

(2007) 10 KAR CK 0019
In the Karnataka High Court
Case No : Writ Petition No. 54208 of 2003

M. Guruswamy

APPELLANT

Vs

The Managing Director, Karnataka Power Transmission
Corporation Limited and Others

RESPONDENT

Date of Decision : 05-10-2007

Acts Referred:

Karnataka Electricity Board Employees (Classification Disciplinary, Control and Appeal)
Regulations, 1987 — Regulation 18, 21, 25

Citation : (2008) ILR (Kar) 214 : (2008) 2 KarLJ 499 : (2007) 4 KCCR 2804

Hon'ble Judges : A.N. Venugopala Gowda, J

Bench : Single Bench

Advocate : Swamy and Singh, for the Appellant; P.S. Dinesh Kumar, for R1 to
R3, for the Respondent

Judgement

A.N. Venugopala Gowda, J.—The petitioner is the employee under the respondents. Alleging certain acts of negligence and misconduct, the petitioner was issued with a charge sheet dated 25.9.2000, vide Annexure-A. The charge sheet contains the articles of charges, statement of imputations of misconduct, the list of documents and the list of witnesses proposed to be examined, through whom the charges were sought to be proved. A retired District Judge was appointed as the Enquiry Officer to conduct the disciplinary enquiry against the petitioner and two others, being a joint enquiry. The Enquiry Officer after conducting the enquiry, has submitted the report vide Annexure-C. The petitioner was issued with a show cause notice enclosing the enquiry report, as to why action in accordance with law based on the enquiry report, should not be taken. Subsequently, an order has come to be passed by disciplinary authority ("DA" for short) on 27.9.2001, vide Annexure-D, holding that, the misconduct alleged against the petitioner as proved and consequently imposing the punishment i.e., reduction of pay to the minimum of the present time scale.

2. The petitioner being aggrieved, has filed an appeal before the Appellate Authority ("AA" for short). On consideration of the appeal of the petitioner as

well as the other employee against whom the joint enquiry was held, the "AA" has passed a common order dated 13.6.2002, vide Annexure-E, upholding the order passed by the "DA". The petitioner thereafter had filed a review petition which was not considered and an endorsement dated 24.7.2003, vide Annexure-F, was issued by the respondents. The petitioner has challenged the said orders.

3. I have heard Sri Narasimha Swamy, learned advocate for the petitioner and Sri P.S. Dinesh Kumar, learned advocate for the respondents. I have perused the record.

4. Learned advocate for the petitioner taking me through the averments made in the writ petition, reiterated the grounds raised in the writ petition. Per contra, Sri P.S. Dinesh Kumar, learned advocate for the respondents, took me through the statement of objections filed to the writ petition, the orders passed by the "DA" and "AA" and would contend that the action taken was based on the record of the enquiry and thus was justified. The learned Counsel would contend that in view of the record and proof of misconduct as held by the "DA" and "AA", no interference is called for in exercise of the power of Judicial review by this Court.

5. Even though both the learned advocates have adverted to the respective stands taken by them in the pleadings, I deem it proper to dispose of this writ petition on the short legal ground that the "AA" has not considered the appeal in accordance with law. Karnataka Electricity Board Employees" (Classification Disciplinary, Control and Appeal) Regulations, 1987, contains the provisions, in matters relating to the classification, disciplinary control, of the employees of the Board. Regulation 18 provides for appeals against orders imposing penalties. Regulation 21 is regarding form and contents of appeal. The said Regulation read as follows:

21. Form And Contents of Appeal:

- 1) Every person submitting an appeal shall do so separately and in his own name.
- 2) Every appeal preferred under these Regulations shall be accompanied by a copy of the order appealed against, and shall contain all material statements and arguments relied on by the appellant, shall not contain any disrespectful or improper language, and shall be complete in itself.

Regulation 25 is regarding consideration of appeals, relevant portion of which, reads as follows:

25. Consideration of Appeals:

- 1) XXX
- 2) In the case of an appeal against an order imposing any of the penalties specified in Regulation 9, the "AA" shall consider-
 - a) Whether the procedure prescribed in these Regulations has been complied with, and, if not whether such non-compliance has resulted in violation of any

provisions of the constitution or in failure of justice;

b) Whether the findings are justified; and

c) Whether the penalty imposed is excessive, adequate or inadequate, and after consultation with the Board if such consultation is necessary in the case, pass orders-

i) Setting aside, reducing, confirming or enhancing the penalty; or

ii) Remitting the case to the authority which imposed the penalty or to any other authority with such direction as it may deem fit in the circumstances of the cases: Provided that-

i) The "AA" shall not impose any enhanced penalty unless such authority or the authority which made the order appealed against is competent to impose such penalty.

ii) No order imposing an enhanced penalty shall be passed unless the appellant is given an opportunity of making any representation which he may wish to make against such enhanced penalty; and

iii) If the enhanced penalty which the "AA" proposes to impose is one of the penalties specified in Clauses (v) to (viii) of Regulation 9 and an inquiry under of Regulation 11 has not already been held in the case, the "AA" shall, subject to the provisions of Regulation 14 itself hold such inquiry or direct that such inquiry be held and thereafter on consideration of the proceedings of such inquiry, pass such orders as it may deem fit.

3) x x x

6. The "AA" in the order at Annexure-E has summarised the grounds raised in the appeal memo by the petitioner. The "AA" has passed the order, with regard to the appeal filed by the petitioner, which reads as follows:

In respect of Sri Guruswamy, Lineman it is observed that this Departmental Inquiry was ordered by the competent Disciplinary Authority and appointment of the Inquiry Officer is in order. Reasonable opportunity was extended to him. His claim that the work carried out by the contractor in an earlier occasion was not known to him is not considerable. Being the Jurisdictional lineman he is expected to know about electricity lines in his jurisdiction and the arrangement made from the TCs for the same. Shifting the responsibility to others and pleading innocence is not correct. Hence this case deserves no sympathy nor interference with the orders of the Disciplinary Authority.

7. From a reading of Regulation 25, it is clear that the "AA" while disposing of the appeal, is required to apply his mind with regard to the factors enumerated therein. Appellate order, if it is in agreement with that of the "DA", may not be a speaking order, but the authority passing the order must show that there had been proper application of mind on his part as regards compliance of the

requirement of law, while exercising the jurisdiction under Regulation 25. When appeal is presented to the "AA", under Regulation 22, the "AA" has the authority, as well as jurisdiction, to re-appreciate the evidence and come to its own conclusion, on facts, being also the fact finding authority. The Regulation casts a mandatory duty on the "AA" to consider the appeal in terms of the said regulation.

8. The order of the "AA" demonstrates total non application of mind. The "AA", when the regulation requires application of mind on several factors, as serious contentions have been raised, which could be seen from the order of "AA" itself, was bound to assign reasons, so as to enable this Court in exercise of judicial review, to ascertain as to whether "AA" had applied its mind to the relevant factors which the regulation required him to do so. The expression "consider" is of material significance. In the context of the Regulation, the "AA" was required to see:

- (i) Whether procedure laid down in the regulation has been complied with;
- (ii) Whether the findings of the "DA" on the charges held to be proved was justified; and
- (iii) Whether the penalty imposed by the "DA" is excessive, adequate or inadequate.

9. The Hon'ble Supreme Court in the case of R.P. Bhatt Vs. Union of India and Ors (UOI) ., , has held that the word "consider" implies a "due application of mind." While interpreting Rule 27(2) of CCS (CC & A) Rules, 1965, which came up for consideration therein, it has been held that the same cast a duty on the appellate authority to consider the relevant factors set forth in Clauses (a), (b) and (c) thereof.

10. In this connection, it would be useful to refer to the decision of the Hon'ble Supreme Court, in the case of Ram Chander Vs. Union of India (UOI) and Others, , interpreting Rule 22(2) of the Railway Servants (Discipline and Appeal) Rules, wherein it has been held as follows:

5. To say the least, this is just a mechanical reproduction of the phraseology of Rule 22(2) of the Railway Servants Rules without any attempt on the part of the Railway Board either to marshall the evidence on record with a view to decide whether the findings arrived at by the Disciplinary Authority could be sustained or not. There is also no indication that the Railway Board applied its mind as to whether the act of misconduct with which the appellant was charged together with the attendant circumstances and the past record of the appellant were such that he should have been visited with the extreme penalty of removal from service for a single lapse in a span of 24 years of service. Dismissal or removal from service is a matter of grave concern to a civil servant who after such a long period of service, may not deserve such a harsh punishment. There being non-compliance with the requirements of Rule 22(2) of the Railway Servants Rules,

the impugned order passed by the Railway Board is liable to be set aside.

9. These authorities proceed upon the principle that in the absence of a requirement in the statute or the rules, there is no duty cast on an "AA" to give reasons where the order is one of affirmance. Here, Rule 22(2) of the Railway Servants Rules in express terms requires the Railway Board to record its findings on the three aspects stated therein. Similar are the requirements under Rule 27(2) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. Rule 22(2) provides that in the case of an appeal against an order imposing any of the penalties specified in Rule 6 or enhancing any penalty imposed under the said rule, the "AA" shall "consider" as to the matters indicated therein. The word "consider" has different shades of meaning and must in Rule 22(2), in the context in which it appears, mean an objective consideration by the Railway Board after due application of mind which implies the giving of reasons for its decision.

(Emphasis supplied by me)

11. In paragraph 13 of the writ petition, the petitioner has raised the contention that the order of the "AA" is not a speaking order. In my view, the contention raised by the petitioner is well founded. Lack of due application of mind on the part of the "AA" in terms of Regulation 25 is apparent. The departmental proceedings are quasi criminal in nature. Taking into account the nature of the proceedings, it is incumbent on the authority conferred with the power/jurisdiction, to consider the appeal in terms of the regulation. The non consideration of the appeal of the petitioner by the "AA" in terms of the regulation is apparent. The order of "AA" suffers from non application of mind to the material statements and arguments raised in the appeal memorandum and has to be held as arbitrary. Since reasons as to how the contentions raised in the memorandum of the appeal filed by the petitioner are non-tenable has not been recorded, in my view, the order passed by the "AA" is bald, laconic and is also not a speaking order. The "AA" has passed the order mechanically in disregard of the mandatory requirements under Regulation 25. Hence, the order passed by the "AA" at Annexure-E is liable to be quashed on the ground of non application of mind, arbitrariness and also as being vitiated. Hence, I pass the following:

ORDER

Writ petition is allowed in part. The order at Annexure-E passed by the " AA" is quashed. The " AA" is directed to reconsider the appeal in accordance with the requirement of Regulation 25 and pass orders thereon, within a period of four months from the date of receipt of a copy of this order. All other contentions raised by both sides are left open.