

(2005) 02 KAR CK 0076
In the Karnataka High Court
Case No : Writ Petition No. 30369 of 2000

V. Praveen Kumar

APPELLANT

Vs

The Chairman/Appellate Authority, Central Silk Board and
Others

RESPONDENT

Date of Decision : 10-02-2005

Acts Referred:

Central Civil Services (Classification, Control and Appeals) Rules, 1965 — Rule 11 (9)
Central Civil Services (Conduct) Rules, 1964 — Rule 3 (1) (i)

Citation : (2005) 3 KarLJ 389 : (2005) 2 KCCR 73 SN

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

Advocate : Vigneshwar S. Shastri, for the Appellant; N.S. Prasad, for Respondents-1 and 2 and Aravind Kumar, for Respondent-3, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Patil, J.—The petitioner, questioning the legality and validity of the order dated 24th April, 2000 bearing No. CSB-1(14)/93-VIG vide Annexure-P and order dated 18th August, 2000 bearing No. CSB-1(14)/93-VIG vide Annexure-Q passed by the first respondent-Appellate Authority, confirming the order passed by the second respondent-Disciplinary Authority dated 15th March, 2000 bearing No. CSB-1(14)/93-VIG vide Annexure-N dismissing the services of the petitioner and treating the period between 3rd December, 1993 to 3rd August, 1999 as a period of non-duty, has presented the instant writ petition. Further, the petitioner has sought for a direction, directing the respondents to reinstate the petitioner with all consequential benefits including payment of back wages from 1993.

2. On an earlier occasion, petitioner being aggrieved by the orders dated 3rd December, 1993 and dated 23rd April, 1994 passed by the Principal Secretary and the Chairman of the respondent-Central Silk Board ("Board" for brevity) had filed Writ Petition No. 2967 of 1995 and the writ petition filed by the petitioner had come up for consideration before this Court on 9th December, 1998. The writ

petition filed by the petitioner was allowed and the orders passed by respondents 1 and 2 therein (respondents 2 and 3 herein) were set aside with a direction to respondents to reinstate the petitioner in his original post. Further, liberty was reserved to the first respondent to conduct a de novo enquiry in accordance with the Rules and principles of natural justice and law laid down by the Apex Court and this Court in that regard.

3. Being aggrieved by the order dated 9th December, 1998 passed by the learned Single Judge of this Court in Writ Petition No. 2967 of 1995, the respondents 1 and 2 therein (respondents 2 and 3 herein) have filed an appeal in Writ Appeal No. 1181 of 1999 before the Division Bench of this Court. The said writ appeal had come up for consideration before this Court on 15th July, 1999 and the Division Bench of this Court, after hearing the Counsels for the parties therein and after going through the record, agreed with the view taken by the learned Single Judge with the only modification that, the respondent (petitioner herein) who was under suspension at the time when the order of dismissal from service was passed by the Disciplinary Authority shall continue in case the appellants (respondents 2 and 3 herein) decide to hold a de novo enquiry. Further, it was observed that, in case de novo enquiry is not initiated within four weeks from the date of the order, then the respondents herein were directed to reinstate the petitioner in service and were further directed to complete the de novo enquiry within six months from the date of receipt/production of the copy of the order. In case the enquiry is not completed within six months, then, the respondents are directed to reinstate the petitioner. After disposal of the writ appeal with directions referred above, a memorandum has been issued to the petitioner on 4th August, 1999 vide Annexure-D enclosing thereto Annexure-I to IV-Statement of Articles of Charges framed against the petitioner. After receipt of the said article of charges, the petitioner has filed his written statement by way of his defence on 16th August, 1999 vide Annexure-R1 produced by the Counsel for respondents along with the statement of objections. In addition to the said written statement, he has also filed additional written statement on 11th October, 1991 vide Annexure-E and immediately on 19th October, 1999 the petitioner has sent an application requesting the second respondent-Disciplinary Authority to drop the charges after consideration of written statement of defence dated 11th October, 1999 vide Annexure-F, After receipt of the said written statement, additional written statements and also the representations dated 16th August, 1999, 11th October, 1999 and 19th October, 1999 respectively, the same have been disposed of by the second respondent herein by his memorandum dated 27th October, 1999 vide Annexure-G. Thereafter, upon receipt of the said memorandum, the petitioner has sent a communication on 1st November, 1999 requesting the Disciplinary Authority to postpone the enquiry fixed on 3rd November, 1999 by twenty days since he is bedridden and suffering from typhoid fever, enclosing thereto the Medical Certificate issued by the Deputy Civil Surgeon, Government General Hospital, Guntur on 1st November, 1999. Again, he has sent one more communication dated 10th November, 1999 requesting the

Enquiry Officer to postpone the enquiry fixed on 24th November, 1999 along with a telegram and also a Medical Certificate issued by the Civil Assistant Surgeon, Government General Hospital, Guntur. In pursuance of these two communications, the Chairman of the Central Silk Board-Appellate Authority, has passed an order dated 30th November, 1999 vide Annexure-J, rejecting the request of the petitioner to change the Enquiry Officer and ordered that, the petitioner should co-operate with the Enquiry Officer to complete the enquiry within the specified time-limit fixed by the Division Bench of this Court. Thereafter, again, the petitioner sent one more communication dated 14th February, 2000 along with a Medical Certificate issued by the Associate Professor of Medicine and Physician, Government General Hospital, Guntur, stating that, he is suffering from the ailment hypertension with paralysis symptoms and the doctor has advised him to take rest for about 35 days from 14th February, 2000. Whenever the petitioner sought for extension of time, his request has been considered and date of enquiry was being adjourned from time to time. Thereafter, the Enquiry Officer has sent a memorandum dated 24th January, 2000 vide Annexure-R3 to the statement of objections filed by respondents, drawing his attention to office letter dated 21st January, 2000 and intimating the date, time and place of the enquiry. Further, it is also stated that, the inquiry proceedings will be continued on the subsequent days also for a period of two to three days and directed the petitioner to come prepared to attend and participate in the regular inquiry proceedings on the stipulated date along with his defence assistant without fail, otherwise the inquiry proceedings will be held ex parte and the same may please be noted, Thereafter, the Inquiry Officer sent a memorandum dated 5th February, 2000 vide Annexure-L informing the petitioner that, the schedule inquiry proceedings in his case was commenced on 31st January, 2000 and concluded on 2nd February, 2000 and observed that, despite serving the inquiry notice well in advance, the defence preferred to abstain from attending the inquiry proceedings, resulting in holding of inquiry as ex parte and enclosed thereto a copy of the additional prosecution Exhibits admitted during the inquiry proceedings for his reference. In spite of giving sufficient opportunity, the conduct of the petitioner shows that, even though he was well aware of the specific direction issued by the Division Bench of this Court to complete the enquiry within the stipulated period, has made every effort to protract the proceedings and drag on the enquiry and was not interested in co-operating with the enquiry proceedings. The Enquiry Officer after thorough evaluation of the oral and documentary evidence available on file and taking into consideration, the serious charges framed, has submitted his report dated 10th February, 2000. Immediately thereafter, a copy of the enquiry report has been sent to the petitioner. The Disciplinary Authority, after taking into consideration the report submitted by the Enquiry "Officer and other material available on record and after thorough evaluation of the entire material threadbare, has passed an order on 15th March, 2000 vide Annexure-N, dismissing the petitioner from service. Being aggrieved by the order passed by the second respondent-Disciplinary Authority, the petitioner has filed an appeal before the first respondent. The

Appellate Authority, after re-assessing the oral and documentary evidence and after going through the report submitted by the Investigating Officer/Enquiry Officer, the order passed by the Disciplinary Authority, after considering the direction issued by this Court and after thorough evaluation of the entire material available on file, has dismissed the appeal filed by the petitioner and confirmed the order passed by the Disciplinary Authority by his order dated 18th August, 2000 in No. CSB-1(14)/93-VIG vide Annexure-Q. Being aggrieved by the impugned orders passed by respondents 1 and 2 herein and the consequential directions, as stated above, the petitioner felt necessitated to present the instant writ petition.

4. The principal submission canvassed by the learned Counsel appearing for petitioner is that, both the authorities have committed an error of law, much less irregularity and the said orders are passed without giving sufficient opportunity to the petitioner. He submitted that, when the petitioner has requested the authorities to give personal hearing, the same has been rejected. Further, the learned Counsel for petitioner submitted that, the petitioner, due to serious ill-health, could not attend the enquiry continuously and to that aspect, he has also produced the Medical Certificates certified by doctors. In spite of these, the respondents have proceeded and passed the order contrary to the mandatory provisions of the Central Silk Board Act and Rules. Further, he submitted that, if the petitioner was given sufficient opportunity, he might have substantiated his case and succeeded before both the authorities. At this stage, he pointed out that, in the criminal proceedings initiated against the petitioner in C.C. No. 98 of 1994, after thorough trial the petitioner has been acquitted. This aspect of the matter has been completely overlooked by the authority at the time of considering the case of the petitioner. Further, he submitted that, the petitioner has given a detailed reply to substantiate his case in respect of each charge in detail and also placed before the respondents several judgments of the Hon'ble Supreme Court including the judgment in the case of Kashinath Dikshita Vs. Union of India (UOI) and Others, and in spite of these materials, the authorities have not considered his request and proceeded to pass the orders. Hence, the said orders are liable to vitiate. Further, with regard to giving personal hearing to the petitioner, he placed reliance on the judgment of the Supreme Court in the case of State of Madhya Pradesh v. Chintaman Sadashiva Waishampayan AIR 1961 SC 1623 and submitted that, the orders passed by respondents 1 and 2 cannot be sustained. Hence, they are liable to vitiate.

5. Per contra, the learned Standing Counsel appearing for respondents, inter alia, contended and substantiated the well-considered orders passed by both the authorities and submitted that the same are passed after going through the oral and documentary evidence and no error or illegality as such has been committed by respondents in passing the said orders. Further, he submitted that, when there is a specific direction issued by this Court to complete the de novo enquiry within six months from the date of receipt of the order/produced by the petitioner, the respondents, after giving sufficient opportunity to the petitioner to

have his say in the matter and by considering his request time and again for postponement of enquiry on three to four occasions and since the petitioner has not co-operated with the officers to complete the enquiry well in time, the authorities had no other option but to pass the impugned orders. The fact that, the petitioner did not want the enquiry to be proceeded with and did not co-operate with the enquiry has been explained in detail in paragraphs 3 to 6 of the statement of objections. Further, the learned Counsel appearing for respondents placed heavy reliance on the communication sent to the petitioner on 24th January, 2000 vide Annexure-R3, produced along with the statement of objections, drawing the petitioner's attention to office letter dated 21st January, 2000 and intimating the date, time and place of the enquiry. Further, it is also stated that, the inquiry proceedings will be continued on the subsequent days also for a period of two to three days and directed the petitioner to come prepared to attend and participate in the regular inquiry proceedings on the stipulated date along with his defence assistant without fail, otherwise the inquiry proceedings will be held ex parte and the same may please be noted. Further, he placed heavy reliance on the written communications sent by the petitioner to three witnesses namely Sri K.N. Eshwarappa, Sri Govinda Rao Kulkarni and Sri Narendra Singh, dated 1st December, 1999, 25th December, 1999 and 20th December, 1999 vide Annexures-R5 to R7 respectively, threatening them of criminal consequences, if they appear and give evidence against him. He further submitted that, the petitioner has even gone to the extent of saying that, he will file necessary defamatory suit for damages against one Sri K.N. Eshwarappa and threatened two others of prosecuting them if they appear before the Enquiry Officer. Further, the learned Counsel for respondents also drew my attention to the communication dated 23rd November, 1999 vide Annexure-R8 written by Sri K.N. Eshwarappa to the second respondent herein, stating that the petitioner has threatened him over phone two to three times telling that he will face severe consequences if he attends and tenders witness against him in the enquiry proceedings. Therefore, he submitted that, the conduct of the petitioner is not normal in nature. The petitioner has intentionally and deliberately intended to see that, the enquiry is not initiated within the stipulated time and has made all efforts to drag on the proceedings and not to complete the de novo enquiry as directed by the Division Bench of this Court. Further, the Disciplinary Authority and the Appellate Authority, after careful evaluation of the oral and documentary evidence, after taking into consideration all the material available on record and having regard to the magnitude and the grievous nature of the charges levelled against the petitioner, has rightly passed the order, dismissing the petitioner from the service of the Board.

6. Further, regarding the argument advanced by the learned Counsel for petitioner that, the petitioner was not given personal hearing, the learned Counsel appearing for respondents submitted that there is no substance or force in the submission of the learned Counsel appearing for petitioner and pointed out the order passed by the Appellate Authority-first respondent herein dated 18th

August, 2000 vide Annexure-Q and drew my attention to page 1 of the said order, wherein it has been specifically referred that, personal hearing has been afforded to the petitioner on 10th August, 2000 along with the defence assistant and the petitioner has appeared before the Appellate Authority on the said date along with his defence assistant and put forth his case. Therefore, he submitted that, the petitioner has intentionally and deliberately suppressed this aspect of the matter and at this stage, it is not open for the petitioner's Counsel to take the stand that, the petitioner is not given personal hearing. Hence, on the ground of suppression of material facts by the petitioner and in not approaching this Court with clean hands, the writ petition filed by the petitioner is liable to be rejected at the threshold by imposing exemplary costs against the petitioner.

7. Having heard the learned Counsel appearing for petitioner and the learned Counsel appearing for respondents, after thorough evaluation of the entire material available on record threadbare and after careful perusal of the orders passed by respondents 1 and 2, it emerges on the face of the said orders that, the authorities have not committed any error much less irregularity. The Disciplinary Authority, after thorough evaluation of the oral and documentary evidence and after discussing the matter in detail, has come to the conclusion that charges I, II and III that are proved against the petitioner in the de novo enquiry are extremely grave in nature and constitute serious misconduct on his part and thus he has failed to maintain absolute integrity, devotion to duty and has acted in a manner which is quite unbecoming of a Government Servant violating Rule 3(1)(i) to (iii) of the Central Civil Services (Conduct) Rules, 1964 and has specifically observed that, the misconducts committed by the petitioner are so grave that, he is not a fit person to be retained "in the Board's service and the ends of justice require that the major penalty of "dismissal from service which shall ordinarily be a disqualification for future employment under the Government" as provided under Rule 11(ix) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 be imposed on him and dismissed the petitioner from the services of the Board. Assailing the correctness of the said order passed by the second respondent-Disciplinary Authority, the petitioner has filed an appeal before the first respondent. The first respondent being the Appellate Authority has further re-assessed the oral and documentary evidence and after thorough evaluation of the entire material available on record and after giving personal hearing to the petitioner along with his defence assistant to put forth his case and after having discussing the enquiry report and the order passed by the Disciplinary Authority, by giving specific reasons and reference to the mandatory provisions of the Rules referred above, has confirmed the order passed by the Disciplinary Authority having regard to the entire history of the conduct and nature of duty rendered by the petitioner, on the ground that, petitioner has not made out any grounds. The Appellate Authority has given a specific finding that, "the right course of action on the part of the Disciplinary Authority on receipt of and acceptance of the Inquiry Report in a given case is to furnish its copy to the delinquent concerned asking him to submit his

representation on the findings contained in the report". And that had only been done in this case. It is highly unbelievable that the appellant who could serve notices to the prosecution witnesses seeking defamation charges etc., in his so-called "bedridden" period could not submit his representation on the Inquiry Report. Even within the extended time-limit granted by the Disciplinary Authority, the appellant had chosen not to submit any representation. Under such circumstances, the Disciplinary Authority who was bound by the Court orders to complete the de novo inquiry within the specified time-limit has rightly proceeded and completed the enquiry after careful evaluation of the material available on record and passed the order of dismissal from service. Accordingly, the Appellate Authority has come to the conclusion that, considering the gravity of the articles of charges that are proved against the petitioner in the de novo enquiry, the major penalty of "dismissal from service which shall ordinarily be a disqualification for future employment under the Government" imposed on the petitioner by the Disciplinary Authority is quite commensurate with the misconducts committed by him and that therefore, there are no good grounds whatsoever to interfere with the order passed by the Disciplinary Authority and has confirmed the penalty of dismissal from service. Thus, both the authorities, after thorough evaluation of the oral and documentary evidence on record, have recorded a finding of fact by giving specific finding and reasoning. Therefore, the question of this Court interfering in the concurrent finding of fact recorded by both the authorities is not justifiable in view of the well-settled law laid down by the Apex Court and this Court in host of judgments. Therefore, I do not find any justification or good grounds to interfere in the order passed by both the authorities below,

8. Further, with regard to personal hearing, it appears, the learned Counsel appearing for petitioner has relied upon the judgment of the Supreme Court purely on the instructions given by the petitioner. But, after careful reading of the order passed by the Appellate Authority, neither the petitioner nor his Counsel has taken such a ground and the reliance placed by the petitioner cannot be accepted for the simple reason that, in view of the specific reference made by the Appellate Authority in paragraph 3 of the order dated 18th August, 2000 it is referred that, the petitioner has been afforded a personal hearing in the case on 10th August, 2000 and permitted him to appear along with his defence assistant and accordingly, the petitioner has appeared before the Appellate Authority-first respondent herein on the said date along with his defence assistant and put forth his case. Therefore, the submission of the learned Counsel for petitioner that, the petitioner is not given personal hearing and the same has resulted in non-compliance of principles of natural justice, cannot be accepted. In spite of giving sufficient opportunity to the petitioner, he has intentionally and deliberately protracted the enquiry instead of co-operating and participating in pursuance of the direction issued by this Court to complete the de novo enquiry within the specific period. The petitioner was well aware of the consequence of not completing the enquiry within the stipulated time, which is reinstatement of

petitioner in service as per the directions of this Court. The petitioner being fully aware of this aspect of the matter, taking advantage of the time-limit stipulated, has dragged on the proceedings by asking for postponement of enquiry on one pretext on the other. However, the Disciplinary Authority, who is a well-qualified Officer, knowing fully well the implications/consequences of not, completing the enquiry within the specified time-limit and also coming to the conclusion that, the petitioner has intentionally and deliberately evaded to appear before the Enquiry Officer, seeking time by sending communications along with Medical Certificates, has discharged his duties as a responsible officer, Those certificates are in no way helpful to him and as a matter of fact, in pursuance of his request, time and again, matter has been adjourned by the authority and thereafter, a specific communication has also been sent to him to appear on 31st January, 2000 failing which the authority will proceed with the matter and decide the same on the basis of the material available on record.

9. Further, as per the settled law laid down by the Hon''ble Supreme Court in the case of Nagar Palika, Natar Vs. U.P. Public Services Tribunal, Lucknow and Others, it has been held that, the conclusion reached by the Enquiry Officer on the basis of the available material that the charges are proved, is not violative of principles of natural justice. Consequently, the Hon''ble Supreme Court has upheld the order of dismissal in the above referred case. Therefore, in view of the settled principles of law laid down by the Supreme Court in the above referred case, in my considered view, the submission of the learned Counsel for petitioner that, there is no compliance of natural justice, has no force and hence, the relief sought for by the petitioner is liable to be rejected on this ground also.

10. Having regard to the facts and circumstances of the case, as stated above, and taking into consideration the totality of the case on hand, I do not find any grounds or justification to interfere in the well-considered orders passed by both the authorities below.

11. For the foregoing reasons, the writ petition filed by the petitioner is dismissed.