

(1994) 10 KAR CK 0012
In the Karnataka High Court
Case No : Writ Petition No. 2096 of 1982

Selvaraj

APPELLANT

Vs

K.M. Nandagopal

RESPONDENT

Date of Decision : 21-10-1994

Acts Referred:

Citation : (1995) 70 FLR 918 : (1995) ILR (Kar) 163 : (1996) 1 LLJ 323

Hon'ble Judges : M.F. Saldanha, J

Bench : Single Bench

Judgement

Saldanha, J.—The petitioner in this case at the relevant times was a conductor with the respondent-Corporation. It is alleged that on 31.8.1971 he committed certain acts of misconduct in relation to non-issue of tickets to certain passengers. In respect of these charges, a show cause notice was issued to him on the same date. The record as far as these charges are concerned is minimal for the simple reason that it is only the evidence of the passengers or the checking staff that was required to be considered. The Corporation has contended in its reply that several changes were in the offing and that these included a change of regulations etc., as a result of which, the disciplinary proceeding was not concluded. Thereafter a second show cause notice was issued on 5.9.1979 to which the petitioner submitted a reply on 15.10.1979 and on 18.11.1981. An order was passed against him imposing a punishment of reduction of two increments. The petitioner filed an appeal which was unsuccessful and he has thereafter challenged the order before this Court.

2. On behalf of the petitioner, various contentions have been raised including the ground that it has been judicially held that the Deputy General Manager is not the competent authority to issue the show cause notice. Most of these grounds are technical and would not avail the petitioner to any large extent. It is well settled law that if there are procedural infirmities, that they may not vitiate the proceeding but more importantly, that they are rectifiable. A perusal of the record however throws up one aspect of the matter which is of consequence

namely the fact that in respect of the allegations of misconduct that are supposed to have taken place on 31.8.1971, the show cause notice which culminated in the order of punishment was issued on 5.9.1979 after a lapse of eight years and one month. Learned Counsel on behalf of the respondents has sought to point out that under the Regulations there is no bar of limitation and that therefore, having regard to the intervening circumstances there was no impediment in the way of the Corporation commencing an enquiry even after eight years.

3. All disciplinary proceedings are essentially governed by the rules of natural justice. These rules have now been interpreted and are required to be applied not only in law but in spirit and one of the fundamental principles embodied in those rules is that the errant employee must be afforded a reasonable and fair opportunity to defend himself in the true sense of the word. It is implicit that enquiries or prosecutions must be commenced and concluded within a reasonable time frame. No definite parameters can be laid down but a Court will in every single case define as to what would be a reasonable time frame. Regardless of the justifications that have been pleaded, to my mind if the enquiry was commenced some eight years after the incident, the delay factor alone deprives the petitioner of an opportunity to defend himself because at that late point of time he would be heavily handicapped in recalling as to what had happened but more importantly, in producing documents or witnesses which would have been available to him at an earlier point of time. Under these circumstances, it will have to be held that the gross and inordinate delay in commencing and concluding the enquiry is fatal to the present proceeding.

4. On this ground alone, the impugned order is quashed and set aside. It is accordingly directed that the amounts recovered from the petitioner be repaid to him as a necessary consequence. Rule is accordingly made absolute. No order as to costs.

5. Writ petition allowed.