

(2016) 01 KAR CK 0009

In the Karnataka High Court

Case No : Writ Petition No. 51898 of 2015 (S-CAT)

Union of India

APPELLANT

Vs

Sabu Joseph

RESPONDENT

Date of Decision : 04-01-2016

Acts Referred:

Citation : (2016) 332 ELT 396

Hon'ble Judges : Mohan M. Shantanagoudar and K.N. Phaneendra, JJ.

Bench : Division Bench

Advocate : Shri Hanumanthappa A, Advocate, for the Petitioner; Shri Sabu Joseph, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

1. The order dated 22-4-2015 passed by the Central Administrative Tribunal, Bengaluru Bench, Bengaluru ("CAT" for short) in O.S. No. 395/2015 is called in question in this writ petition.

2. The respondent herein while working as an Additional Commissioner of Central Excise at Mysore, retired from service on 31-3-2013 on attaining the age of superannuation. He was relieved from his duties, in the afternoon of 31-3-2013, as is clear from Annexure-A1 (Annexed with Original Application filed before the CAT). However, during night of 31-3-2013, a Memorandum dated 31-3-2013 along with certain Articles of Charge, Statement of Imputations of Misconduct and Misbehaviour were served on the respondent. The same were received and acknowledged by the respondent between 22.15 hours and 23.25 hours on 31-3-2013. Thereafter, the respondent approached the CAT in Original Application No. 395/2014 questioning the Articles of Charge, etc. served upon him. The said application came to be allowed by the CAT impugned order (Annexure-A).

3. Sri. A. Hanumanthappa, learned Advocate appearing on behalf of the petitioners Union of India contends that the respondent is deemed to have been

in duty till the midnight of 31-3-2013 and therefore, the department was justified in serving Articles of Charge in between 10.00 p.m. and 11.00 p.m. on 31-3-2013 and consequently, the same is deemed to be issued while the respondent was in service.

4. The said submission of the learned counsel appearing for the petitioners-Union of India cannot be accepted. Sub-rule (4) of Rule 14 of CCS (CCA) Rules, 1965 requires that, "the Disciplinary Authority shall deliver or cause to be delivered to the Government Servant a copy of the Articles of Charge, the statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article or charge is proposed to be sustained....". Thus, sub-rule (4) of Rule 14 of the CCS (CCA) Rules, 1965 makes it amply clear that the Disciplinary Authority can serve a copy of the Articles of charge only on the "Government Servant" and no one else. It is not in dispute that the respondent has attained the age of superannuation on 31-3-2013 and as such he was relieved from all official duties in the afternoon of 31-3-2013, as is clear from the Relief Report produced at Annexure-A1 dated 31-3-2013 issued from the Commissioner of Central Excise, Customs and Service Tax, Mysore-560 011 and the said Commissioner has certified that the respondent, who was working as Additional Commissioner, is relieved of his duties from the Head Quarters, Mysore Commissionerate, Mysore, in the afternoon of 31-3-2013. It is not in dispute that the Articles of Charge were served on the respondent at 23.25 hours on 31-3-2013, i.e., after he was relieved from the duties. The respondent was not supposed to perform his duties as an Additional Commissioner any more till midnight, as argued by the learned counsel for the petitioner. After relieving from his duties, the respondent will not continue as a "Government Servant". If it is so, it is clear that the Articles of Charge, etc., were not served on the Government Servant.

5. Rule 9 of Central Civil (Pension) Rules, 1972 makes it clear that the departmental proceedings should have been initiated against the Government Servant while he was in service. However, it is implied from Rule 9(2)(b) of the said Rules that, the Departmental proceedings can be initiated against the retired Government Servant under certain contingencies that too with the sanction of the President. In the matter on hand, admittedly, the sanction of the President or his delegate is not obtained by the Department while initiating the Departmental Action against the respondent, after his retirement from duties.

6. In view of the above, we do not find any ground to interfere in the impugned order of the Tribunal inasmuch as the Tribunal is justified in concluding that the Articles of Charge were served on the respondent only after he was relieved from the duties. Hence, the writ petition fails and accordingly, the same stands dismissed.