

(2011) 12 KAR CK 0400

In the Karnataka High Court

Case No : Writ Petition No. 35360 of 2010 (S-DIS)

Shri. K. Shashidhar Murthy

APPELLANT

Vs

The Managing Director, Bangalore Electricity Supply Company
(BESCOM), K.R. Circle, Bangalore -560001 and The
Superintendent Engineer, (ElecI) (Commercial, Operation and
Maintenance) Bangalore Electricity Supply Company
Nrupatunga Road, Bangalore - 560001

RESPONDENT

Date of Decision : 09-12-2011

Acts Referred:

Industrial Disputes (Karnataka Amendment) Act, 1987 — Section 104 A
Karnataka Electricity Board Employees (Classification Disciplinary, Control and Appeal)
Regulations, 1987 — Regulation 11, 14A

Citation : (2011) 12 KAR CK 0400

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : S.B. Mukkannappa, for S.B. Mukkannappa and Associates, for the
Appellant; V.Y. Kumar, Advocate for Respondent Nos. 1 and 2, for the Respondent

Final Decision : Allowed

Judgement

Anand Byrareddy

1. Heard the learned counsel for the petitioner and the counsel for the respondents. The facts briefly stated are as follows:

The petitioner had joined the respondents as an Assistant in the year 1984. When he was working as an Assistant with C-3 Sub-Division, Mathikere and was so discharging his duties, disciplinary proceedings against the petitioner as well as three others working in the same division were initiated under Regulation 11 of the Karnataka Electricity Board Employees" (Classification, Disciplinary, Control and Appeal) Regulations, 1987 (hereinafter referred to as the "1987 Regulations" for brevity), and charge-sheet was issued. The sum and substance of the charge-sheet was, that the petitioner and two others had committed theft

of monies belonging to the Board as on 4.11.1998. The petitioner had submitted his reply to the same, denying the charges, the respondents proceeded to initiate proceedings under Regulation 14-A of the 1987 Regulations and on the basis of a report of the Vigilance Commission, proceeded to terminate the services of the petitioner. The petitioner challenged the order of termination before this Court by way of a writ petition in W.P. No. 3844/1999 which was partly allowed, by an order dated 9.8.1999, allowing the present petitioner's writ petition as well as other writ petitions, filed by other employees, questioning their orders of dismissal passed against them as well. The Board, however, was granted opportunity to initiate a fresh enquiry as contemplated under the 1987 Regulations. The Board had thereafter passed a resolution under Regulation 11 and passed an order of dismissal based on the very report submitted in the first instance. That was challenged in appeal before the Appellate Authority and the appeal having been rejected by a judgment dated 26.12.2001/ the petitioner then raised an industrial dispute before the Labour Court u/s 10-4(A) of the Industrial Disputes (Karnataka Amendment) Act, 1987. The same was contested and the Labour Court rejected the dispute on the ground of limitation. In the meanwhile, independent criminal proceedings which had been initiated against the petitioner by the Jurisdictional police who had filed a charge-sheet before the Court of the First Additional Chief Metropolitan Magistrate, Bangalore, had proceeded further and by a judgment dated 6.8.2003, the Court of the First Additional Chief Metropolitan Magistrate had acquitted the petitioner on the benefit of doubt. The petitioner thereafter had questioned the dismissal of the dispute before this Court in writ petition in W.P. No. 12031/2006. This Court held that the respondents could not have dismissed the petitioner from service merely on the basis, of the investigation report which was submitted when the petitioner was acquitted in the criminal proceedings and in the absence of any evidence in support of the investigation report by holding a further domestic enquiry which was available under sub-regulation 1 (a) of Regulation 14-A of the 1987 Regulations. The same was questioned by way of a writ appeal before the Division Bench of this Court and the order of the learned Single Judge having been affirmed by the judgment of the Division Bench, the same was carried before the Apex Court and the matter attained finality in the Apex Court dismissing the SLP filed by the respondents. In none of the proceedings, either before the High Court or the Apex Court, did the respondents seek leave of the Court to conduct any fresh enquiry. However, on the order of dismissal, having been successfully challenged by the petitioner, having attained finality, the respondents have now chosen to resort to the disciplinary enquiry in terms of the Regulations on the footing that notwithstanding the special procedure that was adopted in the first instance, the respondents are not precluded from initiating fresh proceedings which was always available to the respondents. It is this which is under challenge in the present petition. Therefore, the point for consideration before this Court in this petition is whether there is a bar to such proceedings by virtue of the earlier procedure adopted under Regulation 14-A having culminated in a final order before the Supreme Court, and whether the respondent would be

in a position to initiate fresh proceedings by resorting to the general procedure of holding disciplinary proceedings against its employees.

2. Regulation 14-A 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 proceedings against Board employees whose alleged misconduct has been investigated into by the Vigilance Commission / Lokayukta / UpaLokaynkta 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 / UpaLokaynkta or any Officer of the Vigilance Commission / Lokayukta / Upa Lokayukta authorised by him in wilting 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/Lokayuka / 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 he conducted either by the Vigilance Commissioner / Lokayukta / Upa Lokayukta 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 titan that of such Board employee;

c) The Vigilance Commissioner / Lokayuktd / 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.

From a bare reading of Regulation 14-A, it is evident that 1(a) of Regulation 14-A would indicate that the respondents have the option of dismissing an employee on the basis of the investigatory report that is generated in the first instance, with or without holding any further enquiry, on the basis of such report.

3. If the respondents have elected to proceed against the present petitioner on the basis of the investigative report without holding an enquiry and that having been set-aside ultimately, without leave having been granted to the respondents to conduct a fresh enquiry, the question of the respondents re-opening the matter by resorting to the general provisions of holding disciplinary proceedings, is not available. This is apparent on a plain reading of the Regulations.

4. The learned counsel for the respondents, however, would seek to place reliance on a Division Bench judgment of this Court in the case of *Mehiboobsab Vs. Upalokayukta and Others*, , which was a case where on an acquittal in a criminal proceeding whether the right of the employer to initiate or continue departmental proceedings against the employee in regard to the same charges, was available. This Court had pointed out that whether the employee is honourably acquitted by being completely exonerated, then, normally it would not be expedient to continue Departmental enquiry on the same charges as held in *G.M. Tank Vs. State of Gujarat and Another*, , and while distinguishing the judgment in *Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another*, , the same is not the circumstances in the present case on hand. The special procedure that was adopted by recourse to Regulation 14-A preclude the respondents from initiating fresh proceedings in terms of the Regulations providing for disciplinary proceedings under Part-V and Part-VI of the Regulations. The choice of either folding an enquiry or not to hold an enquiry pursuant to the Investigatory report, was certainly available to the respondents which it did not choose to press into service either in the first instance or on a remand by this Court while allowing the writ petition filed by the petitioner herein in W.P. No. 3844/1999. In that view of the matter, the respondents are certainly precluded from holding any fresh proceedings in respect of the very charge that was the subject matter of the earlier proceedings.

5. Accordingly, the petition stands allowed. The petitioner is said to have been reinstated into service and he having been reinstated, would continue to remain in service. Any benefits the petitioner would be entitled to by virtue of the order of punishment having been set-aside, would be made available to the petitioner.