

(1996) 04 KAR CK 0040
In the Karnataka High Court
Case No : Writ Petition No. 10273 of 1987

Panduranga Rao K.V.

APPELLANT

Vs

Karnataka Dairy Development Corporation and Others

RESPONDENT

Date of Decision : 12-04-1996

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1997) 2 KarLJ 477

Hon'ble Judges : H.L. Dattu, J

Bench : Single Bench

Advocate : H.B. Prabhakara Shastry, for the Appellant; P.G.C. Chengappa and B. Veerappa, for the Respondent

Judgement

1. Superintendent (Personnel) was the post held by the petitioner at the time of dismissal from service by Respondents Nos. 1 and 2. Aggrieved by this unjustified action of the respondents, the petitioner is before this Court. The short question involved in this petition is whether the disciplinary enquiry proceedings held by the respondents is in accordance with the principles of natural justice and whether the severe punishment imposed by the employer is in commensuration with the gravity of charges alleged against the delinquent official.

2. In order to appreciate the nature of the controversy between the parties, it is necessary to note a few background facts.

3. The petitioner was appointed by respondent No. 1 on November 2, 1978, as superintendent (Personnel) and posted to Bangalore Dairy Bangalore. Some time in the month of October 1981, he was transferred to Mysore Dairy Complex, Mysore. There, he was served with memo dated July 8, 1985, by the General Manager of Respondent No. 2, inter alia, directing the petitioner to offer his explanation within the prescribed time. The memo reads as under :

"MEMO"

Mrs. M. Devajammanni, a casual employee of our establishment, has submitted a letter to the Home Minister of Karnataka and endorsed a copy to me. A copy of the said endorsement is enclosed herewith.

You are hereby called upon to submit your explanation and remarks to the undersigned on or before July 10, 1985, for the purpose of taking necessary steps in this regard.

(Sd.)"

3. At this stage, it is very relevant to state that the complaint of Smt. Devajammanni was only with regard to the delay in forwarding the claim papers for settlement of provident fund to the Provident Fund Commissioner. The delinquent official by his reply dated July 8, 1985, refuted the allegations made in the memo issued by the General Manager of Respondent No. 1. As a sequel to the memo and the reply, the General Manager telegraphically informed the petitioner to handover all the files pertaining to his department. This was sometime during the month of August, 1985. Pursuant to this telegram received, the petitioner handed over all the files to one Sri Shanthi Gowda, Office Superintendent on August 24, 1985. Even on this day, the petitioner did not foresee the drastic future consequence to come in his service career. It is apropos for me to give an indication that what else transpired on that fateful day, by referring to the evidence of the management witness, Smt. Shakuntla (M.W.-1), before the Enquiry Officer. A bare reading of the statement of that lady gives an impression that the whole episode was stage managed, keeping in view the possible action contemplated against the delinquent official. In her evidence, she would state that she was asked to do despatching work on that day by Office-Superintendent as one Kannan who was a regular despatching clerk was on leave. The stage show would commence at 3.30 p.m. when the Superintendent (Personnel) would call the lady to come to his chambers with despatch register. Once she was in, it was stated that the petitioner directed her to make certain entries on August 21, 1985, as if certain letters had been despatched on that day. To cover this commission, she states that changes had to be done in the stamp accounts also. Obliging, she has done all this because the petitioner was her superior officer. After narrating the lines in the first part of the episode, she states that around 4.15 p.m. one Sri Rajgopal, Labour Welfare Officer, meets her in the canteen and enquires whether any one had made entries in the despatch register and immediately thereafter, she was asked to go over to the General Manager's chambers by Office Superintendent with despatch register. In the General Manager's chambers, one Sri Narendra, Advocate, was also present who has filed objections to the writ petition for and on behalf of Respondents 10 Nos. 1 and 2. In his presence, it is said that she was asked to give her statement in writing which is produced as exhibit M-9 before the Enquiry Officer. Before she could go over to the General Manager's chambers a rehearsal had been done in the conference room in the presence of one Sri Krishna Moorthy-co-employee, Sri Narendra, Advocate and the Office Superintendent and the drama ends by

about 4.30 p.m. on that day. Why I have given this graphic picture is only to indicate that all was not well as far as the petitioner's relationship with higher-ups in the management, and to suggest the whole thing was stage managed after a good amount of rehearsal by keeping their counsel in midst of them to catch their prey red-handed. With this background, what better results can the petitioner expect in the departmental enquiry proceedings and I will come to this part of the episode and inferences that can be drawn a little later. As a follow-up action, the petitioner was kept under suspension pending intended departmental enquiry proceedings by its order dated September 11, 1985. A vague charge-sheet was served on the petitioner by the Managing Director of Respondent No. 1, Federation, alleging certain irregularities said to have been committed by the petitioner. The charge memo dated October 5, 1985, reads as under :

CHARGE-SHEET

"You, Shri K. V. Panduranga Rao, are aware that you were, until your suspension, vide KMF order No. KMF/ACO/149/85, dated September 11, 1985, working in the Mysore Dairy as Superintendent (Personnel).

During your tenure as the Superintendent (Personnel) in the Mysore Dairy, it is reported that you have committed the following irregularities :

(i) that you have on August 24, 1985 by misusing your official position and powers, caused certain irregular entries to be made in pages Nos. 270 and 271 of the outward despatch register of the Mysore Dairy so as to make it appear that a letter was despatched to the office of the Provident Fund Commissioner on January 21, 1985, whereas no such letter was in fact despatched on January 21, 1985;

(ii) that the said regular entries appear to have been made with the dishonest intention of fabricating false evidence to cover up your acts of omission and commission.

From the facts mentioned above, it appears that you have committed the following acts of misconduct :

- (1) Fabrication of documents,
- (2) Tampering of official records,
- (3) Lack of integrity,
- (4) Acts unbecoming of an officer.

You are hereby required to submit your explanation in writing to the above charges within 10 days from the date of receipt of this charge-sheet, failing which it will be presumed that you have no explanation to offer and that you have admitted the above said charges. The management thereupon will be at liberty to proceed further in the matter on presumption of your admission without any further notice to you."

The charge-sheeted officer by his reply dated October 18, 1985, denied the allegations made in the charge memo. Thereafter, the disciplinary authority by his order dated March 4, 1986, appointed Sri M. R. C. Ravi, Advocate, Bangalore, as Enquiry Officer to enquire into charges of misconduct levelled against the petitioner; with a specific direction that the enquiry officer to furnish his report within 60 days positively. However, enquiry proceedings commenced only on October 30, 1986, nearly after a lapse of eight months from the date of appointment of the Enquiry Officer. On that day, charge-sheet dated October 5, 1986 and January 4, 1986, came to be marked as exhibits M-5 and M-6. Proceedings of the enquiry would give an indication that at the earliest point of time, the petitioner had objected to marking of additional charge-sheet dated January 4, 1986, on the ground that the same has not been received by him. This assertion has been denied by the presenting officer by stating that the additional charge-sheet was sent to the delinquent official by registered post with acknowledgment due and the same would be produced at a later date but as the proceedings would indicate that this later date never came and the delinquent official was furnished with a copy of the additional charge-sheet but not time to file his explanation because the charge-sheeted officer did not seek for time without realising the consequences. The management to prove their charges levelled against the petitioner examined three witnesses, viz., Smt. Shakuntala Despatch Clerk (M.W.-1), Sri Shanthigowda, Office Superintendent (M.W.-2) and Sri R. Meenakshi Sundaram - Accounts Officer (M.W.-3) and got several documents including the statement of Smt. Shakuntala made before the General Manager marked. In the evidence, it is brought out by the management that Smt. Shakuntala carried out certain entries in the despatch register at the instance and direction of the charge-sheeted officer and in the cross-examination she has stated that one Mahalinga, helper, was sitting on a stool at the entrance of the chamber of the delinquent official. The evidence of Sri Shanthigowda (M.W.-2) does not throw any light on charges alleged in the charge-sheet dated October 5, 1985. In order to substantiate charges alleged in the additional charge-sheet, the management has examined one Sri R. Meenakshi Sundaram (M.W.-3). By way of defence the charge-sheeted officer has examined himself and one Mahalinga, helper who was working in the personnel section of the first respondent-federation. In his evidence the witness categorically states that around 3.30 p.m. Smt. Shakuntala did not go to the chambers of the charge-sheeted officer. The charge-sheeted officer in his deposition once again categorically asserts that the additional charge-sheet dated January 4, 1986, was not served on him. Strangely, Presenting Officer for management has not cross-examined the charge-sheeted officer on any one of the issues including the service of additional charge-sheet dated January 4, 1986. The enquiry was completed on December 2, 1986. The Enquiry Officer submitted his report together with the records of the enquiry proceedings and other documents to the disciplinary authority. In the report, the Enquiry Officer has given his findings to the effect that the management has proved charges alleged in both the charge memos, without even a verging to the service or non-service of the additional

charge-sheet dated January 4, 1986, on the delinquent official. The disciplinary authority after considering the report of the Enquiry Officer and records of the proceedings and after concurring with the findings of the Enquiry Officer proceeds to issue a second/final show-cause notice, inter alia, directing the charge-sheeted officer to show cause why the petitioner's services should not be dismissed with immediate effect and the explanation/representation to reach within 10 days from the date of receipt of the show-cause notice. Show-cause notice is dated February 23, 1987, and received by the delinquent official on March 3, 1987, and the official was required to make representation on or before March 13, 1987. The petitioner by his request letter dated March 11, 1987, requested the disciplinary authority to grant him a week's time to file his reply/representation. This letter of request was acknowledged by Respondent No. 2 on March 13, 1987, itself. Thereafter, the petitioner by his letter dated March 17, 1987, sent his explanation to the second show-cause notice which was duly acknowledged by Respondent No. 2 on March 18, 1987, itself. In the explanation, the delinquent official in an elaborate way discusses each one of the charges alleged against him as far from truth and also comments on the perversity of the findings of the Enquiry Officer and would also state that the management has miserably failed to establish any one of the charges alleged against him and the allegations can never be termed as acts of serious misconduct which warrant any action much less punishment of dismissal from service and, lastly, he would represent that the intended punishment is neither called for nor justified and is wholly disproportionate to the alleged charges. As I have already stated this explanation was received by the disciplinary authority on March 18, 1987. However, the disciplinary authority proceeded to pass an order with date of passing order as March 16, 1987, without looking into explanation offered by the charge-sheeted officer but despatched the order only on March 19, 1987, which was served on the petitioner on March 20, 1987. By the said order, the services of the petitioner as Superintendent (Personnel) was dismissed with immediate effect. The respondent-management has played a very cruel game on a lowly rated officer and has deprived him his right to livelihood and thereby depriving him right to life. Being deprived of his livelihood to the point of abrogation the dismissed officer is before this Court in a petition filed under Article 226 of the Constitution.

4. Sri H. B. Prakash Shastri, learned counsel for the petitioner strenuously contends that in the absence of service regulations or rules and the Standing Orders, the alleged irregularities committed by the petitioner cannot be construed as misconduct. He would further submit that the charges alleged in the memo does not contain full particulars, they are not specific and they are all vague, which prevented the charge-sheet officer in making proper representation and offering cogent explanation which has occasioned in failure of justice. That non-service of additional charge-sheet dated January 4, 1986, on the delinquent official has vitiated the entire enquiry proceedings. That the entire enquiry proceedings, the enquiry report and the findings thereon are wholly perverse,

unjustified and unlawful. That the passing of the impugned order without taking into consideration the explanation/representation made pursuant to the final/second show cause notice is not only illegal but opposed to the principles of natural justice. It was, therefore, contended that the impugned order framed by the disciplinary authority requires to be set aside.

5. Sri Chengappa, ably assisted by Sri Narendra, learned counsel for the respondent-management, on the other hand, submitted that for the purpose of enquiry proceedings, the management had adopted the Model Standing Orders for the employees employed in industrial establishments. Learned counsel submitted that in any case the entire enquiry proceedings conducted are in accordance with law and proceedings by no stretch of imagination could be said as one opposed to the principles of natural justice and the punishment imposed is in commensuration with the gravity of charges alleged and proved against the charge-sheeted officer. It was ultimately submitted by learned counsel for the respondents that the order of the disciplinary authority is justified and there is no illegality as contended by the petitioner.

6. Having heard respective rival contentions of the parties, the question that requires to be considered is whether the disciplinary enquiry proceedings conducted by the management against the delinquent official is in accordance with law and in accordance with the principles of natural justice.

7. The management in contemplation of disciplinary proceedings, kept the petitioner out of office temporarily. The reason given in the said order was that the petitioner was involved in making certain irregular entries in the despatch register of the Mysore Dairy relating to despatch of provident fund papers of one of the employees of respondent No. 1-Federation, which conduct amounts to serious misconduct. As a follow up action, a charge memo dated October 5, 1985, was served on the official, in that it was said that the official is said to have committed the following acts of misconduct, viz., fabrication of documents, tampering of official records, lack of integrity and acts unbecoming of an officer and the petitioner was asked to submit his explanation within the prescribed time. Learned counsel for the petitioner characterises the charge memo as vague devoid of material particulars and not specific and thereby prevented the delinquent official in making proper and effective representation. To the charge memo, the petitioner had offered his explanation and had not said that charges are not specific and as such he would not be in a position to answer them. In fact, the delinquent official understands the charges and replies the same by stating that the charges that are levelled against him are false, frivolous, vexatious and far from truth. This circumstance gives a clear indication that the delinquent official understood the charge and there was no complaint about the charge memo at the earliest point of time and even if assuming that there is any defect in the charge memo, it has not occasioned in any failure of justice and as such the contention of learned counsel for the petitioner cannot be accepted. Based on the charge memo dated October 5, 1985, an Enquiry Officer had been

appointed to enquire and furnish a report on the charges alleged against the delinquent official. During the enquiry, the presenting officer for the respondent-management sought to mark the additional charge-sheet dated January 4, 1986, as exhibit M-6. This was objected to by the delinquent official on the ground that the same has not been served on him. However, the presenting officer maintained that the additional charge-sheet was sent by registered post/ acknowledgment due and the acknowledgment for having served that the second charge memo would be produced later and this was never done at any time during the enquiry proceedings. Learned counsel for the petitioner would submit that the basic requirement in a departmental enquiry proceeding is that the disciplinary authority shall frame definite charges on the basis of allegations against the officer and the same would be communicated in writing to the officer. Non-compliance with this basic requirement violates the basic postulates of the rules of natural justice and that itself is sufficient to annul the entire enquiry proceedings. The stand of the management seems to be that the additional charge-sheet was served on the delinquent official by registered post accompanied by an acknowledgment slip. The slip was not produced and not marked as one of the exhibits. There is no proof produced by the management before the Enquiry Officer for having sent the additional charge-sheet by registered post. The management could have definitely produced the unadulterated despatch register or at least the receipt for having lodged the registered letter in the post office. In fact, the presenting officer of the management assured the Enquiry Officer that the acknowledgment signed by the delinquent official for having received the additional charge-sheet would be produced at a later stage. Even this has not been done. In the absence of proper proof, for having sent and served the charge-sheet dated January 4, 1986, to the official, normal presumption is that the same has not been received by the delinquent official and this is the rebuttal presumption which the management failed to rebut by adducing any evidence. The service of charge memo is a prerequisite to the validity of departmental enquiries. If it is not established that the charge-sheet was served upon the delinquent official, then, the subsequent proceedings in the course of departmental enquiries are invalid. The report and the finding of the Enquiry Officer based on a charge memo which was not served upon the employee is ineffective. Now, what remains to be seen is, just because the delinquent official did not seek time, before the Enquiry Officer for offering his explanation/representation to the additional charge-sheet, whether he has waived his right to be heard in the matter. At this stage, it is worth while to notice the evidence of the delinquent official before the Enquiry Officer. It reads as under :

"I am surprised to note when the presenting officer produced the additional charge-sheet dated January 4, 1986, which I have not received. However, without causing any interruption to the enquiry proceedings, I have accepted a copy of the charge-sheet on October 30, 1986.

Since I have received the charge-sheet only on October 30, 1986, I decided to

give my explanation in the enquiry itself as stated above."

8. The statement made by the official would clearly indicate that for the first time additional charge-sheet was furnished to him during the enquiry proceedings. It was the obligation of the Enquiry Officer to have given the charge-sheeted officer sufficient time to offer his explanation to the allegation made therein. The requirements of natural justice are met only if an opportunity to represent is given in view of proposed action. The demands of natural justice are not met even if the very person proceeded against has furnished the information on which action is based, if it is furnished during the enquiry proceedings. The requirement is that a person charged against must have fair opportunity of being heard and there should be an orderly course of procedure. This requirement flows from the first requirement that a delinquent official should have notice of all the accusations made against him, purpose being that the official should have sufficient opportunity to meet the allegations. The mere opportunity to explain the conduct is not sufficient and the charge-sheeted officer should have the opportunity to produce his defence, he should have fair opportunity to state his case and meet the accusations made against him. This minimal requirement can on no account be dispensed with by relying upon the principles of absence of prejudice or on the principle of "no demand and no opportunity". In my view, the Enquiry Officer was not justified in proceeding with the enquiry without affording sufficient opportunity to the delinquent official to make his representation or offer his explanation to the additional charge-sheet. The barest requirement of natural justice was given a "go by" by the Enquiry Officer. Further, the respondent-management could not have held the departmental enquiry against the petitioner without serving the additional charge-sheet dated January 4, 1986. In my view, non-service of the charge memo dated January 4, 1986, on the delinquent official is fatal to the enquiry proceedings, since the same is opposed to basic postulates of the principles of natural justice.

9. That brings me to the order of the disciplinary authority. After the submission of the report together with the records of the enquiry proceedings by the Enquiry Officer, the disciplinary authority by his final show-cause notice dated February 23, 1987, directed the delinquent official to show cause why his services from the Federation should not be dismissed with immediate effect and the representation, if any, to be made within ten days of receipt of the second show-cause notice. Admittedly, this notice was served on the petitioner only on March 3, 1987. The petitioner had time till March 13, 1987, to reply by way of representation to the disciplinary authority. However, by a request letter dated March 11, 1987, the petitioner requested the disciplinary authority to grant a week's time to submit his "final statement" and the same had been received by the disciplinary authority. Thereafter, by his representation dated March 17, 1987, which was received by Respondent No. 2 on March 18, 1987, the petitioner brought to the notice of the disciplinary authority several loopholes in the enquiry proceedings conducted by the Enquiry Officer and also denied the allegations made in the charge-sheet dated October 5, 1985, and January 4, 1986, and the

intended punishment was uncalled for, unjustifiable and disproportionate to the alleged charges. The disciplinary authority without even considering the explanation offered to the second show-cause notice and without even rejecting the petitioner's request for extension of time to file his representation has proceeded to pass the order on March 16, 1987, but has despatched the order only on March 19, 1987, and the same was received by the delinquent official on March 20, 1987. In my view, the order of the disciplinary authority dated March 16, 1987, is also opposed to the principles of natural justice. The main purpose of issuing a second notice is to enable an employee to show cause against the finding of the Enquiry Officer and mainly to make proper representation against the proposed punishment. Opportunity to show cause against the punishment includes right to show infirmities in the findings of the Enquiry Officer. The second stage of enquiry is equally important as in the first stage of enquiry. Both are quasi-judicial proceedings. Even at the second stage, the principles of natural justice has to be followed, otherwise the enquiry proceedings would be invalid. In the present case, a second show-cause notice was given directing the delinquent to show cause within a particular time. The delinquent officer sought for time to make proper representation. This request for adjournment was before the disciplinary authority. The reasonable opportunity would include an adjournment for the purpose of showing cause. However, in the present case the disciplinary authority without even rejecting the application filed for adjournment has proceeded to pass the impugned order making second show-cause notice as idle formality and opportunity given in the notice, as no opportunity at all. In reply to the second show-cause notice, the petitioner did file his detailed reply and the same had reached the disciplinary authority on March 18, 1987, but the disciplinary authority has passed his order on March 16, 1987, but has despatched it only on March 19, 1987. Much has been said on this aspect by the petitioner in the petition. I do not want to comment on this, but I can only say that the disciplinary authority was in mortal hurry to deprive the petitioner of his livelihood. Whenever the accused employee files his reply to the second show-cause notice, it is expected of the disciplinary authority to consider the objections and pass appropriate orders thereafter. The disciplinary authority should not decide the case on the basis as if no explanation was offered by the delinquent official within the due date. In my view, the procedure adopted by the disciplinary authority is not only opposed to the principles of natural justice but at the same time highly deplorable.

10. For the reasons, in my view, the departmental enquiry proceedings are liable to be set aside on the ground that the entire proceedings are opposed to the rules of natural justice. Accordingly, the order passed by the disciplinary authority in No. KMF/BD.SN/UCP/05/KVP/86-87, dated March 16, 1987, is quashed. Further, a direction is issued to the respondents to reinstate the petitioner within a month from the date of receipt of this order and it is further declared that the petitioner will be entitled to all consequential benefits flowing from quashing of the order dated March 16, 1987. Rule made absolute. No order

as to costs.