

(2016) 11 KAR CK 0090
In the Karnataka High Court
Case No : Writ Petition No. 23485 of 2015

Shankarappa

APPELLANT

Vs

Karnataka Power Transmission Corporation Ltd.

RESPONDENT

Date of Decision : 24-11-2016

Acts Referred:

Karnataka Electricity Board Employees (Classification, Disciplinary Control and Appeal) Regulations, 1987 - Registration 14(A)(d)

Citation : (2017) 2 AirKarR 732

Hon'ble Judges : John Michael Cunha and H. G. Ramesh, JJ.

Bench : Division Bench

Advocate : P. Chandrashekhar for M/s Ravi B. Naik Associates, for the Petitioner; Sushen. S for Harikrishna S. Holla, Advocate, for the Respondent No. 1; G. Deveraj, Advocate, for the Respondent No. 2

Final Decision : Disposed Off

Judgement

H. G. Ramesh, J.—The following questions fall for determination in this case:

- (i) Whether Upa-lokayukta can disagree with the findings of an inquiry officer recorded in a disciplinary inquiry?
- (ii) What is the procedure to be followed by a Disciplinary Authority, if it disagrees with the findings of an inquiry officer and/or the recommendation of Upa-lokayukta?
- (iii) Whether the decision of this Court in The KPTCL v. Javarai Gowda & Anr. [ILR 2015 KAR 1615] is per incuriam?

2. In this writ petition, petitioner is challenging the recommendation dated 16.01.2015 (Annexure-K) made by Upa-lokayukta as per Regulation 14(A)(d) of the Karnataka Electricity Board Employees- (Classification, Disciplinary Control and Appeal) Regulations, 1987 (" the Regulations- for short) recommending compulsory retirement of the petitioner from service. The petitioner is also

challenging the consequent show-cause notice dated 15.05.2015 (Annexure-L) issued to him by the Disciplinary Authority, namely the Director, Karnataka Power Transmission Corporation Limited. The aforesaid Regulations were made in exercise of the power under Section 79(c) of the Electricity (Supply) Act, 1948.

3. By consent of learned Counsel on both sides, the petition is heard on merits and is being disposed of by this order.

4. Facts in brief : The Disciplinary Authority (KPTCL) requested Upa-lokayukta to conduct a departmental inquiry against the petitioner into the alleged misconduct namely, that the petitioner demanded and accepted a sum of Rs.2,000/- on 23.02.2008 as bribe from the complainant- A.Ramesh for discharge of his official duties. Upa-lokayukta nominated Additional Registrar Enquiries-4 as the inquiry officer. Accordingly, he conducted the inquiry and submitted inquiry report dated 29.05.2010 as per Annexure-D holding that the charge levelled against the petitioner was not proved. Upa-lokayukta has disagreed with the inquiry report as per his recommendation dated 16.01.2015 (Annexure-K) and has recommended for compulsory retirement of the petitioner from service. The Disciplinary Authority, on the basis of the recommendation of Upa-lokayukta, has issued show-cause notice dated 15.05.2015 (Annexure-L) to the petitioner. The petitioner being aggrieved of the recommendation and the show-cause notice has filed this writ petition.

5. Learned Counsel appearing for the petitioner contended that Upa-lokayukta has no power to disagree with the report of the inquiry officer exonerating the petitioner of the charge, and consequently, the impugned show-cause notice dated 15.05.2015 issued by the Disciplinary Authority as per Annexure-L on the basis of the recommendation of Upa-lokayukta is liable to be set aside. In support of his contention, he relied on a decision of this Court in *The KPTCL v. Javarai Gowda & Anr.* [ILR 2015 KAR 1615] and submitted that the said decision was carried to the Supreme Court in petition for special leave to appeal (C) No.16501/2015 and the Supreme Court dismissed the Petition in limine with the following order dated 05.10.2015:

"The special leave petition is dismissed."

6. Learned Counsel appearing for the Disciplinary Authority contended that the decision relied upon by learned Counsel for the petitioner is per incuriam as it was rendered without considering the effect of Regulation 14(A)(d) of the Regulations. Learned Counsel appearing for the Lokayukta submitted that Upa-lokayukta has given his recommendation as required by Regulation 14(A)(d) of the Regulations. Hence, the recommendation does not warrant any interference. He also submitted that the decision in *The KPTCL (supra)* is per incuriam as the effect of Regulation 14(A)(d) of the Regulations is not considered.

7. In view of the above rival contentions, the following questions fall for determination in this case:

(i) Whether the recommendation dated 16.01.2015 (Annexure-K) given by Upa-lokayukta disagreeing with the inquiry report is tenable in law?

(ii) Whether the show-cause notice dated 15.05.2015 (Annexure-L) issued to the petitioner by the Disciplinary Authority on the basis of the recommendation of Upa-lokayukta is in accordance with law?

(iii) Whether the decision of this Court in *The KPTCL v. Javarai Gowda & Anr.* [ILR 2015 KAR 1615] is per incuriam?

8. Re. question Nos.(i) & (iii): To examine as to whether the impugned recommendation of Upa-lokayukta is tenable in law, it is necessary to refer to Regulation 14(A) of the Regulations; it reads as follows:

" 14. (A) SPECIAL PROCEDURE IN CERTAIN CASES of MISCONDUCT

(1) The following provisions shall, notwithstanding anything contained in Regulations 10 to 11 (A) and 13 be applicable for purposes of proceeding against Board employees whose alleged misconduct has been investigated into by the Vigilance Commission/Lokayukta /UpaLokayukta either suo-moto or on a reference from the Board or from any other authority, viz.

(a) where on investigation into any allegation against " "

(i) a member of the Board services Group A, B, C or D in respect of an allegation of a serious nature; the Vigilance Commissioner/ Lokayukta/Upa-Lokayukta or any officer of the Vigilance Commission/Lokayukta/Upa- Lokayukta authorised by him in writing under sub-rule (2) of Rule 5 of Karnataka State Vigilance Commission- s Rules 1980/Rule 12 of the Karnataka Lokayukta/Upa-Lokayukta Act 1984 is of the opinion that disciplinary proceedings shall be taken, he shall forward the record of investigation along with his recommendations to the Board, and the Board after examining such records, may either direct an inquiry into the case by the Vigilance Commission/ Lokayukta/Upa-Lokayukta or direct the appropriate disciplinary authority to take action in accordance with Regulation 11.

(b) Where the Vigilance Commission/Lokayukta/Upa-Lokayukta is directed to hold an inquiry into a case under clause (a) the inquiry may be conducted either by the Vigilance Commissioner/Lokayukta/Upa-Lokay-ukta or by an officer of the Vigilance Commission/ Lokayukta/Upa-Lokayukta authorised by the Vigilance Commissioner/Lokayukta/Upa-Lokayukta to conduct the inquiry.

Provided that the inquiry of a case relating to a Board employee shall not be conducted by an officer lower in rank than that of such Board employee;

(c) The Vigilance

Commissioner/Loka-yukta/Upa-Lokayukta or the officer authorised to conduct the inquiry under clause (b) shall conduct the inquiry in accordance with the provisions of sub-regulation (2) to (20) and sub-regulation (23) of Regulation 11 and for the purposes of conducting such inquiry, shall have the power of the

disciplinary authority referred to in the said Regulation.

(d) After the inquiry is completed, the records of the case with the findings of the inquiring officer and the recommendations of the Vigilance Commissioner/ Lokayukta/Upa Lokayukta shall be sent to the Board.

(e) On receipt of the records under clause (d), the Board shall take action in accordance with the provisions of sub-regulation (21) and sub-regulation (23) of Regulation 11 and Regulation 11(A), and in all such cases the Board shall be competent to impose any of the penalties specified in Regulation 9.

Explanation: In this Regulation, the expressions " Vigilance Commission / Lokayukta/ Upa Lokayukta- and " Vigilance Commissioner/ Lokayukta/ Upa Lokayukta- shall respectively have the meanings assigned to them in the respective Rules/Act and further amendments made to the above from time to time." ?

(Emphasis supplied)

A plain reading of Clause(d) of Regulation 14(A) extracted above clearly show that after completion of the inquiry, the record of the case with the findings of the inquiry officer along with the recommendation of the Vigilance Commissioner or Lokayukta or Upa-lokayukta, as the case may be, shall be sent to the Board. Therefore, sending of recommendation of the concerned Authority along with the record of the case is mandatory.

9. In *The KPTCL v. Javarai Gowda & Anr.* [ILR 2015 KAR 1615] which is relied upon by learned Counsel for the petitioner, it is held that Upa-lokayukta has no power to sit in judgment over the report of an inquiry officer. As noticed above, petition for special leave to appeal against this decision was dismissed by the Supreme Court in limine by Order dated 05.10.2015 which is extracted above. A three judge bench of the Supreme Court in *Kunhayammed v. State of Kerala* [(2000) 6 SCC 359] : (AIR 2000 SC 2587) has held that dismissal of a petition for special leave to appeal in limine does not amount to acceptance of correctness of the decision sought to be appealed against. Hence, by the dismissal of the Special Leave Petition, the decision in *The KPTCL* [ILR 2015 Kar 1615] can- t be said to have been approved or affirmed by the Supreme Court.

10. In *The KPTCL* [ILR 2015 Kar 1615], effect of Clause(d) of Regulation 14(A) of the Regulations is not at all considered. Regulation 14(A)(d) of the Regulations mandates that after completion of the inquiry, the record of the case with the findings of the inquiry officer shall be sent to the Disciplinary Authority along with the recommendation of the Vigilance Commissioner or Lokayukta or Upa-lokayukta, as the case may be. As rightly contended by learned Counsel for the respondents, the decision rendered in *The KPTCL v. Javarai Gowda & Anr.* [ILR 2015 Kar 1615] is without considering the effect of Regulation 14(A)(d) of the Regulations though it is quoted in the decision. It is relevant to note that Regulation 14A(d) is not held to be invalid. Therefore, the effect of the said

regulation can- t be ignored. Hence, we hold that the decision in *The KPTCL v. Javarai Gowda & Anr.* [ILR 2015 KAR 1615] is per incuriam as it was rendered without considering the effect of Regulation 14(A)(d) of the Regulations which has statutory force.

11. A decision given per incuriam is not a binding precedent.

12. Upa-lokayukta is bound by Regulation 14(A)(d) of the Regulations and is accordingly required to send his recommendation along with the record of the case and the findings of the inquiry officer to the Disciplinary Authority. When he is required to send his recommendation, he is entitled to disagree with the inquiry report by giving reasons. Therefore, the impugned recommendation of Upa-lokayukta can- t be said to be without the authority of law to warrant any interference by this Court.

13. Re.question No.(ii): Whether the impugned show" " cause notice is in accordance with law? In our opinion, the impugned show-cause notice is liable to be set aside as it is contrary to the law laid down by a three judge bench of the Supreme Court in *Punjab National Bank v. Kunj Behari Misra* [(1998) 7 SCC 84] : (AIR 1998 SC 2713). In the said decision, Regulation 7(2) of the Punjab National Bank officer Employees (Discipline and Appeal) Regulations, 1977 which is identical to Regulation 11A(2) of the Regulations fell for consideration; it read as follows:

"7(2). The disciplinary authority shall, if it disagrees with the findings of the enquiring authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose."

In the context, Regulation 11A of the Regulations may also be noticed:

"11.(A) ACTION ON THE INQUIRY REPORT.

The disciplinary authority, if it is not itself the inquiring authority, may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of Regulation 11 as far as may be.

(2) The disciplinary authority shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.

(3) If the disciplinary authority, having regard to its findings on all or any of the articles of charge, is of the opinion that one or more of the penalties specified in Regulation 9 should be imposed on the Board employee, it shall, notwithstanding anything contained in Regulation 12, make an order imposing such penalty."

14. The Supreme Court in the context of interpreting Regulation 7(2) extracted

above, which is identical to Regulation 11A(2) of the Regulations, has made the following observations which are relevant to this case, and hence, require to be noticed:

"11. The controversy in the present case, however, relates to the case where the disciplinary authority disagrees with the findings of the enquiring authority and acts under Regulation 7(2). The said sub-regulation does not specifically state that when the disciplinary authority disagrees with the findings of the enquiring authority and is required to record its own reason for such disagreement and also to record its own finding on such charge, it is required to give a hearing to the delinquent officer.

19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.

20. The aforesaid conclusion which we have arrived at is also in consonance with the underlying principle enunciated by this Court in the case of Institute of Chartered Accountants. While agreeing with the decision in Ram Kishan case we are of the opinion that the contrary view expressed in S.S. Koshal and M.C. Saxena cases do not lay down the correct law."

(Underlining supplied)

15. In the light of the decision of the Supreme Court in Punjab National Bank (AIR 1998 SC 2713) (supra), we are of opinion that a Disciplinary Authority is at liberty to disagree with the findings recorded by the inquiry officer and/or the recommendation of Upa-lokayukta by giving reasons to record its own findings. But before it records its own findings, it must record its tentative reasons for such disagreement and shall give a copy thereof along with a copy of the inquiry report and the recommendation of Upa-lokayukta to the delinquent employee and shall afford him an opportunity to file his representation against the tentative reasons of the Disciplinary Authority. Admittedly, this exercise is not done in this case by the Disciplinary Authority as it has not recorded its tentative reasons for disagreeing with the inquiry report and for agreeing with the recommendation of Upa-lokayukta. Hence, the impugned show-cause notice dated 15.05.2015 (Annexure-L) is liable to be set aside and is accordingly set

aside. The matter is remitted to the Disciplinary Authority (R1) which shall now proceed in the matter in accordance with law.