

(1983) 04 KAR CK 0017
In the Karnataka High Court
Case No : WP. 12082/82

Naik S.H.

APPELLANT

Vs

Asst. Executive Engineer, Kumta and Others

RESPONDENT

Date of Decision : 19-04-1983

Acts Referred:

Constitution of India, 1950 — Article 226

Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957 — Rule 27

Citation : (1983) 2 KarLJ 401

Hon'ble Judges : M. Rama Jois, J

Judgement

1. The petitioner, a class IV employee of the Public Works Department has prayed for quashing the order of the Superintending Engineer, Dharwad Circle, by which penalty of compulsory retirement was imposed against the petitioner.

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

A departmental enquiry was instituted against the petitioner by the Executive Engineer, Karwar Dvn., Karwar. After holding the enquiry into the charges levelled against the petitioner, the Executive Engineer and the Disciplinary Authority made the final order on 27-11-1981. The operative portion of the order reads:

"After careful consideration of the findings of the inquiry officer and in exercise of the powers conferred under Rule 8 (iii) of K.C.S. (CCA) Rules, 1957, it is ordered that next two increments of Sri S.H. Naik, Chowkidar are hereby stopped with cumulative effect on future increments."

The petitioner did not prefer any appeal against the said order. Thereafter on 26-2-1982 a notice was served on the petitioner, copy of which is produced as Annexure-B. By the said notice the Executive Engineer, Sirsi Division, proposed to hold an inquiry into the very charges which were inquired into and in respect of which a final order had been made by the Executive Engineer on 27-11-1981. After the inquiry was held and report was submitted, the Superintending

Engineer proceeded to pass the impugned order Annexure-C which reads:

"Proceedings of the office of Superintending Engineer, Dharwad Circle, P.W.D. Dharwad.

Sub: Departmental Enquiry against Sri S.H. Naik, Chowkidar, I.B. Mandageri of No. 5 Sub-Dn. Kumta.

Read: (1) T.O. Proceedings EST-III/ENQ/81-82/136 confidential/27-1-1982.

(2) Enquiry Officer and Disciplinary Authority confidential Report No. EST/ENK/81-82/135 of 22-4-1982.

Preamble: In this office proceedings cited (1) above, the Executive Engineer, Sirsi Division, Sirsi has been appointed as an Enquiry Officer and Disciplinary Authority and directed to conduct the above Enquiry as per the directions of the Chief Engineer (C & B), Bangalore, vide his letter No. VC/ENQ/WBE/81-82 dated 12-12-1981.

The Enquiry Officer has furnished the report with the findings and conclusions, vide reference cited at No. (2) above and stated as under.

Out of 11 charges framed by the Assistant Executive Engineer, against Sri S.H. Naik, Chowkidar of Kumta Inspection Bungalow, 8 charges are found to be proved as per the findings, 3 charges are not found to be proved.

In the proved charges, he has become entirely responsible for not maintaining absolute integrity, devotion to duty etc., as per rule 3 of K.C.S.R.'s (C.C.A..... Rules). In view of this, the enquiry Officer had endorsed his opinion of the previous enquiry Officer Sri C. Nagaraju, Asst. Ex. Engineer regarding the penalty to be imposed on the Chowkidar Sri S.H. Naik, as per Section-V to VIII of rule 8 of K.C.S. (C.C.A.) Rules preferably the punishment under rule 8(vi) i.e., compulsory retirement.

Orders thereon; After careful consideration of the findings of the enquiry officer, and in exercise of the powers conferred under Section V to VIII rule 8 (vi) of K.C.S. (CCA.) Rules 1957, it is ordered that Sri S.H. Naik, Chowkidar be retired compulsorily from service

(Sd,) Superintending Engineer,

D.C. Dwd."

The petitioner questions the legality of the said order in this writ petition.

3. Sri Visweswara, learned counsel for the petitioner contended that a second inquiry into the very charges in respect of which the petitioner had earlier been punished was without authority of law.

4. The above contention was raised by the petitioner on the ground that after the penalty order was made, there had been no order passed by the competent

authority and communicated to the petitioner setting aside the earlier proceedings and directing the holding of the denovo inquiry.

5. Sri S.V. Narasimhan, the learned High Court Government Pleader appearing for the respondents submitted that this was not a case of holding a second inquiry into the charges in respect of which the petitioner had already been punished, but this was a case in which the proceedings in the inquiry in which a minor penalty was imposed against the petitioner was set aside by the competent authority in exercise of its power under Rule 27 of the K.C.S. (CCA.) Rules, 1957 (Rules for short) and a direction was issued by it for holding a denovo inquiry and that such a course was authorised by Rule 27 of the Rules.

6. In reply to the above submission, after going through the original records, learned counsel for the petitioner submitted that, according to the provisions of the Rules, the Superintending Engineer was the appellate authority in respect of punishments imposed against Class. IV employees by the Executive Engineer and in the present case as it was the Chief Engineer who exercised" the power of review and directed the holding of a denovo inquiry against the petitioner and not the appellate authority, the proceedings instituted which culminated in the issue of the impugned order were without jurisdiction.

Rule 27 of the Rules reads:

"27. Review of orders in disciplinary cases.-The authority to which an appeal against an order imposing any of the penalties specified in rule 8 lies, may, of its own motion or otherwise, call for the records of the case in a disciplinary proceeding, review any order passed in such a case and after consultation with the Commission where such consultation is necessary, pass such order as it deems fit, as if the Government servant had preferred an appeal against such order:

Provided that no action under this rule shall be initiated more than six months after the date of the order to be reviewed."

The wording of the rule is clear and unambiguous. The power to review the order made in the disciplinary proceedings is conferred on the appellate authority. The appellate authority is given power to pass appropriate orders in exercise of the power of review as if the party concerned himself had preferred an appeal. In the schedule to the Rules at page 331 the disciplinary authorities and appellate authorities in respect of Class IV employees in the P.W.D. have been specified. The Assistant Engineer is empowered to impose minor penalties in which event the Executive Engineer becomes the appellate authority. The Executive Engineer is empowered to impose major penalties in which event the Superintending Engineer becomes the appellate Authority. There is no dispute that the power to impose major penalties includes the power to impose the minor penalties. Therefore the Executive Engineer undoubtedly had the power to impose major penalties as well as minor penalties against the petitioner. Though the Executive Engineer imposed a minor penalty against the petitioner, the Superintending

Engineer was the appellate authority. Therefore there can be no doubt that the Superintending Engineer, in exercise of the powers under Rule 27 of the Rules, could have set aside the earlier proceedings if there were valid grounds to do so and direct the holding of a denovo inquiry against the petitioner, provided such power was exercised within a period of six months from the date of the order of the disciplinary authority.

7. Sri S.V. Narasimhan, however maintained that the power to review has been exercised not by the Chief Engineer but by the Superintending Engineer alone and therefore the denovo inquiry was valid.

In the original records there is a letter dated 25-12-1981 addressed by the Chief Engineer to the Superintending Engineer. It reads:

No. VC/ENQ/WCE/81-82 Dt. 15-12-81

Encl: Original file

To

The Superintending Engineer,

P.W.D., Dharwar Circle,

Dharwar.

Sir,

Sub: Departmental Enquiry against Sri S.H. Naik, I.B. Chowkidar, Madanageri of No. 5 Sub-Division, Kumta.

Ref: Proceedings of the Executive Engineer, PWD, Karwar Division, Karwar bearing No. MGR/ENQ/81-82/8090 Karwar dated 27-11-81.

In enclosing herewith the original file received from the Executive Engineer, Karwar Division, Karwar, on the above subject I am to state that on review of the above record it appears that enquiry proceedings are defective on account of the procedural irregularity in conducting Enquiry under Rule II of KCS., (CC & A) Rules 57.

In view of several Telegrams received in this office from the public on the subject, it is suggested that you may arrange to conduct Denovo Enquiry by appointing an officer outside the Division, say Executive Engineer, PWD. Sirsi Division Sirsi and dispose of the case.

Yours faithfully,

(Sd.)"

(underlined (italics) by me)

8. In the said order the Chief Engineer directed the Superintending Engineer to hold a denovo inquiry. Further the Chief Engineer said that on review of the

record it appeared to him that the inquiry proceedings were defective. By the same letter he directed the Superintending Engineer to hold de-novo inquiry into the charges levelled against the petitioner. This document clearly indicates that it was the Chief Engineer who reviewed the orders of the disciplinary authority i.e., the Executive Engineer dt. 27-11-1981 and directed the holding of a de-novo inquiry. The Chief Engineer not being the appellate authority could not have invoked the powers of review under Rule 27 of the Rules. Therefore the power of review exercised by the Chief Engineer directing the holding of de-novo inquiry was without authority of law.

9. Sri S.V. Narasimhan maintained that it was really the Superintending Engineer who exercised the power of review and what the Chief Engineer had done by the aforesaid letter was to invite the attention of the Superintending Engineer about the necessity of review. In support of his submission he relied on the letter of Superintending Engineer dated 27-1-1982. It reads:

CONFIDENTIAL

Office of the Superintending Engineer, D.C., Dharwad, 27-1-1982

PROCEEDINGS

Sub: Departmental Enquiry against Sri S.H. Naik, LB. Chowkidar, Mandanageri of No. 5 Sub-Division, Kumta.

Ref: Proceedings of the Executive Engineer, PWD. Karwar Division, Karwar bearing No. MGR/ENQ/81/82/8090. Karwar dated 27-11-1981.

It is stated by the Chief Engineer (Communications and Building)-Bangalore, vide his letter No. VC/ENQ/WCR/81-82 dt. 12-12-1981, that on review of the above records it appears that the enquiry proceedings are defective on account of procedural irregularity in conducting the enquiry under Rule 11 of KCS (CC&A) Rules, 1957 and directed to appoint an officer outside the Division.

In view of the directions of the Chief Engineer (C & B) Bangalore, I, the Superintending Engineer Dharwad Circle, Dharwad hereby appoint the Executive Engineer, Sirsi Dvn. Sirsi, as an Enquiry Officer and Disciplinary Authority and he is hereby directed to conduct enquiry and submit the report within a month.

The date fixed may be adhered to.

(Sd) Superintending

Engineer, D.C., Dwd.

Mr. Narasimhan also invited my attention to the letter dated 8-2-82.

It reads:

"No. EST III/ENQ/81-82/145

Office of the Superintending Engineer,

D.C., Dharwad, 8-2-1982.

To

The Executive Engineer,

Karwar Division, Karwar.

Sub: Departmental Enquiry against Sri S.H. Naik, I.B. Chowkidar, Mandanageri of No. 5, Sub-Division, Kumta.

Ref: This Office letter No. EST. III/ENQ/81-82/136, dated 27-1-1982.

In view of the fresh enquiry ordered to be conducted by this office, vide letter No. cited above, as per the directions issued by the Chief Engineer (C&B) Bangalore, against Sri S.H. Naik, I.B. Chowkidar, the Executive Engineer, is instructed to cancel the proceedings order by you, vide your office letter No. MGR/ENQ/81-82/8090, Karwar dated 27-11-1981 at your end and inform to all the concerned.

Sd/-

for Superintending Engineer D.C. Dwd.

In the aforesaid letter no doubt the Superintending Engineer states that in view of the fresh inquiry ordered by his office, the Executive Engineer was directed to cancel the proceedings dt. 27-11-81. This is factually incorrect. It may be seen that in the aforesaid letter of the Superintending Engineer, he refers to his earlier order dt. 27-1-1982, the contents of which are extracted earlier. That order dt. 27-1-1982 unmistakably indicates that the Superintending Engineer himself has said that it was the Chief Engineer who had reviewed the proceedings of the Executive Engineer and directed the holding of the de-novo inquiry. The documents found in the records establish beyond doubt that it was the Chief Engineer who exercised the power of review, though he had no such powers under the rules. Therefore it should be held that, setting aside the order of the Executive Engineer dt. 27-11-1981 and the giving of a direction to hold a de-novo inquiry against the petitioner, by the Chief Engineer, was without authority of law. Consequently all subsequent proceedings including the second inquiry proceedings against the petitioner are liable to be quashed.

10. Learned High Court Government Pleader next contended that in any event the writ petition should not be entertained as the petitioner has the right of appeal under Rule 18 of the Rules.

11. I do not find any substance in this contention. In the present case the appellate authority under the rule viz., the Superintending Engineer himself has exercised the disciplinary power. Therefore no appeal could be preferred to the appellate authority prescribed under the rules. Even assuming there was a right of appeal to the Chief Engineer against the order of the Superintending Engineer, it is no bar for entertaining the petition under Art. 226 of the Constitution.

Particularly in a case of this type where an earlier final order has been set aside by the authority who had no jurisdiction to do so under the Rules, there is no justification to reject the writ petition and compel the petitioner to prefer an appeal under the Rules. Hence the contention is rejected.

12. For the reasons aforesaid I make the following Order.

The writ petition is allowed. The impugned order of the Superintending Engineer Annexure-C is quashed. The petitioner shall be entitled to all consequential benefits flowing from the quashing of the order.

Sri S.V. Narasimhan, learned High Court Government Pleader is permitted to file his memo of appearance within two weeks.