

(2005) 10 KAR CK 0023
In the Karnataka High Court
Case No : Writ Petition No. 6074 of 2003

The State of Karnataka and Another

APPELLANT

Vs

Ninganagouda Shankargouda Patil

RESPONDENT

Date of Decision : 19-10-2005

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Mysore Civil Services (Classification, Control and Appeal) Rules, 1957 — Rule 11, 11 (23), 11 (3), 11A, 11A (3)

Citation : (2005) ILR (Kar) 5663 : (2006) 1 KarLJ 98 : (2006) 1 KCCR 182

Hon'ble Judges : S.R. Nayak, J; C.R. Kumaraswamy, J

Bench : Division Bench

Advocate : S. Prakash Shetty, for the Appellant; Girish Jambagi, for B.B. Bajentri, for the Respondent

Final Decision : Dismissed

Judgement

S.R. Nayak, J.—The State of Karnataka represented by the Secretary to Government, Finance Department and the Commissioner of Commercial Taxes, Bangalore, being aggrieved by the order of the Karnataka Administrative Tribunal at Bangalore (for short, "Tribunal") dated 03.12.2002 passed in Application No. 5101 of 2002 have preferred this Writ Petition under Articles 226 and 227 of the Constitution of India.

2. The facts of the case, in brief, are as follows:

The respondent herein while serving as Second Division Assistant on probation in the office of the Assistant Commissioner of Commercial Taxes, 2nd Circle, Bijapur, was issued with a charge memo dated 20.11.2000 by the 2nd petitioner herein who is the Disciplinary Authority under Rule 12 of the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957 (for short "CCA Rules"). The said charge memo is marked as Annexure-A1 and produced at page-21 of the material papers. It reads as follows:

The respondent-delinquent submitted his reply to the charge memo. The Disciplinary Authority being not satisfied with the reply of the delinquent was proceeded to conduct enquiry and appointed an Enquiry Officer. The Enquiry Officer having conducted enquiry held that the delinquent is guilty of the charges. The Disciplinary Authority having accepted the findings returned by the Enquiry Officer, passed order on 18.03.2002 imposing penalty of dismissal as a disciplinary measure.

3. The delinquent being aggrieved by the above order of the Disciplinary Authority filed Application No. 5101 of 2002 before the Tribunal. The main ground urged before the Tribunal is that the Disciplinary Authority having initiated an enquiry under Rule 12 of the CCA Rules should have imposed minor penalty and ought not to have imposed an extreme penalty of dismissal and on that count itself, the order of the Disciplinary Authority could not be sustained in law and is liable to be quashed. As a defence, the Department in its reply statement filed before the Tribunal contended that though the enquiry was initiated against the respondent-delinquent under Rule 12 of the CCA Rules, as a matter of fact, a regular enquiry contemplated under Rule 11 of the CCA Rules was conducted and therefore, it was very much within the power of the Disciplinary Authority to impose one of the major penalties on the delinquent, because, the misconduct alleged against him is satisfactorily proved by adducing evidence. The Tribunal having not found any merit in the defence, but finding merit in the contention raised by the respondent-delinquent, by its order dated 03.12.2002 allowed the Application and quashed the impugned order passed by the Disciplinary Authority. Hence, this writ petition by the State of Karnataka and its authorities.

4. We have heard Sri S. Prakash Shetty, Learned Government Advocate for the petitioners and Sri Girish Jambagi, Learned Advocate for the respondent.

5. Sri S. Prakash Shetty, Learned Government Advocate would contend that the ground urged by the delinquent to attack the order made by the Disciplinary Authority is very much technical in nature and as a matter of fact, a regular departmental enquiry envisaged under Rule 11 of the CCA Rules was conducted against the delinquent giving him full opportunity to defend himself after appointing an Enquiry Officer. It was also pointed out by the Learned Government Advocate that in the enquiry, witnesses were examined and they were tendered for cross-examination by the delinquent. It was submitted by the Learned Government Advocate that simply because the charge memo was issued under Rule 12 of the CCA Rules, that fact itself would not lead to the conclusion that the Department did not conduct enquiry envisaged under Rule 11 of the CCA Rules and therefore, it could not have imposed any of the major penalties on the delinquent. Sri. Prakash Shetty would draw our attention to the provisions of Sub-rule (3) of Rule 11-A of the CCA Rules and contend that in terms of the said Sub-rule (3), it is permissible for the Disciplinary Authority to impose even a major penalty on a delinquent against whom an enquiry is initiated for imposing minor

penalties under Rule 12 of the CCA Rules.

6. Sri Girish Jambagi, Learned Counsel appearing for the respondent-delinquent, per contra, while supporting the impugned order of the Tribunal, would submit that simply because the Disciplinary Authority in its discretion thought it appropriate and just to conduct enquiry in the manner laid down in Sub-rules (3) to (23) of Rule 11, that fact itself, without anything further, has no effect of converting the enquiry initiated under Rule 12 into an enquiry contemplated under Rule 11.

7. Having heard the Learned Counsel for the parties, a short question that arises for our decision is whether the Disciplinary Authority illegally acted in imposing a major penalty like the dismissal. Our considered answer to the question is an emphatic "No". We proceed to give our reasons.

8. The charge memo-Annexure: A1 in an unmistakable term shows that enquiry with the delinquent was initiated only under Rule 12. It is true that technicalities could not be pressed into service to thwart legitimate power of the State employer to discipline its workforce. At the same time, the procedure prescribed by the Statutory Rules which are mandatory in nature should not be given a go-by at the peril of a delinquent. It is the vested right of delinquent to defend himself effectively and without prejudice in a Disciplinary Enquiry. With this preface, we proceed to examine the rule position. The relevant part of Rule 12 reads as follows:

12. Procedure for imposing minor penalties:

1) Subject to the provisions of Sub-rule (3) of Rule 11-A, no order imposing on a Government servant any of the penalties specified in Clauses (i) to (iva) of Rule 8 shall be made except after,-

a) informing the Government servant in writing of the proposal to take action against him and of the imputations of misconduct or misbehaviour on which it is proposed to be taken, and giving him a reasonable opportunity of making such representation as he may wish to make against the proposal;

b) holding an inquiry in the manner laid down in Sub-rules (3) to (23) of Rule 11, in every case in which the Disciplinary Authority is of the opinion that such inquiry is necessary:

Provided that no order imposing a penalty of withholding increments with cumulative effect shall be made without holding an inquiry in the manner laid down in Sub-rules (3) to (23) of Rule 11".

9. Sub-rule (3) of Rule 11-A to which our attention was drawn by Sri Prakash Shetty, Learned Government Advocate in the course of the argument, reads as follows:

"11A (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 Rule 8 should be imposed on the Government servant, it shall, notwithstanding anything contained in Rule 12, make an order imposing such penalty.

Provided that in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the Disciplinary Authority to the Commission for its advice on the penalties proposed to be imposed on the Government servant and such advice shall be taken into consideration before making any order imposing any penalty on the Government servant".

10. If Sub-rule (1) of Rule 12 were not to contain Clause (b), perhaps, we cannot have any objection to accept the argument of the learned Government Advocate. But, provisions of Clause (b) of Sub-rule (1) of Rule 12 is a formidable stumbling block to accept the argument of the learned Government Advocate as correct. It is not and it could not be the contention of the Learned Government Advocate that the enquiry was not initiated against the delinquent under Rule 12. If, admittedly, the enquiry was initiated under Rule 12, simply because, the Disciplinary Authority in its wisdom and discretion thought it appropriate to hold the enquiry in the manner laid down in Sub-rules (3) to (23) of Rule 11, the question for consideration is whether holding of such enquiry would alter the nature of the enquiry from the one under Rule 12 to the other under Rule 11. If the Rule-making authority had intended the answer to be in the affirmative, there was no difficulty for the Rule-making authority to declare so in specific term.

11. The argument of the Learned Government Advocate based on the provisions of Sub-rule (3) of Rule 11, in our considered opinion, is not well-founded and not acceptable to us. If we may say so, Rule 11-A is an integral part of Rule 11 itself. Rule 11-A as a whole deals with as to what the Disciplinary Authority should or could do after the enquiry envisaged under Rule 11 is complete. The provisions of Sub-rule (3) of Rule 11-A has a direct bearing on and refer to the provisions of Sub-rule (2). Sub-rule (2) provides that the Disciplinary Authority shall, if it disagrees with the findings of the Enquiry Officer 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. Having thus provided in Sub-rule (2), Sub-rule (3) proceeds to provide that if the Disciplinary Authority having regard to its findings, [the term "its findings" has undeniably reference only to the words "its own findings" occurring in Sub-rule (2)] on all or any of the articles of charge is of the opinion that one or more of the penalties specified in Rule 8 should be imposed on the Government servant, it shall, notwithstanding anything contained in Rule 12, make an order imposing such penalty. Sub-rule (3) is only an enabling provision which enables the Disciplinary Authority to impose not only the major penalty but also a minor penalty on a delinquent in an enquiry initiated and conducted under Rule 11 of the CCA Rules. In other words, by virtue of Sub-rule (3), the Disciplinary Authority can impose a minor penalty on a delinquent though enquiry was initiated and conducted under Rule 11

without recourse to Rule 12. The Rule-making Authority has contemplated such a situation and it is not difficult for us to comprehend such a situation. For example, in an enquiry initiated and conducted under Rule 11, after returning of the findings from the Enquiry Authority or on appreciation of the evidence, if the Disciplinary Authority is of the opinion that any major penalty would be disproportionate to the gravity of the misconduct committed by a delinquent, it can impose any of the minor penalties on the delinquent instead of a major penalty. If that is the intendment of Sub-rule (3), it will be idle to require the Disciplinary Authority to again issue a show-cause notice envisaged under Rule 12 giving an opportunity to the delinquent to submit his defence, if any, and then to pass appropriate order imposing minor penalty. Cumulatively speaking, Sub-rule (3) of Rule 11-A in no way has any bearing on the crucial question posed to ourselves for the decision-making. In the result, the contention of the Learned Government Advocate is not acceptable to us. The writ petition is, therefore, dismissed with no order as to costs.