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**(1979) 02 KAR CK 0005**  
**In the Karnataka High Court**  
**Case No : WP. 7327, 8387 etc/78**

P.V. Srinivasa Sastry

APPELLANT

Vs

Comptroller and Auditor General of India and Others

RESPONDENT

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**Date of Decision :** 28-02-1979

**Acts Referred:**

Central Civil Services (Classification, Conduct and Appeal) Rules, 1965 — Rule 11(Vi)

**Citation :** (1979) 2 KarLJ 71

**Hon'ble Judges :** Rama Jois, J

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## Judgement

In these eight writ petitions presented by the officials of the office of the Accountant General, Karnataka, Bangalore, against the orders imposing penalty of reduction in rank, the following two important questions of law arise for consideration:

(1) Whether the Disciplinary authority, exercising power under rule 11 of the C.S. (C.C.A.) Rules, 1964, can reduce a Central Government servant, who is directly recruited to a particular cadre or post to a post lower than the one to which he was directly recruited?

(2) Even if it is permissible to impose a penalty of reduction in rank against such civil servant by reducing him to a post lower than the one to which he was directly recruited, whether such a reduction could be made to a post from which no promotion is possible under the rules of recruitment to the post from which he was brought down to such a lower post?

As these eight writ petitions raise common questions of law and fact, they are being disposed of by this common order.

2. FACTS; The nature of the allegation levelled and the penalty imposed, against all the petitioners are similar. Hence it is sufficient to refer to the facts of the case in one of the writ petitions. Accordingly, I state the facts in W.P. 7327 of 1978. The petitioner in this writ petition was directly recruited as Upper Division Clerk on 12-12-1963. After he passed Part I of the SAS. Examination, he was

working as an Auditor. He drew a sum of Rs. 2,100 towards leave travel concession on 11-6-1975 stating that he is performing journey to Kashmir by availing the travel concession. On 23-7-1975, he presented a final bill for Rs. 2,625 and claimed a balance of Rs. 525 supported by a receipt issued by M/s. Kirti Travels, No. 1, K.K. Line, Cottonpet, Bangalore. In truth, without actually performing the journey availing the leave travel concession, the petitioner had not only taken advance amount, but had also furnished a false certificate and receipts, indicating that he had actually performed journey to Kashmir. Obviously for the reason that the petitioner realised that the fraud played by him was sure to be unearthed, he by his letter dated 1-9-1975 addressed to the Senior Deputy Accountant General (Admn.) requested that the aforesaid claim made by him might be cancelled and also intimated that he would also refund the advance amount drawn in a couple of days. By letter dated 10-9-1975 he informed the authorities that he had refunded the amount by crediting the same to the Reserve Bank of India. The Disciplinary Authority, on coming to know of the attempted misappropriation of public funds, issued a charge memo dated 29-5-1975 (Annexure-B) calling upon the petitioner as to why action should not be taken against him for having drawn an advance amount of Rs. 2,100 and also for having tried to claim a sum of Rs. 2,625 fraudulently by producing false travel receipts. The petitioner furnished his reply. He admitted the charge and pleaded for excusing him tendering apology for his conduct. (See: Annexures F and J-1). He also submitted that as he himself voluntarily refunded the amount and has thereby not caused any loss to the Government, no action should be taken against him. A show cause notice dated 23/28-8-1975 (Annexure-G) was issued to the petitioner proposing to impose the penalty of compulsory retirement from service. The petitioner submitted his reply (Annexure-J) to the said notice. After considering the representation of the petitioner, a final order dated 30-1-1976 (Annexure-A) was passed by the disciplinary authority imposing the penalty of reduction in rank to the lower post of clerk until he is found fit, after the period of five years from the date of issue of the order, for restoration to the higher post of the Auditor. The petitioner preferred an appeal to the Accountant General, Karnataka, Bangalore, who passed order dated 16-6-1976 (Annexure-K) dismissing the appeal. Thereafter the petitioner preferred a review petition, to the Comptroller and Auditor General of India. The reviewing authority rejected the review petition which was communicated to the petitionee as per letter dated 3-6-1978 of the Accountant General dated 3-6-1978 (Annexure-L). Aggrieved by these orders, the petitioner has presented this writ petition. The facts and circumstances in the other seven petitions also, namely, the substance of the charge, the nature of the reply furnished by the petitioners, the show-cause notice issued and the final orders passed and the fate of the appeal and the review petition presented by the petitioners, are almost similar, the only difference being the amount which each of the petitioners took as advance towards availing of the leave travel concession and the amount of final bill submitted by each of them. Hence, as stated earlier, it is not necessary to refer to these details in respect of all the petitions. However, for the purpose of

considering the common contentions urged for the petitioners, it is necessary to furnish the particulars relating to the post to which each of the petitioners was directly recruited, the post held by each of them before the imposition of penalty of reduction in rank and the post to which each one of them has been reduced and they are as follows;

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From the facts stated above, the cases fall into following three categories;

(i) Petitioners in W.Ps. 7327 and 8387 of 1978 were directly recruited to the posts of Upper Division Clerks. At the time of imposition of penalty of reduction in rank both of them were working as Auditors. They have been reduced to the posts of Lower Division Clerks which they never held, for five years. There is provision for promotion from the cadre of Lower Division Clerks to that of Upper Division Clerks.

(ii) The petitioner in W.P. 8469 of 1978 was directly recruited to the post of Lower Division Clerk. At the time of imposition of the penalty of reduction in rank, he was working as an Auditor. He has been reduced in rank to the post of Lower Division Clerk, which he was holding earlier to his promotion.

(iii) In the other five writ petitions, i.e., 8381, 9329, 9841, 10262 and 10263 of 1978, all the petitioners had been directly recruited to the post of Lower Division Clerks. By the impugned orders, they have been reduced in rank to Class IV posts, which they never held, with a condition for considering their cases for restoration to the posts of Lower Division Clerks after five years. There is no provision for promotion, under the recruitment rules, providing promotion from Class IV posts to the posts of Lower Division Clerks.

3. Sri V.S. Gunjal, learned counsel for the petitioners, raised the following contentions in support of the prayer made in the writ petitions- (i) As the petitioners in all these petitions voluntarily withdrew the bills submitted by them towards their claim in respect of leave travel concession and also voluntarily refunded the advance amount drawn by them, there was no basis for finding them guilty of the charge framed against them and to impose penalty on that basis and the impugned orders are liable to be quashed.

(ii) In any event, as the petitioners in W.Ps. 7327 and 8387 of 1978 were directly recruited to the posts of Upper Division Clerks, the penalty of reduction in rank by way of reducing them to the posts of Lower Division Clerks, i.e., a cadre below the cadre to which they were directly recruited, was not permissible under the rules.

(iii) In any event, in the case of petitioners in W.Ps. 8381, 9329, 9841, 10262 and 10263 of 1978 as they were directly recruited to the posts of Lower Division Clerks and the posts of Lower Division Clerks are not promotional posts from the cadre of Class IV posts in the department, the imposition of penalty by way of reduction in rank to such posts from which promotion is not possible to the post

of Lower Division Clerks, is illegal.

4. As far as the first contention urged for the petitioners is concerned, there is absolutely no substance. It is unfortunate that the petitioners, who are working in the Indian Audit and Accounts Department, which is constitutionally entrusted with the responsibility of unearthing misuse of finances of the State and to safeguard public money, have themselves resorted to play a fraud on the department, drew amounts as advance falsely stating that they were performing journey availing leave travel concession in respect of the travel, which they never intended to undertake and submitted final bills also with false certificates. The voluntary withdrawal of the final bills and the refund of the advance amount already drawn by the petitioners could only be attributed to their having realised that the fraud played by them has already come to the notice of, or sure to come to the notice of the department. All the petitioners had, therefore, no other alternative than to admit the charges levelled against them. Accordingly, they admitted the charge and pleaded for mercy. In spite of the gravity of the charge the plea of the petitioners for mercy appears to have moved the disciplinary authority, which resulted in the imposition of reduction in rank only instead of compulsory retirement as proposed in the show cause notice. Therefore, I am of the opinion that far from there being no basis for imposition of penalty, the petitioners have been dealt with leniently even in the face of the serious charges framed against them. It may be that the petitioners feel that the penalty of reduction in rank also causes great hardship and humiliation to them, But they have to blame themselves for the misery as they invited it upon themselves by their covetous conduct. Non-imposition of penalty for such naked misconduct would render the disciplinary jurisdiction meaningless and ridiculous. Therefore, I find no substance in the first contention urged for the petitioners in all the writ petitions.

4A. In view of my conclusion, on the first contention, WP. No. 8469 of 1978 is liable to be dismissed as the other two contentions do not arise in this case.

5. The second contention urged for the petitioners in WP. 7327 and 8387 of 1978 is that it was not competent for the disciplinary authority to have imposed the penalty of reduction in rank and bring down the petitioners to the posts below the one to which they were directly recruited. The learned counsel for the petitioners argued that by the impugned penalty of reduction in rank imposed against the petitioners, they have been brought down to the posts, which they never originally held. He submitted that in cases where civil servants have been directly recruited to a particular cadre, there is no question of imposing penalty of reduction in rank to a post lower than the one to which they were directly recruited.

6. The third contention urged for the petitioners in WPs. 8381, 9329, 9841, 10262 and 10263 of 1978 is that they could not have been reduced to Class-IV posts as the posts of Lower Division Clerks from which they were brought down are not promotional posts of the Class IV posts.

7. Sri U.L. Narayana Rao, learned Senior Standing Counsel for the Central Government, per contra submitted that Art. 309 of the Constitution empowered the President to frame rules regulating the conditions of service which includes the rules regulating imposition of penalties and rule 11 of the CCS. (CCA). Rules, 1965 (hereinafter referred to as "the Rules") so framed authorised the disciplinary authorities to impose penalty of reduction in rank against the civil servants and there is no bar for the imposition of penalty of reduction in rank against any civil servant even if it results in bringing him down to a post lower than the one to which he was directly recruited and from which no promotion is possible to the post held before the imposition of penalty of reduction in rank.

8. The answer to the second and third contentions urged for the petitioners depends upon the interpretation of rule 11 (vi) of the Rules, which reads as follows:

"11. Penalties: The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a Government servant namely:

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Major Penalties:

(vi) reduction to a lower time-scale of pay, grade, post or Service which shall ordinarily be a bar to promotion of the Government servant to the time-scale of pay, grade, post or Service from which he was reduced, with or without further directions regarding conditions of restoration to the grade or post or Service from which the Government servant was reduced and his seniority and pay on such restoration to that grade, post or service;

As can be seen from the above rule, the disciplinary authority may, for good and sufficient reasons, impose the penalty of reduction in rank, to a lower time-scale, grade, post or service which shall ordinarily be a bar to promotion of the concerned Government servant to the time-scale of pay, grade, post or service from which he was reduced, with or without further directions issued by the disciplinary authority imposing the conditions for restoration to the grade, post or service from which the Government servant was reduced. In view of the wording of rule 11(vi) of the Rules, it appears to me that the imposition of penalty of reduction in rank to a lower time-scale of pay, grade, post or service, is possible only when, having regard to the rules of recruitment, the time-scale of pay, grade, post or service, from which the civil servant is reduced, must be a promotional one, in relation to the time-scale of pay, grade, post or service, to which the civil servant concerned is reduced. In other words, there should be a provision in the recruitment rules for consideration of the case of the civil servant once again for promotion to the time scale pay, grade, post or service from which he was reduced on the basis of seniority and merit or selection, as the case may be. As far as the posts of Upper Division Clerks/Auditors from which the petitioners in W.P. 7327 and 8387 of 1978 have been reverted to the posts of Lower Division Clerks, are concerned, it is not disputed for the petitioners that

the posts of Upper Division Clerks/Auditors, are promotional posts in relation to the cadre of Lower Division Clerks, under the rules of recruitment of the department. Therefore, after the expiry of the bar for consideration for their promotion for a period of five years imposed in the impugned orders, they are eligible to be considered for promotion to the higher posts in accordance with the rules of recruitment. In other words, though the posts of Upper Division Clerks which these two petitioners held at the time of imposition of penalty of reduction in rank was by way of direct recruitment, those posts are promotional posts in relation to the posts of Lower Division Clerks to which they have been reverted. The learned counsel for the petitioners, however, strenuously urged that it was not competent for the disciplinary authority to have reverted them to the posts of Lower Division Clerks as the petitioners had been directly recruited to the posts of Upper Division Clerks. It is no doubt true that normally penalty of "reduction in rank" is imposed only so as to bring down a civil servant to a lower time scale grade, service or post, held earlier by him before promotion and not below the post, grade, service, or time-scale to which a civil servant was directly recruited and it appears, that it is also reasonable to do so. The learned counsel, however, could not substantiate the point with reference to the rule which empowered the disciplinary authority to impose the penalty of reduction in rank as it does not make any such differentiation. The petitioners have not questioned the validity of rule 11 (vi) of the Rules on any valid ground. Therefore, as the Rules stand I do not find any bar for imposing the penalty of reduction in rank against a directly recruited Upper Division Clerk reducing him to the cadre of a Lower Division Clerk, as the post of Upper Division Clerk is a promotional post in relation to the post of Lower Division Clerk. Therefore, I reject the second contention urged for the petitioners, which relates to the petitioners in W.P. Nos. 7327 and 8387 of 1978 only.

9. Coming to the third contention urged for the petitioner in W.P. Nos. 8381, 9329, 9841, 10262 and 10263 of 1978, I find there is force in the said contention. In all these cases, the petitioners were directly recruited to the posts of Lower Division Clerks. All of them have been reverted to the Class IV posts of Peons/Daftry as can be seen from the statement set out earlier. It was not disputed by the learned counsel appearing for the respondents that all the posts of Lower Division Clerks in the department are required to be filled up only by direct recruitment. Consequently, the posts of Lower Division Clerks are not promotional posts in relation to the cadre of Class-IV posts of Peons or Daftry. Therefore, as the consideration of their cases for promotion once again to the cadre of Lower Division Clerks is not possible under the rules of recruitment it was not competent for the disciplinary authority to bring down these petitioners from the posts of Lower Division Clerks to the posts of Peons/Daftry in exercise of its powers under rule 11(vi) of the Rules.

10. The learned counsel for the respondents maintained that rule 11(vi) of the Rules authorised imposition of even such a penalty. I am unable to agree with the submission made on behalf of the respondents. Rule 11(vi) of the Rules

states that the imposition of penalty of reduction to a lower time-scale of pay grade or post or service, ordinarily bars the promotion of the civil servant to the higher time scale of pay, grade, post or service, but the disciplinary authority is competent to fix the period after the expiry of which, once again the concerned Government servants may be considered for promotion and if found fit can be restored to the higher time scale of pay, grade, post, or service held before the imposition of penalty of reduction in rank. The wording of rule 11(vi) of the Rules make it abundantly clear that the post from which a civil servant might be reduced in rank, must be a promotional post in relation to the post to which he could be reduced. Therefore, under rule 11(vi) of the Rules it is not competent for the disciplinary authority to bring down a civil servant to any post according to its whims and fancy. The post to which a civil servant could be reduced must be a post from which once again promotion is possible under the rules of recruitment to the post from which the concerned civil servant was reduced, if his record of service in the lower post after reduction in rank is found to be good. Acceptance of the contentions urged for the respondents would lead to incongruous and absurd results. To illustrate, could a Doctor be reduced in rank to the post of a Compounder or an Engineer to the post of a Fitter, or a Teacher in a High School to the post of a Peon, or a Scientific Officer to the post of a ministerial officer, in the absence of any provision in the rules for the consideration of the case of the civil servant concerned, for promotion from the latter category to the former category? It appears to me that on a fair and proper construction of rule 11(vi) of the Rules, the condition precedent for the exercise of power under that rule by way of imposing penalty of reduction in rank to a lower post is, that the higher post from which the concerned civil servant is sought to be reduced must be a promotional post in relation to the lower post to which he is sought to be reduced. Though, in the impugned orders, the disciplinary authority has stated that the case of all these petitioners may be considered for restoration to the posts of Lower Division Clerks after a period of five years, the said condition imposed is contrary to the rules of recruitment according to which, admittedly no consideration of the cases of these petitioners for promotion to the cadre of Lower Division Clerks is possible. In the circumstances, I am of the opinion that having regard to the gravity of the charges proved against these petitioners the disciplinary authority could have imposed any penalty against the petitioners other than the reduction in rank to the posts of Peons/ Daftry.

11. In the light of the above discussion my conclusion is as follows:

A penalty of reduction in rank, from a higher time-scale of pay, grade, post or service can be imposed against a civil servant, if only the former category is a promotional one in relation to the latter category. In other words, by imposing penalty of reduction in rank a civil servant cannot be sent to a lower post from which there is no provision for promotion to the post which the concerned civil servant held before imposition of such a penalty.

12. For the reasons aforesaid, I make the following order;

(i) In WPs. 7327, 8387 and 8469 of 1978:

(a) Rule discharged, (b) Writ petitions dismissed with cost.

(c) Advocate's fee Rs. 100 in each of the petitions.

(ii) In W.Ps. 8381, 9329, 9841, 10262 and 10263 of 1978.

(a) Rule made absolute.

(b) The impugned orders imposing penalty of reduction in rank are quashed leaving liberty for the respondents to pass fresh orders imposing any other penalty.

(c) No costs.