

(1968) 11 KAR CK 0014
In the Karnataka High Court
Case No : Writ Petition No. 1362 of 1966

Prabhu (C.D.)

APPELLANT

Vs

Deputy Commissioner, Mangalore and Another

RESPONDENT

Date of Decision : 29-11-1968

Acts Referred:

Mysore Civil Services (Classification, Control and Appeal) Rules, 1957 — Rule 11 (2)

Citation : (1969) 18 FLR 292 : (1969) ILR (Kar) 323 : (1969) 2 LLJ 822 :
(1969) 1 MysLJ 405

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

Bench : Division Bench

Judgement

Somnath Ayyar, J.—Disciplinary proceeding against the petitioner who was a second division clerk was commenced on 23 September, 1958, on which date the charges which were made by the disciplinary authority who was the Deputy Commissioner, were communicated to him. The petitioner produced his defence on 25 October, 1958. After the completion of that enquiry a show-cause notice was issued to the petitioner on 30 May, 1959, in which he was intimated that it was proposed to impose a punishment in the form of stoppage of five increments. The petitioner produced his representation with respect to this show-cause notice on 16 June, 1959, and that was the last that anyone heard those disciplinary proceedings.

2. But instead of continuing the old disciplinary proceedings in which nothing was done after the production of the representation in response to the show-cause notice, the Assistant Commissioner commenced a new disciplinary on 26 November, 1960 in obedience to the direction that he should so commence it, imparted to him by the Divisional Commissioner. After the completion of that enquiry by the Assistant Commissioner, the petitioner was dismissed and it is the punishment which is called in question in this writ petition.

3. Though the punishment inflicted is challenged on more than one ground in this writ petition, the two main criticisms made by Sri Datar of his punishment are,

firstly, that after the discontinuance of the first disciplinary proceeding there could be no second disciplinary proceeding in respect of the same charges to which the first disciplinary proceeding related. It was asserted by Sri Datar that the contention raised on behalf of the Government that the second disciplinary proceeding comprised additional charges which were not included in the charges to which the first disciplinary proceeding related, is unsustainable and that in truth what was done in the second disciplinary proceeding was the splitting up of the old charges into a larger number.

4. If it could be said that the second disciplinary proceeding also pertains to the charges which formed the subject matter of the first disciplinary proceeding, it is obvious that the second disciplinary proceeding was plainly impermissible. If a disciplinary proceeding is commenced with respect to an accusation and that disciplinary proceeding has reached the stage when the enquiry has been completed, that disciplinary proceeding must be continued and must end either in the imposition of a punishment or in exoneration. If that disciplinary proceeding has not been terminated in that way, the commencement of disciplinary proceedings with respect to those charges is plainly incompetent.

5. But, however that may be, it has been pointed out to us by Sri Datar that while the disciplinary authority in respect of the petitioner who is a second division clerk is the Depute Commissioner as stated in Sch. II to the Mysore Civil Services (Classification, Control and Appeal) Rules, and it is he who under rule 11(2) of those rules has to appoint a specially empowered authority to make the enquiry, there was no such appointment of the Assistant Commissioner who made enquiry in the second disciplinary proceeding and that that appointment was made by the Divisional Commissioner who is not a disciplinary authority in respect of the petitioner and so could appoint no specially empowered authority under rule 11(2).

6. This submission, in our opinion, is unanswerable. A specially empowered authority could be appointed only by a disciplinary authority, and the Divisional Commissioner who appointed the Assistant Commissioner to make the enquiry in the case before us on the second occasion, was not the disciplinary authority.

7. So we quash the impugned punishment. No costs.