

**(2016) 10 KAR CK 0025**

**In the Karnataka High Court**

**Case No :** Writ Petition No. 410 of 2015 (S-Res)

Sadashiva Kallappa Jamakandi

APPELLANT

Vs

Karnataka Power Transmission Corporation Limited

RESPONDENT

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**Date of Decision :** 19-10-2016

**Acts Referred:**

Constitution of India, 1950 — Article 226, Article 311  
Karnataka Lokayukta Act, 1984 — Section 12(3)

**Citation :** (2016) 4 AirKarR 742 : (2017) LIC 223

**Hon'ble Judges :** Raghvendra S. Chauhan, J.

**Bench :** Single Bench

**Advocate :** Sri G Devaraj, Advocate, for the Respondent Nos. 3 to 6; Sri Subramanya Jois, Senior Counsel for K. C. Shantha Kumar, Advocate, for the Petitioner; Sri Abhilash Raju, Advocate for M/s. Sundarswamy Ramdas, Advocate, for the Respondent Nos. 1 and 2

**Final Decision :** Dismissed

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## **Judgement**

Raghvendra S. Chauhan, J. - The petitioner has challenged the show-cause notice dated 20.12.2014 issued by the respondent No. 1, whereby the respondent No. 1 has issued second show-cause notice to the petitioner in a disciplinary proceeding.

2. Briefly the facts of the case are that the petitioner was working on the post of Executive Engineer (Electrical), S&L with HESCOM, Bijapur. On 6.01.2009, one Shri. Bandenawaz filed a complaint before the Police, Karnataka Lokayukta, inter alia claiming that the petitioner was demanding an illegal gratification of Rs.6,000/-. On the basis of the said complaint, a trap proceeding was initiated. Eventually, a charge sheet was filed in Crime No. 1/2009 before the Special Judge for Prevention of Corruption cases. But finally, the petitioner was acquitted in the said criminal case.

3. Meanwhile, on 8.2.2013, article of charges was furnished to the petitioner for initiating necessary action against him. Challenging the article of charges, the

petitioner had filed a writ petition, namely WP.No. 15653/ 2013 before this Court. This Court had initially granted a stay, but subsequently, the stay was not confirmed by this Court. Therefore, the departmental enquiry was re-commenced against the petitioner. After concluding the departmental enquiry, the enquiry officer concluded that the petitioner is guilty of alleged misconduct. On the basis of enquiry report, the Upa-Lokayukta recommended that the petitioner be compulsorily retired from service. Consequently, the second show-cause notice has been issued to the petitioner. Hence, this petition before this Court.

4. Mr. Subramanya Jois, the learned Senior Counsel for the petitioner, has contended that the Upa-Lokayukta does not have the power to make any recommendation with regard to the quantum of punishment to be imposed upon a delinquent officer. In order to buttress his argument, the learned Senior Counsel for petitioner has relied on a Division Bench judgment of this Court in the case of *KPTCL v. Javarai Gowda and another* [Writ Appeal No.8594/2012 decided on 18.12.2015] : (Reported in 2015 (2) AKR 399).

5. Secondly, since the petitioner was unaware of the fact that the stay order granted in his earlier writ petition, mentioned herein above had expired, he had failed to participate in the departmental enquiry. Therefore, the departmental enquiry has been completed against him without giving him an opportunity of hearing. Hence, the second show-cause notice issued by the disciplinary authority deserves to be set aside by this Court.

6. On the other hand, Mr. Abhilash Raju, the learned Counsel for the respondent Nos.1 & 2, has submitted that in the case of *V. Narayana v. The Karnataka Power Transmission Corporation Ltd. and others* [W.P.No. 24273/2015 : (2016 (2) Kar LJ 378) decided on 09.12.2015] a learned Division Bench of this Court has clearly held that the Upa Lokayukta does have the power to make recommendations with regard to the quantum of punishment, and the said recommendation shall be treated as a report submitted under Section 12 (3) of the Karnataka Lokayukta Act. 1984 ("the Act" for short). Moreover, in the case of *V. Narayana* (supra), this Court had also opined that ordinarily a litigant cannot challenge a show-cause notice unless issuance of show -cause notice is void-ab-initio. Therefore, this Court had opined that such petitions are premature in nature. In fact, the litigant is required to answer or to reply to the show-cause notice instead of rushing to this Court. Therefore, according to the learned Counsel for the respondents, the present writ petition is a premature one.

7. Heard, the learned counsel for the parties and perused the impugned order.

8. Although, the learned senior Counsel has relied on the case *Javarai Gowda* (2015 (2) AKR 399) (supra), the said case has been distinguished in the case of *V. Narayana* (supra). In the case of *Javarai Gowda*, the enquiry officer had exonerated the petitioner

therein, and yet the Upa-Lokayukta had recommended that the punishment of compulsory retirement should be imposed upon the delinquent officer. It is in these circumstances that this court had opined that "the Upa-Lokayukta does not have the power to sit over the report of the enquiry officer and make a recommendation". Therefore, the case of *Javarai Gowda* (2015 (2) AKR 399) (supra) is distinguishable from the present case. For, in the present case, the enquiry officer has found the petitioner guilty, and has not exonerated him. On the basis of enquiry report, the Upa-Lokayukta recommended that the petitioner be compulsorily retired from service. Thus, the case of *Javarai Gowda* (supra) does not rush to the rescue of the petitioner.

9. The issue whether the Upa-Lokayukta has the power to recommend the quantum of punishment to be imposed upon a delinquent officer or not, is no longer res-integra. For, in the case of *V. Narayana* (supra), this Court has already held that the Upa-Lokayukta does have the power to make a recommendation, and such a recommendation should be treated as a report under Section 12(3) of the Act. Therefore, first contention raised by the learned Senior Counsel is clearly unacceptable.

10. Moreover, in the case *V. Narayana* (supra), this Court has already opined that instead of challenging the show-cause notice, a litigant is expected to submit his reply to the show-cause notice. Therefore, such petitions are premature in nature. The same reasoning would apply even to the present case as the petitioner has been issued merely a second show-cause notice, and yet has chosen to rush to this Court. Therefore, the contention raised by the learned Counsel for the respondents that the writ petition is premature one is worthy of acceptance.

11. Although, the learned Senior Counsel has pleaded that the petitioner did not participate in the enquiry due to mistake of fact, the said contention cannot be accepted at this stage by this court. However, the petitioner shall be free to raise the contentions urged before this Court, before the disciplinary authority, while submitting reply to the second show-cause notice.

12. For the reasons stated above, this Court does not find any merit in the writ petition. It is, hereby, dismissed.

13. The petitioner is granted one month's time to file his reply to the second show-cause notice. Considering the fact that the case has been pending for more than two years, the disciplinary authority is directed to pass a reasoned order within a period of two months thereafter.