

(1961) 08 KAR CK 0011
In the Karnataka High Court
Case No : Writ Petition No. 99 of 1960

P. Ekambaram Ponnurangam

APPELLANT

Vs

General Manager and Competent Authority, Mysore Govt.
Road Transport Department

RESPONDENT

Date of Decision : 01-08-1961

Acts Referred:

Constitution of India, 1950 — Article 311, 311 (2)
Penal Code, 1860 (IPC) — Section 381

Citation : AIR 1962 Kar 84

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

Bench : Division Bench

Advocate : G.E. Kotre, for the Appellant; B. Venkataswamy, Govt. Pleader, for the Respondent

Judgement

Somnath Iyer, J.

(1) The petitioner was a carpenter appointed by the Mysore Government Road Transport Department. On April 16, 1957 the Deputy General Manager of that Department presented a complaint to the concerned police authorities that the petitioner had stolen a signal bell from a bus which had been entrusted to him for repairs. The petitioner was charged with having committed an offence under S. 381 of the Penal Code. The prosecution for that the offence ended in an acquittal of the petitioner had been charged was not established. On September 7, 1957 the petitioner presented an application requesting that he may be reinstated in the post from which he had been suspended. It should be mentioned that on April 16, 1957, very curiously no action was taken on that application when the reinstatement was the only thing which, in the circumstances, was possible.

(2) The Department, nearly six months after the presentation of his application, framed two more charges against the petitioner. Those charges were framed on March 22, 1958. The first charge was that on April 16, 1957 he spent more time

than was reasonably expected of the petitioner in the lavatory which he visited. The second charge was that he had stolen signal bell which was the subject matter of the complaint in the Criminal case.

(3) Very surprisingly, no enquiry was made into those two charges for nearly four months after those charges were again framed against the petitioner. Those two charges were in substance the same as those framed against him on March 22, 1958.

(4) An enquiry was held into those two charges and the enquiring officer who held an enquiry on those two charges found him guilty in his report which he prepared on September 25/29 to show cause why he should not be either redacted in rank or discharged or dismissed.

(5) The petitioner having accordingly shown cause, the proceedings terminated with an order made on October 16/18, 1958 which reads:

"Sub: Re Appointment.

The competent authority having fully examined our case had decided to take you back on duty in the post held by you treating as suspension, the interim period from the date you have been stopped from duty to the date of your reporting back to duty as a specific punishment. You are therefore requested to report duty to the Deputy General Manager , Bangalore Transport Service, Bangalore immediately."

(6) The petitioner decided not to report himself to duty on those conditions and it has been explained to us that he made representations against that order made against him. Since the petitioner did not report himself for duty, an order was made against him on September 21/24, 1959 and that order reads:

"Since Sri Ekambaram, carpenter T. No. 35 (BTS) has failed to report for duty within the time stipulated in this office memo dated 2-9-1959 read above in spite of his receiving from the rolls and establishment of this division with effect from 10-9-59 B/N. He will not have any claim for job in this division".

(7) In this Writ Petition, the petitioner assails the correctness of not only the order made against him on October 16/18, 1958 but also that made on September 21/24. 1959.

(8) I find no difficulty in coming to the conclusion that this Writ Petition should succeed. Firstly, the order made on September 21/24, 1959 by which the petitioner was removed from service was not proceeded but the two opportunities guaranteed to the petitioner by Art. 311(2) of the Constitution. No charge was framed against the petitioner in respect other of his failure to report himself to duty as directed in the earlier order made on October 16/18, 1958. No enquiry was made into that the charge and no opportunity was afforded to him to show cause why the punishment, of removal should not be inflicted on him. The order of removal made by the disciplinary authority without affording the petitioner the

opportunities guaranteed by the provisions of Article 311 of the Constitution cannot be sustained and has to be and is quashed.

(9) Very surprisingly , no enquiry was made into these two charges for nearly four months after those charges were framed. On July 23, 1958, two charges were again framed against the petitioner. Those two charges were in substance the same as those framed against him on March 22, 1958.

(10) An enquiry was held into those two charges and the enquiring officer who held an enquiry on those two charges found him guilty in his report which he prepared on September 25/29 1958. The petitioner was thereupon called upon to show cause why he should not be either reduced in rank or discharged or dismissed.

(11) The petition we having accordingly shown cause, the proceedings terminated with an order made on October 16/18 1958 which reads:

"Sub : Re Appointment.

The component authority having fully examined your case has decided to take you back on duty in the [post held by you treating as suspension, the interim period from the date you have been stopped from duty it the date of your reporting back to duty as a specific punishment. You are therefore requested to report for duty it the Deputy General Manager, Bangalore Transport Service, Bangalore immediately".

(12) The petitioner decided not to report himself to duty in those conditions and it has been explained to us that he made representations against that order made against him. Since the petitioner did not report himself for duty, an order was made against him on September 21/24 1959 and that order reads:

"Since Sri. Ekambaram, carpenter T. No. 35 (ETS) has failed to report for duty within the time stipulated in this office memo dated 2.9.59 read above in spite of his receiving it on 7.9.59, his name is hereby removed from the rolls and establishment of his division with effect form 10.9.59 B/N. He will not have any claim for job in this division".

(13) In this Writ Petition, the per assails the corrections of not only the order made against him on October 16/18 1958 but also that made on September 21/24 1959.

(14) I find no difficulty in coming to the conclusion that this Writ Petition should succeed. Firstly, the order made on September 21/24 1959 by which the petitioner was removed from service was not proceeding by the two opportunities guaranteed to the petitioner by Art, 311(2) of the Constitution. No charge was framed against the petitioner in respect of his failure to report himself to duty as directed in the earlier order made on October 16/18 1958. No enquiry was made into that charge and no opportunity was afforded to him to show cause why the punishment of removal should not be the disciplinary

authority without affording the petitioner the opportunities guaranteed by the provisions of Article 311 of the Constitution cannot be sustained and has to be and is quashed.

(15) The only question which has next to be considered is whether the petitioner's grievance against the earlier order made on October 16/18, 1958 is a sustainable grievance. It seems to me that it is impossible to support the order made by the disciplinary authority, and the reason why I should come to this conclusion is that it was improper and unfair for the disciplinary authority to frame the very charge of which the petitioner had been acquitted in the Criminal case instituted against him in respect of the complaint presented by the Deputy General Manager on April 16, 1957, and punish him for it.

(16) It is astonishing to my mind that although the Criminal Court which inquired into that complaint and tried it, recorded a finding of acquittal, the disciplinary authority should have again resuscitated that very charge and found him guilty of it on the evidence of two witnesses who had been disbelieved by the Criminal Court. When the Deputy General Manager presented his complaint on April 16, 1957, his intention was to secure annunciation from the Criminal Court as to the truth or otherwise of the story that the petitioner had committed an offence of theft. The Criminal Court which made an investigation into that complaint found the complaint to have not been established. That finding recorded by the Criminal Court should have been treated in the ordinary course of events by the Department as a finding completely exasperating the petitioner of the charge which had been made against him, and when the petitioner after he was acquitted, made an application on September 7, 1957 for his reinstatement, he should have been forthwith reinstated. Very curiously, for more than six months no action was taken in respect of that application. The order of suspension which was made on April 16, 1957 was not revoked. During that period the Department appears to have been considering as to what should be done to the petitioner, since the complaint which had been presented against him ended in an acquittal. Having so deliberated it was for the first time on March 22, 1958 after an inordinate delay that the Department decided to frame against the petitioner for another enquiry departmentally, the very charge which had been made the subject matter of a criminal complaint and which had ended in the petitioner's acquittal.

(17) Mr. Venkataswamy, the learned Government Pleader, has strenuously urged before us that there was no prohibition against the commencement of the departmental enquiry into the very charge which had been inquired into by the Criminal Court and which had been found to be not established. I find great difficulty in acceding to this contention.

(18) Normally, if a person holding a civil post is found to have committed an offence punishable under the Penal Code he should in the first instance be prosecuted in a Criminal Court for that offence. It may be that it is a relief always necessary to resort to that course since the disciplinary authority would

also have the power to make departmental enquiry into that charge although it is punishable by a Criminal Court . But if the Department in which the petitioner was holding the civil post chooses to have that charge inquired into by the Criminal Court and the Criminal Court enquires into it and acquits the civil servant of the charge which had been framed against him, it would in my opinion, be extremely improper for any disciplinary authority to enquire again into that charge and hold him guilty on the very evidence which was produced before the Criminal Court and which it disbelieved. To pursue that would be to countenance an improper circumvention of the order of acquittal made by a completing Criminal Court.

(19) I am not also satisfied that the disciplinary proceedings in this case were commenced in good faith. The extraordinary and inordinate delay in the commencement of the disciplinary proceedings in the first instance on March 22nd, 1958, the unexplained reason for which that proceeding was abandoned and the unintelligible commencement of yet another proceeding on July 23, 1958 into the very same charges whether had been framed on March 22, 1958 demonstrate to any mind that the disciplinary proceedings were not proceeding, commenced in good faith and that there was some collateral consideration which operated in the minds of those responsible for the commencement of this proceedings. In my opinion, the punishment imposed by the disciplinary authority in October 16/18 1958, based as it is soon a disciplinary proceeding which it could not be properly held has to be quashed.

(20) There is one more reason why we should come to that conclusion. In the report which was made by the enquiring officer on September 28/29 1958 by recommended that the punishment suggested by him should be imposed on the petitioner not only because the petitioner was found in his opinion guilty of the charges framed against him but also because the petitioner's antecedent official record was not satisfactory. He was not called upon to explain why a particular punishment should not be imposed upon him on the ground that his antecedent record was adverse to him.

(21) Mr. Venkataswamy, the learned Government Pleader has urged that the opportunity to be afforded to a civil servant at the stage. When the punishment has to be imposed upon him when such punishment is based only in cases where the punishment of dismissal, removal or reduction in rank is imposed.

(22) I am unable to agree that that rule which is a plain rule or natural justice should be observed only in cases where a major punishment is imposed. I see no principle on the basis of which it could be said that that rule is attracted only in cases where those three punishments referred to in Article 311 are imposed and that rule could be disregarded where a disciplinary authority chooses to impose a smaller punishment . The omission on the part of the disciplinary authority to afford an opportunity to explain the antecedent official record when it decided to impose a punishment in its order made on October 16/18 1958, amounts to a contravention of the principles of natural justice.

(23) I have omitted to mention that the punishment imposed upon the petitioner was also based upon a finding recorded by the enquiring officer that the petitioner spent an unduly long period of time in the lavatory without any valid reason.

(24) I am surprised that a charge of that description should ever have been framed against any one. Now, although it is the Department's case that this officer of sitting in the lavatory longer than he should have, in the opinion of the Department, done, is said to have been committed on April 16, 1957, shortly after he was said to have committed the offence of theft. No action was taken in regard to that extremely trivial charge if it amounts to a charge at all until seven months after the petitioner was acquitted by the Criminal Court. That charge was made the subject matter of a disciplinary proceeding only on March 22, 1958, nearly a year after the presentation of these complaint to the police by the Deputy General Manager.

(25) The learned Government Pleader has explained to us that the fact that the petitioner spent 20 minutes, as he is reported to have done. In the lavatory amounts to of duty. It seems to me that this proposition is merely to be stated to be repelled. What time a person should spend in the lavatory would depend upon each person's constitution, unless of course it is established that that person sits or is accustomed to sit in the closet not because it becomes necessary for him to do so, but because he is a scrimshank and uses the lavatory as the place where he could ladle away his time. THAT was not the charge which was made out against the petitioner by the Department.

(26) At any rate the extraordinary delay attendant upon the framing of that charge and the fact that on April 16, 1957 no such charges was made against the petitioner and that charge was for the first time framed against him only on March 22, 1958 goes to establish the utter unsustainability of that allegation made against him. The punishment imposed on the petitioner on the basis of that charge as one which should never have been imposed by any one in the circumstances in which that charge was framed against the petitioner.

(27) The order that we should, in any opinion make in this cases would be to quash not only the order made against the petitioner on October 16/18 1958 but also that made on September 21/24 1959. It is so ordered. In my opinion the petitioner must get the costs of this Writ Petition from the respondent, the advocate's fee being fixed at Rupees one hundred (Rs. 100/-)

Kalagate, J.

(28) I agree.

(29) Petition allowed.