
(1966) 10 KAR CK 0002
In the Karnataka High Court
Case No : Writ Petition No. 1242 of 1964

Mandanna A.M.

APPELLANT

Vs

Director of Medical Services

RESPONDENT

Date of Decision : 28-10-1966

Acts Referred:

Mysore Civil Services (Classification, Control and Appeal) Rules, 1957 — Rule 10 (4), 11 (4)

Citation : (1967) 14 FLR 21 : (1967) 2 LLJ 149 : (1966) 2 MysLJ 705

Hon'ble Judges : B.M. Kalagate, J;A.R. Somnath Ayyar, J

Bench : Division Bench

Judgement

Somnath Ayyar, J.—The petitioner was a X-ray technician in the Civil Hospital Somwarpet. In a disciplinary proceeding, the first charge against him was that he was found in the dark room of the X-ray department inside the hospital premises on March 29, 1963 with a woman "in an unbecoming position." The second charge was that there was dereliction of duty of his part. These two charges were formulated on June 24, 1963.

2. At an earlier stage, the petitioner was asked to supply answers to three questions with reference to what was described as a chargesheet. The first was whether it was a fact that the petitioner was with a woman in the X-ray room and the petitioner admitted it. The second was whether that woman was a patient and had been referred to the petitioner by someone, and the answer was in the negative. The third asked the petitioner to explain why disciplinary action should not be taken against him, and he said this :

"It is true that I was with a lady in the X-ray room for which I regret very much, I most humbly request you that I may kindly be excused for this time. I assure you, Sir, that I won't commit such mistakes in future."

3. Although this was what the petitioner (sic) at that stage, when he produced his defence with reference to the two charges which were formulated on June 24, 1963, he denied that he was in an "unbecoming position" with a woman on

March 29, 1963, and added that the woman had come to the X-ray room requesting the petitioner to screen her and that she was talking to him. He denied that he had committed any misconduct and sought exoneration.

4. In the enquiry which was conducted, the persons who were supposed to have seen the petitioner in a compromising position inside the X-ray room were not examined as witnesses. They were a lady medical officer, a medical officer and a matron. What the inquiring authority did was to read out their statements which had been recorded earlier, to the petitioner, and, to ask him whether he wished to cross-examine those witnesses. On the petitioner declining to cross-examine them, the inquiring authority made his report on the basis of which the Director of Medical Services dismissed the petitioner.

5. It is this order of dismissal which is called in question in this writ petition.

6. On behalf of the petitioner, Sri M. Rama Jois made two submissions. The first was that the inquiring authority transgressed the provisions of rule 11 of the Mysore Civil Services (Classification, Control and Appeal) Rules, 1957, by reason of the dependence placed by the inquiring authority on the statements made by persons who had not been called as witnesses in the disciplinary proceeding. The second submission was that when the petitioner was called upon to show cause against the imposition of punishment of dismissal, he was not supplied with the report of the inquiring authority.

7. We are satisfied that both these submissions are substantial.

8. Under rule 11(4) of the Mysore Civil Services (Classification, Control and Appeal) Rules, 1957, which will be referred to as the rules, if the charge against a Government servant is not admitted by him, there should be an inquiry into that charge. Although in April 1963 the petitioner did admit that he was found in the company of a woman in the X-ray room, when the charge spoke of his being in the company of that woman "in an unbecoming position" the petitioner did not admit the truth of that charge. So the charge which stated that the petitioner was found in the company of the woman "in an unbecoming position" was not admitted, and so it became the duty of the inquiring authority to investigate into the truth of that charge. For that purpose, it became necessary to call witnesses to support the charge, and to record their evidences. That course was not adopted.

9. What was done was to read out to the petitioner the statements of those witnesses which had been recorded at some antecedent stage during the preliminary investigation and to ask him whether he proposed to cross-examine any of them. Sri Jois contends that the petitioner was not bound to cross-examine those witnesses since their evidence had not been recorded and since these earlier statements had not been brought on the confer on them the status of admissible evidence. That might have happened if the witnesses were present and their statements during investigation were read over to him and they admitted their correctness. But they did not appear before the inquiring

authority; nor did they admit the correctness of those statements. So those statements did not form part of the record on which dependence could be placed in support of the charges and there being no such evidence, the petitioner very properly declined to cross-examine a witness whose examination-in-chief was not recorded.

10. But, nevertheless, the inquiring authority depended upon those earlier statements in support of his conclusion that the charge that the petitioner and the woman were both "in an unbecoming position" was established. So Sri Jois is right in contending that the conclusion rested upon irrelevant material.

11. We cannot accede to the contention of the Government Pleader that the admission previously made by the petitioner that he and the woman were found inside the X-ray room amounts to an admission that they were found there "in an unbecoming position." He did not then admit that they were found there in that way. All that he admitted was that he was there in the company of that woman.

12. On the contrary, when he produced his defence, which he was entitled to produce under the rules, he denied that he was found in that way. So it was, that an inquiry became necessary since otherwise, the inquiry would have been superfluous as provided by sub-rule (4) of rule 11 of the rules. It is the report prepared by the inquiring authority in this impermissible way that formed the foundation for the imposition of the punishment of dismissal on the petitioner by the Director of Medical Services who was the disciplinary authority. So the punishment of dismissal is liable to be set aside on this short ground. The punishment becomes again unsupportable for the reason that when the petitioner was asked to show cause against this imposition, he was not supplied with a copy of the report of the inquiring authority.

13. We, therefore, set aside the punishment of dismissal.

14. But we reserve liberty for the continuance of the disciplinary proceedings from the appropriate stage when the illegality was committed. That stage is the stage when evidence had to be recorded in support of the charges which had been framed and the defence had been produced. And what remained to be done was to examine witnesses in support of the charges and to allow an opportunity to the petitioner to meet those charges and to examine witnesses in defence if he wished to do so. The inquiring authority could then proceed according to law. The inquiry has to continue in that way.

15. It is seen from rule 10(4) of the rules that if the disciplinary authority decides to continue the inquiry in that way, the petitioner shall be deemed to have been placed under suspension by the appointing authority from the date of the original order of dismissal and shall continue to remain under suspension until further orders. That would be the consequence if it is so decided.

16. No costs.