

(1984) 12 KAR CK 0001
In the Karnataka High Court
Case No : W.P. No. 18387 of 1983

Sidramappa

APPELLANT

Vs

Divisional Commissioner, and Others

RESPONDENT

Date of Decision : 04-12-1984

Acts Referred:

Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957 — Rule 28A

Citation : (1985) 1 KarLJ 235

Hon'ble Judges : M. P. Chandrakantaraj Urs, J

Judgement

1. Petitioner, a Village Accountant has filed this petition aggrieved by his dismissal following a departmental enquiry on the specific charge that he was not residing at the Headquarters where he was expected to reside.

2. He was formally charge-sheeted. He filed the written statement to the charges and thereafter an Enquiry Officer, namely, the 3rd respondent Asst. Commissioner, Sedam, Gulbarga Dist. was appointed. The 3rd respondent concluded the enquiry and submitted his report to the Deputy Commissioner-2nd respondent herein. The Deputy Commissioner found defect in the report in as much as the procedure prescribed under Rule 11 of the Karnataka Civil Services (Classification Control & Appeal) Rules, 1957, (hereinafter referred to as "CCA Rules" for short) had not been followed. He, therefore directed a fresh enquiry. Notice of fresh enquiry was issued by the 3rd respondent Asst. Commissioner to the petitioner and was sought to be served through the Tahasildar having jurisdiction over the village in which the petitioner was expected to reside as a Village Accountant. That notice was returned with the endorsement that he did not reside in the house. Thereafter the Asst. Commissioner proceeded to hold the enquiry ex-parte resulting finally in the dismissal order. Appeal filed by the petitioner against the order of the disciplinary authority, the Deputy Commissioner-2nd respondent to the Divisional Commissioner also came to be dismissed. Therefore, he has approached this Court under Articles 226 and 227 of the Constitution, urging several grounds for relief.

3. I do not think it necessary to go into the merits of the case as the matter can be disposed of on the short question whether the second enquiry proceeded in accordance with the CCA Rules. There is no dispute in the statement of objections filed or additional statement filed that there was no service of notice actual or constructive on the petitioner in the second enquiry in accordance with Rules. While Rule 11-A of the C.C.A., Rules does not itself provide the mode of service. Rule 28-A of the CCA Rules provides the manner in which a delinquent officer facing an enquiry is to be served. Rule 28-A of the CCA Rules reads as follows:

"28A: Service of order, notices, etc.-(1) Every order, notice & other process made or issued under these rules shall be served in person on the Govt. Servant concerned or communicated to him by regd. post.

(2) Where the Govt. Servant refuses to receive, or keeps out of the way for the purpose of avoiding the services of such order, notice, or other process the same may be served by affixing a copy thereof on the notice board of the Office of the Disciplinary Authority or of the Inquiring Authority & upon some conspicuous part of the house, if any, in which he is known to have last resided, or by publication in two daily newspapers having wide circulation in the State".

In substance, it is no more than what is contained in Order V of the Code of Civil Procedure. If, as records disclose, the notice of the second enquiry, that is after remand by the Deputy Commissioner, was not served on ground of non-availability at the last known address, then substituted services contemplated in sub-section (2) above should have been resorted to. The record does not disclose that such steps were taken. No notice of service by method of substitution was done. Therefore, there is a clear transgression of the mandatory requirement of Rule 28-A of the CCA Rules. When that is established, this Court need not embark on further investigation in respect of the merits of the case. Petition is therefore allowed reserving liberty to the 3rd respondent to continue the fresh enquiry ordered by the 2nd respondent de novo from the stage of notice assuming that it has been served on him as the petitioner now has knowledge of the fresh enquiry commenced against him in the light of the remand made by the 2nd respondent. Petitioner, will therefore appear before the 3rd respondent on 11.1.85 or on such later date as the Assistant Commissioner may inform the petitioner, if his present permanent address is furnished to the Asst. Commissioner.

4. He shall appear on the aforementioned date in the Office of the 3rd respondent at 11 a.m. and receive such documents as he may be entitled to and thereafter participate in the enquiry as if notice had been served on him in accordance with Section 28-A of the Rules.

5. In the result, the impugned orders of the Divisional Commissioner as well as the Deputy Commissioner are quashed for the defect pointed out.

6. Rule will be made absolute in terms above. But there will be no order as to

costs.

7. If the learned Govt. Pleader has not filed his appearance, he shall do so within four weeks from today.