. Shetty and copy of the same was also sent to B.A. Kuddus, Clerk, calling for his explanation how he recovered octroi without observing the formalities laid down in rule 26 of Mysore Municipality Taxation Rules who expired. Defence counsel argued that matter was settled amicably by the then Chief Officer and there is no reason why it should be revived again after keeping it for more than 3 years. The prosecuting counsel counter argued that the matter was not settled. Unless this matter is enquired into and fault of the official is established between two officials it is hard to come to any conclusion at this distance of time. However, it speaks about the behaviour of the Octroi Inspector.

Charge-5: The defence counsel has argued that Sri B.A.K. Shetty was the Octroi Inspector and in subsequent order he was made as Revenue Inspector in the year 1974. He was suspended in the year 1975. During the course of one year he has executed many distraint warrants and arrears recovered. And also he argued to give the statistics of recovery effected after his period of suspension. The Prosecuting Counsel was not able to furnish the details but he counter argued that Sri B.A.K. Shetty was not keen on duty and taking interest in collection of dues. In the argument, it is concluded that the official showed little bit dereliction of duty.

Charge-6: This is also a case derived from misunderstanding between the Octroi Inspector and Govinda, Octroi Peon as explained in Charge-4. The same

argument was given by the prosecuting and defence counsels. It shows also behaviour of the Octroi Inspector.

Charge-7: The defence counsel has pointed out that it is not a charge. There are so many instances where punishment given officials are promoted to the gazetted rank. The previous punishments may be taken as an evidence or presumption that the official may commit same kind of mistake in future also. The prosecuting witness pointed out that Sri B.A.K. Shetty was awarded punishments and it was the reason why he was not promoted.

In conclusion there are no direct evidence to prove the case. On perusal of the Service Register he has put in more than 25 years of service but circumstantial evidence shows that he is an official with a bad record and also in default. Hence I am of opinion that he may be compulsorily retired from service and suspension period treated as on duty.

(Sd/-) Block Development Officer and Enquiry Officer, Ponnampet."

5. The report was dated 29 12-1976. After the receipt of the said report, by an order dated 24th January 1978 (Ex. "C"), the petitioner, who had been placed under suspension pending enquiry, was reinstated with effect from 27th January 1978. Accordingly, the petitioner reported for duty at the office of the Town Municipal Council, Virajpet.

6. A notice dated 4th October, 1977 (Ex, "A") was issued to the petitioner as to why the petitioner should not be compulsorily retired from service as recommended by the Enquiry Officer. The petitioner submitted his reply to the said show cause notice. Thereafter, without passing any orders in the said enquiry, the Deputy Commissioner proceeded to institute a fresh enquiry on the same charges and issued a fresh article of charges dated 23-2-1978 (Ex. "B"). After receipt of the said article of charges the petitioner gave a representation on 18-3-1978 (Ex. "E") and raised a preliminary objection to the effect that the Deputy Commissioner had no jurisdiction to hold a fresh enquiry on the same charges. The petitioner also submitted his reply on merits, to the charges. Thereafter, the Deputy Commissioner proceeded to appoint the Assistant Commissioner, Kodagu, Madikeri as Enquiry Officer under Rule 191(4) of the Karnataka Municipalities (Conditions of Service of Officers and Servants) Rules, 1972. Again the petitioner gave a representation informing the Deputy Commissioner that the holding of a fresh enquiry on the same charges which had already been enquired into was without jurisdiction. As the Deputy Commissioner had appointed the Enquiry Officer and the enquiry was proposed to be held, the petitioner presented this writ petition praying for the issue of an appropriate writ restraining the respondents from holding the enquiry and for quashing the article of charges framed by the Deputy Commissioner on 23-2-1978 (Ex. "B") and the order of the Deputy Commissioner appointing the Assistant Commissioner as the Enquiry Officer, dated 22-4-1978 (Ex. "F").

7. Sri. Padubidri Raghavendra Rao, learned counsel appearing for the petitioner

contended that under the rules regulating the disciplinary proceedings of municipal servants, which are similar to the provisions contained in the Karnataka Civil Servants (Classification, Control and Appeal), Rules, 1957, the Deputy Commissioner had no jurisdiction to hold a second enquiry on the same charges by appointing another Enquiry Officer.

8. Sri U.A. Khadar, learned counsel for the respondents, however, submitted that if the earlier enquiry was found ineffective, it was competent for the Deputy Commissioner to hold further enquiry into the matter, if necessary, by appointing another Enquiry Officer.

9. In my view, the contention urged for the petitioner is well founded. After the petitioner furnished his reply to the show cause notice, it was open for the Deputy Commissioner, either to accept the finding recorded by the Enquiry Officer or to accept the explanation furnished by the petitioner. If the Deputy Commissioner came to the conclusion that there were procedural irregularities in the conduct of the departmental enquiry, it was open for the Deputy Commissioner to set aside the findings and to direct the enquiry officer to hold a *denovo* enquiry. But in the present case, the Deputy Commissioner has not adopted any one of the courses open to him. Without passing any orders on the earlier enquiry, he framed the same charges once again and appointed a different enquiry officer to hold enquiry into those charges. This is clearly impermissible.

10. There is no dispute that Rule 191 of the Mysore Municipalities (Conditions of Service of Officers and Servants) Rules, 1972, which governs the holding of the disciplinary proceedings against Municipal Servants, is in substance similar and corresponding to Rule 11 of the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957 and Rule 15 of the Central Civil Services (Classification, Control and Appeal) Rules, 1957.

(1) In the case of *K.R. Deb v. Collector of Central Excise*, AIR 1971 SC 1447, a similar question arose for consideration. Interpreting the corresponding provision of Rule 15 of the Central Civil Services (Classification, Control and Appeal) Rules, 1957, the Supreme Court stated that:

"It seems to us that Rule 15, on the face of it, really provides for one Inquiry but it may be possible if in a particular case there has been no proper enquiry because some serious defect has crept into the inquiry or some important witnesses were not available at the time of the inquiry or were not examined for some other reason, the Disciplinary Authority may ask the Inquiry Officer to record further evidence. But there is no provision in Rule 15 for completely setting aside previous inquiries on the ground that the report of the Inquiring Officer or Officers does not appeal to the Disciplinary Authority. The Disciplinary Authority has enough powers to reconsider the evidence itself and come to its own conclusion under Rule 9.

In our view the rules do not contemplate an action such as was taken by the

Collector on February 13, 1962. It seems to us that the Collector, instead of taking responsibility himself, was determined to get some Officer to report against the appellant. The procedure adopted was not only not warranted by the rules but was harassing to the appellant."

In view of the law laid down by the Supreme Court, it was open for the Disciplinary Authority to pass any orders which it considered appropriate, after considering the report of the enquiry or if it found that the enquiry had not been properly conducted, it could even direct the Enquiry Officer to hold further enquiry. But it had no jurisdiction to start a fresh enquiry by appointing another Enquiry Officer.

(2) In the case of C.D. Prabhu v. Commissioner, Mangalore, (1969) 1 Mys. L.J. 405, while interpreting Rule 11 of the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957, a Division Bench of this Court held that if a disciplinary proceeding was commenced with respect to an accusation and that disciplinary proceeding had reached the stage when enquiry had been completed, that disciplinary proceeding must end either in the imposition of a punishment or in exoneration. If that disciplinary proceeding had not been terminated in that way, the commencement of another disciplinary proceeding with respect to those charges was incompetent. The ratio of this decision also fully supports the case of the petitioner.

11. The learned counsel for the petitioner stated that during the pendency of this petition the petitioner had retired from service with effect from 1-12-1978 after reaching the age of superannuation. He, therefore, submitted that the impugned article of charges and the order appointing the Enquiry Officer should be quashed and consequential directions should be issued for payment of full salary during the period of suspension and also for payment of retirement benefits.

12. For the reasons stated above, I make the following orders:

(i) Rule made absolute, (ii) The article of charges framed by the Deputy Commissioner as per order dated 23-2-1978 (Ex. "B") and the order made by the Deputy Commissioner on 22-4-1978 (Ex. "F") appointing the Assistant Commissioner, Madikeri Sub-Division, Madikeri as an Enquiry Officer are quashed.

(iii) The period during which the petitioner had been placed under suspension, until the date when he reported for duty, after the first enquiry, on 27-1-1978, shall be treated as duty, (iv) The petitioner shall be entitled to all retirement benefits in accordance with the rules.

13. Sri U.A. Khadar, learned High Court Government Pleader is permitted to file his memo of appearance in two weeks.