

(1966) 09 KAR CK 0014
In the Karnataka High Court
Case No : Writ Petition No. 982 of 1964

Nanjundayya (G.N.)

APPELLANT

Vs

Inspector-General of Police

RESPONDENT

Date of Decision : 27-09-1966

Acts Referred:

Mysore Civil Services (Classification, Control and Appeal) Rules, 1957 — Rule 11, 8, 9, 9 (3)

Citation : (1967) 1 LLJ 659

Hon'ble Judges : Ahmed Ali Khan, J;A.R. Somnath Ayyar, J

Bench : Division Bench

Judgement

Somnath Ayyar, J.—The petitioner was a second division clerk in the office of the Superintendent of Police in Mysore, and, disciplinary proceedings were commenced against him by the Superintendent of Police of that district on a charge that he failed to report himself to duty in time. The Deputy Superintendent of Police was authorized to hold the enquiry, and, on the basis of his report, the Superintendent of Police dismissed the petitioner.

2. The petitioner appealed to the Inspector-General of Police, and the contention urged before him was that the enquiry into the charge should have been made either by the Inspector-General of Police or by an authority specially empowered by him, and, that since the District Superintendent of Police was not the disciplinary authority and so the Deputy Superintendent of Police could not have made the enquiry under his authority the proceedings were void. The Inspector-General of Police upheld the contention that the punishment of dismissal imposed by the District Superintendent of Police was unsustainable, and so, he set aside the punishment imposed by him. What he next proceeded to do was to issue a notice to the petitioner to show cause why he should not himself dismiss him, and, after hearing the petitioner, he substituted his own punishment of dismissal for the punishment imposed by the District Superintendent of Police.

3. Sri Rama Jois contends that this substitution was, in law, impossible, and we

think that he is right. The punishment of dismissal is a major penalty falling within Clause (viii) of rule 8 of the Mysore Civil Services (Classification, Control and Appeal) Rules, and so, the procedure for the imposition of that penalty is what is prescribed by rule 11 of those rules. Sub-rule (1) of that rule says that no major penalty shall be imposed except after an enquiry in manner provided by that rule. The first step in the enquiry to be so held is that prescribed by Sub-rule (2) which directs that a disciplinary authority or an authority specially empowered by it in that behalf, shall frame charges which should be communicated with other enclosures to the concerned Government servant, who should be required to submit his statement of defence in writing. Sub-rule (3) authorizes the inspection of relevant official records by the concerned Government servant for the preparation of his defence, although permission for such inspection may be refused if the disciplinary authority or the specially empowered authority is of opinion that the records of which an inspection is sought, are not relevant or public interest forbids such inspection. Sub-rule (4) directs an enquiry by the disciplinary authority or the specially empowered authority on receipt of the written statement of defence or where no such statement is produced within the time allowed. Sub-rule (5) regulates the engagement of counsel and Sub-rule (6) directs the recordings of evidence. Sub-rule (7) provides for the preparation of a report of enquiry. We are not concerned with the other parts of rule 11.

4. It will, therefore, be observed that one of the main steps which cannot be dispensed with for the imposition of a major penalty like a penalty of dismissal, is the conduct of an enquiry by a disciplinary authority or by an authority specially empowered by it, who is referred to as the "specially empowered authority."

5. The question is whether there was such enquiry into the charge against the petitioner, and we find that there was none. The only authority which could hold that enquiry is the disciplinary authority or the specially empowered authority, but the enquiry was held by a Deputy Superintendent of Police who was neither the one nor the other.

6. Rule 2 defines a disciplinary authority as the authority competent to impose a penalty under the rules. Rule 9 enumerates those authorities and Sub-rule (3) of that rule forbids the imposition of the penalties enumerated in Cls. (v) to (viii) of rule 8 by an authority lower than the appointing authority. Dismissal is one of them, and so, in the case of the petitioners, the lowest disciplinary authority was the appointing authority, and no one inferior to him could make an enquiry or appoint another to make it. The identification of the petitioner's appointing authority is assisted by rule 2(a) which defines an appointing authority. That clause reads :

"2. Interpretation. - In these rules, unless the context otherwise requires -

(a) "appointing authority" in relation to a Government servant means -

(i) the authority empowered to make appointments to the service of which the

Government servant is for the time being a member or to the grade of the service in which the Government servant is for the time being included, or

(ii) the authority empowered to make appointments to the post which the Government servant for the time being holds, or

(iii) the authority which appointed the Government servant to such service, grade or post, as the case may be, whichever authority is the highest authority.

* * *

7. So, in each case, the highest authority among the authorities specified in Sub-cl. (i) to (iii) of the above clause would be the appointing authority, and, no authority lower in rank than that authority could be the disciplinary authority referred to in Clause (3) of rule 9, and so, within the meaning of rule 11(4). It is not disputed that the Inspector-General of Police appointed the petitioner as a second division clerk, and so, he being the highest authority among the authorities specified in Sub-cl. (i), (ii) and (iii) of rule 2(a), was the appointing authority in the case of the petitioner.

8. At one stage, Sri Doddakalegowda, the learned Government Pleader, asked attention to the relevant part of Sch. II to the rules which says that, for the second division clerks in a District Police Office, one of the appointing authorities is the District Superintendent of Police, who could impose anyone of the punishments enumerated in Cls. (ii) to (viii) of rule 8, one of which is a punishment of dismissal. The Government Pleader also depended upon rule 9(2) (c) which lays that any of the penalties specified in rule 8 may be imposed on a member of a State Civil Service by the appointing authority or the authority specified in the schedules to the rules. It is on the basis of rule 9(2) (c) and the relevant part of Sch. II that the argument was constructed that the District Superintendent of Police could impose a punishment of dismissal on the petitioner.

9. But this argument overlooks the clear provisions of rule 9 (3) which reads :

"9. Disciplinary authorities. -

* * *

(3) Notwithstanding anything contained in this rule, no penalty specified in Cls. (v) to (viii) of rule 8 shall be imposed by any authority lower than the appointing authority."

10. Dismissal being a punishment referred to in rule 8 (viii), the embargo of rule 9(3) is that that punishment shall not be imposed by an authority lower than the appointing authority. The lowest authority which could impose that punishment is thus the appointing authority, and, as already observed, rule 2(a)(iii) makes it clear that the appointing authority for the petitioner was the Inspector-General of Police, and, no one lower than him could impose a punishment of dismissal.

11. The Inspector-General of Police had also no doubt in his mind that this was the only conclusion possible. So, he displaced the punishment imposed by the District Superintendent of Police by a punishment of dismissal which he himself imposed. But it was not possible for the Inspector-General to do so unless the imposition of a punishment of dismissal was preceded by an enquiry conducted under rule 11(4). That enquiry as already demonstrated, could be made either by the disciplinary authority who, in the case before us, was the appointing authority who again could not be an authority lower than the Inspector-General of Police. That enquiry could also have been held by a specially empowered authority, but, that specially empowered authority could be appointed only by the disciplinary authority who, in the case before us, could not be one lower in rank than the Inspector-General of Police.

12. But, Doddakalegowda depended upon the explanation to rule 11(2) which reads :

"11. Procedure for imposing major penalties. -

(1) * * *

(2) * * *

Explanation. - In this sub-rule and in sub-rule (3), the expression "the disciplinary authority" shall include the authority competent under these rules to impose upon the Government servant any of the penalties specified in Cls. (i) to (iv) of rule 8."

13. The argument maintained was that since it is indisputable that the District Superintendent of Police was competent to impose any one of the penalties specified in Cls. (i) to (iv) of rule 8, he became the disciplinary authority for all purposes, and so, could appoint the Deputy Superintendent of Police to make the enquiry and that that Deputy Superintendent of Police who was authorized to make it became the specially empowered authority. So, we were asked to say that the enquiry made by the Deputy Superintendent of Police was an enquiry within the meaning of rule 11(4).

14. But, this argument overlooks that the explanation to rule 11(2) is an explanation only for sub-rules (2) and (3) does not permeate sub-rule (4). So, although the authority competent to impose a minor penalty is a disciplinary authority by force of the explanation for the purposes of sub-rules (2) and (3), that authority would not be the disciplinary authority for the purpose of sub-rule (4). So, that lower disciplinary authority may frame the charges and communicate them to the concerned Government servant and call upon him to submit his written statement in defence under sub-rule (2), and, although that authority could decide under sub-rule (3) whether the inspection of the relevant records should or should not be permitted, that authority would have no competence to hold the enquiry under sub-rule (4), since, the status of a disciplinary authority is conferred on that lower authority only for purposes of

sub-rules (2) and (3) and not for the purpose of sub-rule (4). The disciplinary authority for the purpose of sub-rule (4) is the disciplinary authority to which rule 9 refers, and, that authority as decided by us, could not be lower in rank than the Inspector-General of Police.

15. So, it emerges that the District Superintendent of Police was not the disciplinary authority for the purpose of rule 11 (4) and the Deputy Superintendent of Police could not be a specially empowered authority within the meaning of that sub-rule. The enquiry held by him was without competence and was not an enquiry enjoined by that rub-rule.

16. But, it was said that there is a delay of nearly eight months in the presentation of this writ petition and we should, therefore, refuse to exercise our jurisdiction.

17. The Inspector-General of Police made his order on 8 August 1963, and the writ petition was presented on 14 April 1964. We do not think that there have been such great laches on the part of the petitioner so as to disentitle him to relief in this writ petition. In a case like the one before us, the delay is not such as to persuade us to refuse to the petitioner the relief to which he is so plainly entitled.

18. So, we set aside the impugned punishment of dismissal imposed by the Inspector-General of Police which was not preceded by the enquiry directed by the mandatory requirement of rule 11(4).

19. No costs.