

(1998) 05 KAR CK 0017

In the Karnataka High Court

Case No : Writ Petition No. 21681 of 1990

Vishnu Hanamanthappa Bagalkoti

APPELLANT

Vs

Karnataka Electricity Board, Bangalore and Another

RESPONDENT

Date of Decision : 25-05-1998

Acts Referred:

Constitution of India, 1950 — Article 226, 311 (2)
Mysore Civil Services (Classification, Control and Appeal) Rules, 1957 — Rule 11 (4),
11 (5), 11 (6)

Citation : (1998) ILR (Kar) 2993 : (1998) 5 KarLJ 188

Hon'ble Judges : H.L. Dattu, J

Bench : Single Bench

Advocate : Sri Kumar for Sri Sri M. Narasimha Murthy, for the Appellant; Sri Subba Rao for Sri B.C. Prabhakar, for the Respondent

Judgement

1. This petition is preferred against the orders passed by the Appellate Authority dated 22-01-1991 in confirming the orders passed by the disciplinary authority dated 30-3-1986. By the said order, the disciplinary authority has imposed a punishment of reducing the pay of the petitioner to the lower stage in the time scale for a period of two years from the date of the order. To appreciate the case of the petitioner, a few facts requires to be stated.

2. Petitioner was working as an Assistant Accounts Officer in the Karnataka Electricity Board ("Board" for short). While working in the aforesaid post, petitioner was served with a charge memo dated 21-01-1985, containing allegations of misconduct said to have been committed by him as A.A.O. The Deputy Controller of Accounts (Enquiries) was appointed as a specially empowered authority as an Enquiry Officer to frame definite charges and to conduct enquiry against the petitioner as per rules by the disciplinary authority. The said Enquiry Officer had framed two charges against the petitioner. In the first charge it was alleged that the petitioner erased a word which was previously recorded in his service register and the same amounted to tampering of records of the Board. In the second charge it was alleged that the petitioner pasted one

attested copy of the caste certificate in his service register without obtaining the permission of the appropriate authorities. After obtaining the explanation from the delinquent, the Enquiry Officer held both the charges are proved against the petitioner. The matter was placed before the disciplinary authority as required under K.E.B. Rules. The disciplinary authority agreed with the findings of the Enquiry Officer and accordingly imposed the punishment of reduction to lower stage in time scale of pay for a period of two years by his order dated 30-03-1986. Aggrieved by this order, petitioner had filed an appeal before the Appellate Authority and the said appeal was rejected by the Appellate Authority by his order dated 22-01-1991. It is the correctness of these orders which are being questioned by the delinquent in this petition filed under Article 226 of the Constitution, being aggrieved by the same.

3. Sri Kumar, learned Counsel appearing for the petitioner strongly contends that the procedure for holding the enquiry adopted by the disciplinary authority in appointing the Enquiry Officer even before framing of charges against the Delinquent Officer is contrary to Rule 11 of the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957, as adopted by the Board. Therefore, the entire disciplinary enquiry proceedings are vitiated.

4. Per contra, Sri Subba Rao, learned Counsel appearing for respondent Board submits that since no prejudice has been caused to the delinquent because of the breach of provisions of Rule 11 of the Rules while initiating the domestic enquiry proceedings by the disciplinary authority, it cannot be said the entire enquiry proceedings are vitiated. In support of that contention, the learned Counsel relies upon the observations of this Court in the case of K.E.B. Vs. T.S. Venkatarangaiah, .

5. In my view the preliminary issue raised and canvassed by learned Counsel need not detain me for long since a Bench of this Court while negating an identical contention raised in T.S. Venkatarangaiah's case, supra, was pleased to observe as under:

"9. Having regard to the clear terms of sub-rules 1 to 4 of Rule 11, we are unable to accept the argument on behalf of the Board that there was no deviation therefrom. There can be no doubt that sub-rule (4) requires the disciplinary authority to await, for the period specified therein, the written statement of defence of the delinquent to the charge-sheet already served upon him. If a written statement is received within that period, the disciplinary authority may enquire into such of the charges as are not admitted therein. This does imply that the disciplinary authority must look into the reply to the charge-sheet, if received in time. Thereafter, the disciplinary authority may decide to hold the enquiry itself or through another agency such as a Board of Inquiry or an Inquiry Officer. In that the disciplinary authority proceeded to nominate an Inquiry Officer even prior to the framing of charges against the delinquent, the procedure set out in Rule 11 was infringed.

10. It was submitted on behalf of the Board that, in any event, no prejudice had been caused to the employee because he had denied the charge in his written-statement of defence. Thereafter, the Inquiry Officer had given him a full opportunity to substantiate his case in the inquiry proceedings. The employee had participated in the inquiry to the full extent. There was no allegation either before Inquiry Officer or the Appellate Authority or this Court that there had been any infringement of the principles of natural justice insofar as inquiry was concerned. The fact that the charges had been framed subsequent to the appointment of Inquiry Officer did not, of itself, lead to the conclusion that the disciplinary authority had already made up its mind about the guilt of the employee.

11. On behalf of the employee it was submitted that the appointment of the Inquiry Officer before the charge was framed and the written statement was received and considered rendered the inquiry proceedings infirm in law.

12. Reliance was placed upon the judgment of a learned Single Judge of this Court in *M.K. Nagaraja v State of Karnataka*. The learned Judge was dealing with the identical Rule 11 and he held that the appointment of an Inquiry Officer before the framing of the charges was in contravention of sub-rule (5) of Rule 11. This is indisputable. It was not, however, contended before the learned Judge that no prejudice had been caused to the delinquent in that case, as, indeed, it could not have been, because there were also other complaints.

13. We have no doubt that had the breach of provisions of Rule 11 led to any prejudice to the employee, the disciplinary inquiry and all proceedings consequent thereon would have had to be quashed. But, in the circumstances of this case, we feel that no prejudice whatsoever has been caused by reason of breach. In his written statement the employee denied the charge that was levelled against him. Even if the Inquiry Officer had not been appointed at that point of time, an inquiry would, therefore, have been called for and it was open to the disciplinary authority to delegate to an Inquiry Officer the power of holding such inquiry. The inquiry was held. The employee participated therein. He raised no objection thereto. There is no averment before us that there was any breach of the principles of natural justice during the course of the inquiry or that the employee was not afforded the fullest opportunity to defend himself. Having regard to the specific facts of this case, we are of the view that the breach of the rule was no more than a technicality that caused no prejudice to the employee".

6. In the instant case also neither in the pleadings nor at the time of hearing of the petition, the learned Counsel for petitioner is unable to demonstrate any prejudice much less serious prejudice caused to the Delinquent Officer in the enquiry proceedings in view of breach of provisions of Rule 11 of the Rules. In that view of the matter, accepting that there is breach of provisions of sub-rules (6) and (4) of Rule 11 of the Rules, since it was not caused any prejudice to the Delinquent Officer, it cannot be said that the domestic enquiry proceedings are vitiated and on this ground the proceedings cannot be quashed by this Court.

7. It was next contended that non-supply of the enquiry report and not issuing the notice seeking explanation by the disciplinary authority before accepting the findings of the Enquiry Officer and before imposing a major penalty is in violation of principles of natural justice and is in contravention of Article 311(2) of the Constitution. Therefore, the orders passed by the disciplinary authority is without authority of law and is inoperative and the penalty imposed is liable to be set aside.

7-A. The question whether the non-supply of Enquiry Officer's report and whether not issuing a show-cause notice seeking explanation as to the acceptance of the findings of the Enquiry Officer, vitiates the order of punishment and if so in what manner has been fully considered by the constitution bench of the Supreme Court in the case of Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., . In view of the law laid down by Apex Court in the aforesaid decision, it can safely be said that since the order of punishment in this case is earlier to the date of judgment in Union of India and others Vs. Mohd. Ramzan Khan, , it must be held that the non-supply of Enquiry Officer's report and non-issuing of show-cause notice by the disciplinary authority before accepting the findings of the Enquiry Officer does not vitiate the order of punishment imposed by the Disciplinary Authority.

8. Lastly the learned Counsel would contend that the charges levelled against the petitioner is wholly misconceived and the findings of the Enquiry Officer on those charges is not based on any evidence and punishment imposed based on perverse findings is impermissible and therefore the punishment imposed requires to be set aside. To appreciate this contention of the learned Counsel, it is necessary to refer to the charges alleged against the delinquent by the specially empowered authority in the charge-sheet dated 21-01-1985. According to them, the petitioner has erased a word which was previously recorded in his service register and secondly it was alleged that the petitioner pasted one attested copy of the caste certificate in the service register without obtaining the permission of the appropriate authorities to do so. The Board to prove the charges alleged in the charge memo had examined six witnesses and had marked nearly 25 documents. The Enquiry Officer in his lengthy report and the findings holds the Delinquent Officer guilty of the charges alleged in the charge memo. A reading of the findings of the Enquiry Officer does not give an impression on that the findings are not based on any evidence or is based on inadmissible evidence or there is an error of law apparent on the face of record. It is now well-settled that this Court under Article 226 of the Constitution is not an Appellate Authority while reviewing a question of fact. Therefore, this Court cannot review the evidence and reverse a finding of fact which is based on some cogent evidence. A bench of this Court in the case of Karnataka Agro Industries Corporation Limited v K. Vittal Das, was pleased to observe as under:

"It is now well-settled by catena of decisions that the ambit of enquiry in exercise of writ jurisdiction in respect of findings recorded in a Disciplinary Enquiry is very

limited. The writ Court is not sitting in appeal over the findings recorded by the disciplinary authority and interference is permitted only in cases where the findings are recorded without any evidence whatsoever or the findings is totally perverse. It is not permissible for the writ Court to analyse each of the charges and the findings and then hold that the charges are not established".

(emphasis supplied)

9. A reading of the findings of the Inquiry Officer makes it clear that the findings is based on evidence adduced by the parties to the lis. By no stretch of imagination it can be said that it is based on no evidence or inadmissible evidence or on evidence which is not legal. Therefore, it cannot be said that the findings of the Inquiry Officer is perverse and the same amounts to error apparent on the face of record. I am of the view that there is some evidence available on record to come to the conclusion that the Delinquent Officer is guilty of the charges alleged in the charge memo. Basing on such a finding, the Disciplinary Authority after concurring with the report and the findings of the Inquiry Officer has proceeded to impose the punishment. It is at this stage relevant to notice once again the observations made by bench of this Court in Karnataka Agro Industries Corporation's case, supra. The Court was pleased to observe:

"The Enquiry Officer as well as the disciplinary authority have relied upon the oral evidence as well as documents produced in the enquiry. It is not for the writ Court to examine whether the evidence is sufficient to bring home the charge. The sufficiency or acceptability of evidence is for the disciplinary authority and this Court under Article 226 of the Constitution can only enquire whether there is some evidence to reach that finding".

10. In view of all this it cannot be said that the findings of the Inquiry Officer is not based on evidence and therefore it cannot be said that the findings are perverse. Accordingly, the contention of the learned Counsel is rejected.

11. The result, therefore, is that the petition fails and is dismissed. In the facts and circumstances of the case, parties are directed to bear their own costs.