(1989) 10 KAR CK 0023

In the Karnataka High Court

Case No : W.A. No. 232 of 1986

V. Srinivasa Rao APPELLANT

Vs

State of Karnataka RESPONDENT

Date of Decision : 18-10-1989

Acts Referred:
Karnataka Civil Services Rules, 1957 — Rule 12, 12 (1)

Citation : (1989) ILR (Kar) 3455 : (1990) 1 KarLJ 3

Hon'ble Judges : Rama Jois, Acting C.J.;Shyamasundar, J

Bench : Division Bench

Advocate : B. Nagesh Rao, for the Appellant; N.K. Gupta, Govt., for the Respondent

Final Decision : Allowed

Judgement

Rama Jois, Ag. C.J.

1. This appeal is presented by the appellant aggrieved by the order of the learned Single Judge dismissing his Writ Petition.

2. The facts of the case, in brief, are these:-

The appellant joined service in the Prisons Department of the State of Karnataka as Second Division Clerk in the year 1959. He was promoted as First Division Clerk in the year 1976 and was posted to work as Store Keeper in the Central Prison, Bellary. A Memo dated 2nd March 1981 was issued to the appellant, which reads:-

"Sub: Excess and shortages noticed in respect of raw materials and Manufactured articles as on 1-5-80 at the time of handing over charge by V. Srinivasa Rao F.D.C. to Sri C. Rameshan, F.D.C.

Ref: This Office Memo No. FCT/3882/80 dated 15-10-80.

2. Your reply dated 16-12-1980.

3.This Office Memo FCT/4320/80 dated 2-12-80.

4.This Office Memo No. 4875/80 dated 2-1-81.

5. Letter No. EST/251/80-81 dated 31-1-81 of the Superintendent, District Prison, Bijapur.

You, Sri V. Srinivasa Rao, F.D.S., District Prison, Bijapur, while working as Store Keeper, Central Prison, Bellary, during the period from June 1976 to May 1980 handing the manufactory stores (both raw materials and manufactured Articles) and also maintaining the Registers of raw materials and manufactured articles. You have handed over the charge of Raw materials and manufactured articles held in your custody on your transfer from Central Prison, Bellary, to District Prison, Bijapur, you have handed over the charge of raw materials & manufactured articles to your successor Sri G.C. Rameshan, F.D.C. It is observed that when the actual stock of raw materials and manufactured articles were compared with book balance as on 1-5-80, shortage worth of Rs. 10,293-20 and Rs. 9,245-42 in respect of raw ''materials and manufactured articles were noticed as on 1-5-80. Hence, it is proposed to recover the loss of Rs. 19,538-62 from your pay by following the procedure prescribed under Rule No. 12 of C.C. & A. Rules. The articles of charges, imputation of misconduct and documents relied upon are furnished vide Annexures I, II & III respectively.

You are therefore directed to submit your explanation as to why the said amount should not be recovered from your pay within 15 days from the date of receipt of this Memo failing which action will be taken to recover the amount as per Rules on the basis of available records.

You are permitted to look into the records and make copies thereof during office hours on any working day with prior permission of the Superintedent.

Sd/- I/c. Superintendent, Central Prison, Bellary.

ANNEXURE-I

Statement of Articles of Charge framed against Sri V. Srinivasa Rao, F.D.C., the then Store Keeper of Central Prison, Bellary:

Article-I: That you Sri V. Srinivasa Rao, F.D.C., District Prison, Bijapur, while working as the Store Keeper of Central Prison, Bellary, handling the manufactory stores (both raw materials and manufactured articles) from June 1976 to May 1980. You have handed over the charge of raw materials and manufactured articles held in your custody to your successor Sri G.C. Rameshan, F.D.C. on your transfer to District Prison, Bijapur on 1-5-80. It is observed that when the actual balance of raw materials and manufactured articles were compared with book balance as on 1-5-80 there were lot of variations in actual stock handed over by you to Sri G.C. Rameshan, F.D.C. Hence the shortage worth of Rs. 10,283-20 and Rs. 9,245-42 in respect of raw materials and manufactured articles were noticed as on 1-5-80. The said shortages have occurred due to your negligence, gross misconduct in maintaining proper accounts of the materials held in your custody. Moreover the shortages have occurred due to your slackness and lethargic attitude on your part in performing your legitimate duties. This action of yours warrants deterrent punishment besides recovery of the loss sustained to Government.

Sd/- I/c. Superintendent, Central Prison, Bellary.

ANNEXURE-II

Statement of imputation of misconduct in respect of recovery against Sri. V. Srinivasa Rao, F.D.C. the then Store Keeper, Central Prison, Bellary.

That you Sri V. Srinivasa Rao, F.D.C. District Prison, Bijapur, while working as Store Keeper, Central Prison, Bellary, handling the manufactory stores (both raw materials and manufactory articles) from June 1976 to May 1980. You have handed over the charge of raw materials and manufactured articles held in your custody to your successor Sri C.G. Rameshan, F.D.C. on your transfer to District Prison, Bijapur, as on 1-5-80. An excess and shortages have been prepared as on 1-5-80 showing the details of actual book balance of raw materials and manufactory articles as on 1-5-80 and actual quantity of raw materials and manufactory articles handed over by you to Sri G.C. Rameshan, F.D.C. as on 1-5-80 and also the floating stock of raw materials as per the stock register maintained by the work instructors were taken into account. It is observed that when the actual physical balance of some of raw materials such as screws, wire-nails, sunglass, fevicol paste etc. were found short as on 1-5-80 and also manufactured articles such as tables, chairs, hardsheets, towels etc. were found short when compared with the book balance as on 1-5-80. A list showing the actual quantity of raw materials and manufactured articles found short as on 1-5-80 along with their value have already been furnished to you under this Office Memo No. FCT/3852/80 dated 15-10-80. The said shortage in respect of raw materials and manufactured articles have been occurred due to your negligence, gross misconduct in maintaining proper accounts of materials held in your custody. Moreover being a responsible official you have failed in your duties to keep carefully the Government property held in your custody and due - to your slackness and lethargic attitude on your part in performing legitimate duties. The shortages in respect of raw materials and manufactured articles have been occurred. This action of your warrants deterrent punishment besides recovery of the loss sustained to Government.

Sd/- I/C. Superintendent, Central Prison, Bellary."

ANNEXURE - III

List of documents and name of witness on which the charges are proposed:

1. Excess and shortage statement of raw materials and manufactured articles as on 1-5-80 at the time of handing over charge by Sri V. Srinivasa Rao, F.D.C. to Sri G.C. Rameshan, F.D.C.

2. Charge list of raw materials and manufactured articles handed over to Sri V. Srinivasa Rao, F.D.C. to Sri G.C. Rameshan, F.D.C. as on 1-5-80.

3. The stock register of raw materials and manufactured articles for the year 1980-81.

4. This Office Memo No. FCT/3852/80 dated 15-10-80 issued to Sri V. Srinivasa Rao, F.D.C. along with a list showing the raw materials and manufactured articles found short along with their value as on 1-5-80.

5. Any other documents the delinquent Government Official would like to examine in his defence,

Sd/- I/c. Superintendent, Central Prison, Bellary."

The appellant gave his detailed reply on 16th June 1981 in respect of each item of charges, running to as many as 30 pages, as per Annexure-D. Thereafter, the In-charge Superintendent straightaway made an order on 3-8-1981, as per Annexure-E, imposing penalty of recovery of a sum of Rs. 16,066-42 from the appellant. It appears that that order was set aside by the Appellate Authority on the ground that the Incharge Superintendent had no authority to pass such an order. Thereafter, the regular Superintendent made a similar order, Annexure-G, on 18-9-1981, imposing the very same penalty on the appellant. Aggrieved by the said order dated 18-3-1981, the appellant preferred an appeal before the Inspector General of Prisons, Bangalore, who dismissed the same by his order dated 23-4-1984, Annexure-K. Challenging the orders Annexures G and K, the appellant filed Writ Petition No. 16902/84. The learned single Judge dismissed the Writ Petition on the ground that the penalty of recovery of loss caused to the Government was only a minor penalty and therefore issue of show cause notice and consideration of reply given thereto was sufficient compliance with Rule 12 of the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957, (hereinafter referred to as the Rules), and there was no infirmity in the disciplinary proceedings. Aggrieved by the order of the learned Single Judge, the appellant has presented this appeal.

3. The learned Counsel for the appellant contended that Rule 12 of the Rules which prescribes the procedure for imposing minor penalties enables the disciplinary authority to pass final orders after giving the delinquent a reasonable opportunity of making a representation or after holding an inquiry in terms of Sub-rules (3) to (23) of Rule 11 in a case in which the disciplinary authority is of the opinion that such inquiry is necessary. Relevant portion of Rule 12 of the Rules reads:

"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."

The learned Counsel submitted that the holding of an inquiry in accordance with Sub-rules (3) to (23) of Rule 11 of the Rules must depend upon the facts and circumstances of the case and not on the mere desire of the disciplinary authority to hold an inquiry or not. Elaborating the contention, the learned Counsel for the appellant submitted that in cases where the nature of the misconduct or an act of commission or omission on the part of the civil servant is such which does not call for holding of an inquiry such as misconduct by way of unauthorised absence or non-compliance with any directions issued, the concerned authority may give an opportunity to the civil servant to make a representation against the action proposed and on consideration of such representation the authority could proceed to impose a minor penalty, but in cases where the charge levelled against a civil servant is disputed and in the very nature of things it is not possible to record a finding of guilt without holding an inquiry in terms of Sub-rules (3) to (23) of Rule 11, it is obligatory on the part of the disciplinary authority to hold an inquiry for the reason that such cases cannot be decided on mere representations.

4. So far as the facts of this case is concerned, the learned Counsel for the appellant invited our attention to the various items of loss in respect of which the explanation of the appellant was called for and the reply furnished by the appellant. We shall refer to some of them:

(1) in respect of shortage of plywood, the explanation of the appellant was that he was not responsible for the same;

(2) in respect of screws his objection was that the audit party had not conducted the physical stock verification and therefore he could not be held responsible for that shortage;

(3) in respect of beeswab, the specific reply was that it was the Weaving Inspector who was responsible for this shortage;

(4) regarding shortage of polish, his reply was that there was no shortage at all;

(5) regarding shortage of turpentine, the reply was that there was possibility of evaporation and the exact cause for shortage could not be established;

(6) as regards fevicol shortage, the reply was that the Carpenter Inspector was in charge of fevicol and it was he who was required to explain the shortage;

(7) as regards sunglass, the appellant pointed out that there was no shortage at

all;

(8) regarding wire-nails he stated that he was not responsible for the shortage;

(9) regarding pencils, plain glasses, hinges and parcel pins, his reply was that the Smithy Inspector had not maintained the floating stock register and as such it was he who was responsible for the shortage;

(10) as regards shortage of firewood, the reply was that the appellant was not responsible for the said shortage;

(11) as regards M.S. Sheets, the reply was that it was the Smithy Inspector who was responsible for the shortage;

(12) in respect of certain other raw materials, the appellant stated that very often there was theft in the carpentry section in respect of spirit polish and there was evidence of hospitalisation of some prisoners for having consumed polish and all these contributed to the shortage;

(13) as regards colour cotton yarn, the reply was that it was with Weaving Inspector and he was responsible for the shortage;

(14) regarding G.C. Yarn, he stated that he was not responsible as there was difference in the floating stock and it was the Weaving Inspector who was responsible for this shortage;

(15) as regards manufactured articles like T.W. Tables etc., he specifically stated that Syed Ismail was responsible for the shortage;

(16) as regards teakwood miscellaneous articles, he stated that it was not included in the charge-list when he took over charge of the Stores.

The learned Counsel submitted that having regard to the nature of the replies furnished by the appellant in respect of each item of shortage it was impossible to fix the liability on the appellant unless a regular inquiry was held in which all the concerned persons were examined as witnesses and he was given an opportunity of cross-examining them, and that therefore the disciplinary authority ought to have held an inquiry as required under Rule 12(1)(b) of the Rules instead of proceeding under Rule 12(1)(a). He further submitted that though Rule 12(1)(b) states that the disciplinary authority should hold an inquiry if in its opinion holding of such inquiry is necessary, such an opinion has to be formed on a rational basis, and if the facts and circumstances of the case demand holding of an inquiry it is obligatory on the part of the disciplinary authority to hold an inquiry. In support of his submission the learned Counsel relied on the Judgment of the Kerala High Court in C.R. WARRIER v. STATE OF KERALA 1983(1) SLR 608. In the said case also the question for consideration was whether holding of an inquiry under Kerala CCA Rules before imposing a minor penalty was essential or not; the Court held that the charge levelled against the delinquent was such as could be established only after a detailed enquiry and therefore, though a minor penalty was imposed,'' the procedure prescribed for imposing major penalty ought to have been followed.

5. In our opinion, the contention urged by the learned Counsel for the appellant is well-founded. We respectfully agree with the view expressed by the Kerala High Court. We are also of the view that even in cases where a minor penalty is proposed to be imposed against a civil servant, if the nature of the charge or charges levelled against him are such that a finding of guilt could be recorded only after holding a regular inquiry in which oral and documentary evidence in support of the charge/s should be recorded and the delinquent should be given an opportunity of cross-examining the witnesses or explaining the documents, the holding of an inquiry as provided in Rule 12(1)(b) becomes mandatory and the disciplinary authority is bound to form an opinion that the holding of an inquiry is necessary and to hold the inquiry.

6. On the facts of this case, it is seen that the liability was sought to be fixed against the appellant in respect of shortage of various items of raw materials and the manufactured articles and the consequent loss caused to the Government, on the basis of an audit report. The appellant filed his detailed reply in which he disputed his liability. He also stated as to who were actually responsible for the shortage. In respect of some items, he specifically stated that those articles had not at all been handed over to him by his predecessor and therefore there was no question of appellant causing loss to the Government by the disappearance of those articles. In view of the reply furnished by the appellant to the show cause notice, it appears to us that unless a regular inquiry was held no finding of guilt could have been recorded. In our opinion, therefore, the finding recorded against the appellant by the disciplinary authority and confirmed by the Appellate Authority was violative of Rule 12(1)(b) read with Sub-rules (3) to (23) of Rule 11 of the Rules and also the principles of natural justice. In the result, we make the following order:-

The appeal is allowed. In reversal of the order of the learned Single Judge, we allow the Writ Petition and set aside the impugned orders of the disciplinary authority as well as the Appellate Authority (Annexures G and K) as also the Notice Annexure-J.