

**(2014) 08 KAR CK 0088**

**In the Karnataka High Court**

**Case No :** Writ Petition No. 19149 of 2014 (S-KSRTC)

S. Mallikarjuna

APPELLANT

Vs

The Karnataka State Road Transport Corporation

RESPONDENT

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**Date of Decision :** 21-08-2014

**Acts Referred:**

**Citation :** (2014) 08 KAR CK 0088

**Hon'ble Judges :** S. Abdul Nazeer, J

**Bench :** Single Bench

**Advocate :** P.S. Manjunath, Advocate for the Appellant; Shwetha Anand, Advocate for the Respondent

**Final Decision :** Allowed

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## **Judgement**

S. Abdul Nazeer, J.—I have heard the learned counsel for the parties.

2. The petitioner was working as Chief Mechanical Engineer in the establishment of the first respondent/Corporation. He along with three other employees of the Corporation was charge sheeted on the allegation that he had not made sufficient efforts for making payment towards body building charges to S.M. Kannappa Automobiles. Therefore, S.M. Kannappa Automobile Industries did not build body on two chassis and the chassis were unutilized. As a consequence, a sum of Rs. 26,24,652/- paid on the two chassis remained locked and that the Corporation had to incur payment of interest of Rs. 3,35,488/-. Thus, the inaction on the part of the petitioner and other three employees has resulted in loss to the Corporation.

3. The petitioner opposed the charge memo by contending that he had taken sufficient care for arranging payment to S.M. Kannappa Automobiles. However, the Superior Officers have not passed orders for payment and made contrary suggestions for negotiations with S.M. Kannappa Automobiles for which there was no scope.

4. The Disciplinary Authority, after considering the explanation, passed an order

at Annexure-C dated 12.03.2013 holding that it is unnecessary to hold an enquiry. The petitioner was warned not to repeat similar mistakes in future. In respect of another official the 2nd respondent herein, the order of punishment was passed withholding one increment for a period of two years without cumulative effect.

5. The second respondent filed an appeal in No. D. 476/2171/2013-14. The Appellate Authority by order at Annexure-E dated 28.01.2014 directed holding of denovo enquiry against four employees including the petitioner against whom charge memos" have been issued earlier. Pursuant to the said order, an enquiry officer was appointed as per Annexure-D dated 13.2/3.2014. The petitioner has called in question the validity of the order of the Appellate Authority at Annexure-E dated 28.01.2014 and the notice at Annexure-D dated 13.2/3.2014 in this writ petition.

6. Sri. P.S. Manjunath learned counsel appearing for the petitioner would contend that the Disciplinary Authority has passed a common order at Annexure-C dated 12.3.2013 by warning the petitioner. Insofar as the second respondent is concerned, the Disciplinary Authority directed deduction of one increment for two years without cumulative effect. The petitioner has not challenged the said order before the Appellate Court. Therefore, the said order has become final insofar as the petitioner is concerned. The second respondent has challenged the said order before the Appellate Authority. The Appellate Authority has directed holding of denovo enquiry against the petitioner and three other employees, which is not permissible in law. Therefore, question of issuance of notice as per Annexure-D intimating the petitioner of holding denovo enquiry is also not sustainable.

7. On the other hand, learned counsel appearing for the respondent has sought to justify the impugned order.

8. As noticed above, an order of punishment was passed at Annexure-C not only against the petitioner, but also against three other employees. Disciplinary Authority has warned the petitioner and no other punishment has been imposed against him. He has not challenged the said order of the Disciplinary Authority. However, the second respondent filed an appeal before the Appellate Court challenging the said order. The appeal should have been confined to the second respondent alone and not to the petitioner. Therefore, the Appellate Authority directing denovo enquiry insofar as the petitioner is concerned, cannot be sustained. Consequently, notice at Annexure-D dated 13.2/3.2014 also requires to be quashed.

9. At this stage, learned counsel for the first respondent submits that under Rules 5 and 7 of the Karnataka. State Road Transport Corporation Employees (Discipline and Conduct) Rules, 1971, (for short "the regulation"), it is permissible for the Corporation to revise the order of the disciplinary authority. Needless to say that if the regulations provide for the revision of the order of the Disciplinary Authority, the Corporation is free to do the same in accordance with

law. However, the Appellate Authority cannot set aside the order of the Disciplinary Authority insofar as the petitioner is concerned, when he has not challenged the said order.

10. In the result, writ petition succeeds and it is accordingly allowed. The order at Annexure-E dated 28.01.2014 passed by the Appellate Authority and the notice at Annexure-D dated 13.2/3.2014 issued by the first respondent are hereby quashed insofar as the petitioner is concerned, subject to the observations made above. No costs.