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Court : Karnataka

Decided On : Jul-20-1967

Reported in : (1968)IILLJ675Kant; (1967)2MysLJ360

Judge : A.R. Somnath Ayyar and ;M. Sadanandaswamy, JJ.

Acts : Mysore Civil Services (Classification, Control and Appeal) Rules - Rule 11(9) and 11(10)(1)

Appeal No. : Writ Petition No. 332 of 1965

Appellant : Ramachandrappa (T.)

Respondent : State of Mysore

Judgement :

Somnath Ayyar, J.

1. The petitioner before us was an Assistant Engineer in the district of Hassan when he was charged of the supervision of a tank-repair work. In a disciplinary proceeding which was commenced against him, eight charges were leveled against him. The inquiring authority which was not the disciplinary authority recorded a finding that charges 2 and 3 were proved that charges 1 and 4 were partly proved and that charges 5 to 8 were not proved. By an order made by the Government on 19 November, 1962, these findings of the inquiring authority were

accepted.

2. Under the provisions of rule 11(10)(1)(b) of the Mysore Civil Services (Classification, Control and Appeal) Rules, a notice was thereupon issued by Government calling upon the petitioner to show cause why the penalties enumerated in Cls. (iv) and (v) of rule 8 of the rules should not be imposed on him. On 15 July, 1963, the petitioner made a representation in writing against the imposition of any such punishment, and, by an order made by Government on 10 June, 1964 Government directed that one increment shall be withheld with cumulative effect. The findings recorded by Government on 19 November, 1962, were modified by the order made on 10 June, 1964. Whereas by the earlier order it was held that charges 2 and 3 were proved and that charges 1 and 4 were partly proved, what was decided on the second occasion was that charges 1 and 3 were not proved and that charges 2 and 4 were partially proved. The exoneration in respect of charges 5 to 8 which had been made by the inquiry authority remained undisturbed.

3. The first submission made on behalf of the petitioner by Sri Datar was that there was no compliance with the requirement of rule 11(9)(b) of the rules when Government recorded their preliminary findings on 19 November, 1962. The requirement of that sub-rule is that in case where the disciplinary authority is not the inquiring authority - and, it was so in this case - it is the duty of the disciplinary authority to consider the record of the inquiry and record its findings on each charge. That there was no consideration of the record of the inquiry when Government recorded their findings on 19 November, 1962, was the submission made by Sri Datar, and, it seems that this submission is substantial. It is the duty of the disciplinary authority in a case which is governed by rule 11(9)(b) to apply its mind to the material on the record to enable itself to record independent findings on each of the charges on which the inquiring authority recorded them. The only discussion by Government in the order made on 19 November, 1962, on the charges against the petitioner, reads :

'Finding against T. Ramachandrappa, Assistant Engineer. - The enquiry officer has in his report discussed elaborately the evidence of case. Of the eight charges

framed against the Assistant Engineer, Ramachandrappa, charges 2 and 3 are held as proved. Charges 1 and 4 are held as partly proved and the remaining charges, i.e., 5, 6, 7 and 8 are held as not proved, Government agree with the views of the enquiry officer and record their findings accordingly.'

4. It is clear from this extract from the order made by Government, that the first paragraph merely alludes to the findings recorded by the inquiring authority.

5. What is clear from what was stated by Government is, that what was considered by them was not the record of the inquiry but only the report of the inquiring authority. That surely is not sufficient compliance with Clause (b) of the rule 11(9). What Government should have done was to make an independent application of their mind to the material on record and to arrive at their own independent conclusions with respect to the charges brought against the Government servant. The requirement of the rule has for its purpose and independent consideration by the disciplinary authority of the evidence on record, since the findings recorded by an inquiring authority, which is not the disciplinary authority, would by itself be insufficient to justify the imposition of a punishment.

6. When a notice was issued under rule 11(10)(1)(b) consequent upon the preliminary findings recorded by Government, the petitioner, as already observed, submitted his representation. It was after this representation was submitted that the impugned order was made by the Government on 10 June, 1964. We are not concerned with the other charges since the only charges of which the petitioner was found guilty are charges 2 and 4. Even in respect of these two charges, the petitioner was found partly guilty of those charges.

7. Sri Datar, in our opinion, is right in making the criticism that the finding in respect of charges 2 in no finding on the cases of which any punishment could be imposed. In respect of that charges what was stated by Government reads :

'Charges 2 against the accused officer relates to bad execution of work in Semanahalli-Balasekere tank repairs : Government are not inclined to accept fully the explanation given by T. Ramachandrappa with reference to this charge and held that charge 2 stands proved partially.'

8. Charge 2 which was made against the petitioner was a highly involved and cumbersome charge and reads :

'He, while working as Assistant Engineer, Belur subdivision, in 1958, being responsible for proper check and supervision of the above tank-repair works, knowing or having reasons to believe that jungle-clearing work by removing roots and proper consolidation of earthwork to bund had not been done (even though these work had to be done as per sectioned estimate), passed on bad execution of this work and caused payment to the contractor and so he was charged as being negligent and irresponsible in his duties in allowing bad execution of work and held liable for grave misconduct.'

9. The language of this very complicated charge is extremely awkward. Under rule 11(10)(iii), Government who were the disciplinary authority were under a duty to consider the representation made by the petitioner and then to proceed to determine what penalty should be imposed on him. Government did proceed to consider the representation with respect to charge 2 as disclosed by the extract from the impugned order made above, although, it was not stated in clear terms which part of the 'explanation' as it was called was accepted and which was not. At the stage, when an order has to be passed under rule 11(10)(iii) after the consideration of the representation of the Government servant, it is the duty of the disciplinary authority to focus attention on the charge and on the representation so that it may enable itself to reach a proper conclusion as to which part and which not, where the charge consists of more than one part. But Government did not, in the course of their order, state which part of the cumbersome charge 2 was proved and which part of it was not established. The omission to state with precision which part of the charge was established, makes the finding defective, since the finding recorded in the obscure way invites the criticism that there was no application of the mind of the disciplinary authority to the relevant factors, including the representation.

10. So, what emerges from the discussion so far made, is, that the finding in respect of charge 2 which was recorded on the first occasion under rule 11(9)(b), was not preceded by compliance with the provisions of that clause while the

finding recorded on the second occasion is defective for obscurity. So, no punishment on the cases of a finding recorded in that way could be imposed.

11. What we should now proceed to consider, is the finding with respect to charge 4. Charge 4 was as involved as the second, and, it reads :

'He, while working as Assistant Engineer, Belur subdivision, during 1958 knowing that original works cannot be undertaken without proper sanctioned estimates, misrepresented to the superior officer, by calling an original repair works as 'making good the damages to Magalkatte-Herohalli tank ' and got the work executed without proper authority and was, therefore, charged for undertaking and executing an original work without proper authority and sanction by misrepresenting to superior officers thereby misusing his official position and rendering himself liable for grave misconduct.'

12. The finding of the inquiring authority on this charge was that the charge of misrepresentation and misuse of power was not established, and, with that finding Government agreed on 19 November 1952 although concurrence in that finding was not proceeded by an independent discussion of the material on record. The inquiry authority was however of the opinion that the other part of the charges which according to it spoke of the execution of a work without proper authority and sanction was established, and, that finding elicited the concurrence of Government.

13. But, here again, that concurrence was made without the independent application of the mind of Government to the record of the inquiry which is imperative under rule 11(9)(b).

14. But when the impugned order was made there was some discussion of that charge, and, that discussion reads :

'Charge 4 relates to exceeding the powers and misleading superior by the accused officer; Government find that this charge is proved to the extent that the Assistant Engineer, T. Ramachandrappa, had exceeded his powers in executing the work, i.e., as far as the earthwork to the bunds concerned without a sanctioned estimate.

It is accordingly held that charge 4 is partly proved.'

15. There are two reasons why we should reach the conclusion that the imposition of the punishment on the basis of this finding was not possible. The first is that the imposition of the punishment was not proceeded by compliance with rule 11(10)(iii) which directs the consideration of the representation of the Government servant made in response to the notice issued under Clause (i) of that sub-rule. As already observed, in response to that notice issued under Clause (i) of sub-rule (10), the petitioner made his representation on 15 July, 1968 with respect to each of the charges. There was a sufficiently long representation with respect to charge 4 and that representation was that he had not exceeded his authority and that the instructions which were given by him to a sub-overseer had been taken advantage of by the contractor who was examined as P.W. 8 to embark upon the construction which was referred to in the charge.

16. Sri Datar pointed out that the Executive Engineer, P.W. 19, who was examined by the inquiring authority, stated in two parts of his evidence, that, to that work so executed, he sanctioned his approval and the inquiring authority was not sure whether that approval had been accorded before or after the estimates were submitted. It is not for us to discuss the evidence given by P. W. 19 or its effect. But what we should point out is that if it is in the context of this evidence given by one of the witnesses examined in support of the charger, that the petitioner asserted in his representation that he was act responsible for the commencement of the construction even before it was sanctioned, it became the duty of the disciplinary authority to consider that representation under rule 11(10)(iii) and state whether the explanation which it is corporates, is accepted or not. That was not done by Government when they discussed charge 4 although they expressly referred to that representation when charges 1 and 2 were discussed. If in the discussion of charges 1 and 2 Government expressly stated that they had taken into consideration the representation of the petitioner and if nothing was stated about such consideration in respect of charge 4, it would be reasonable to say that is the consideration of charge 4, the representation was not taken into consideration. The imposition of the penalty on the basis of charge 4 without a consideration of the representation which is mandatory under rule 11(10)(iii) thus

become unsupportable. We do not accede to the argument advanced by the Government Pleader that since the representation was a comprehensive representation concerning all the charges, we should presume that that representation was taken into consideration even with respect to charge 4. That presumption is unavailable especially since the representation which was referred to in respect of charges 1 and 2 was not so referred to or even mentioned during the discussion of charge 4.

17. What we have said so far would be enough to displace the punishment imposed on the basis of charges 2 and 4, which were according to Government, partly proved.

18. There is also one other reason why we should say that the finding that charge 4 was partly proved, cannot constitute the foundation of a punishment. It will be seen from that charge which we have already reproduced that that charge was a single and indivisible charge by which the petitioner was accused of having exceeded his authority by misrepresentation and misuse of his official position. The essence of the charges was a charge of misrepresentation to his official superiors and the finding of both the inquiry authority and of Government was that there was no such misrepresentation or misuse of his official position. The charge stated that it was the misrepresentation and misuse of official position in that way that constituted 'grave misconduct.' The charge did not consist of two parts as suggested by Sri Vasudeva Reddi or as understood by Government in the order by which they imposed the penalty. There was no independent and separate charge by which the petitioner was accused of having exceeded his authority in proceeding with a construction for which no sanction had been obtained. The assertion that there was a distinct charge to that effect is negated by the language of the charge which contains the following words :

'. . . and was, therefore, charged for undertaking and executing an original work without proper authority and sanction by misrepresenting to superior officers thereby misusing his official position and rendering himself liable for grave misconduct.'

19. The accusation, therefore, was that there was a misrepresentation which involved misuse of official position by which the petitioner enabled himself to execute an original work without proper authority and sanction. The language of the charge makes it clear that the misconduct with which the petitioner was charged, was, an act of misrepresentation which involved misuse of official power. But, if the charge that there was misrepresentation failed before the inquiring authority whose finding on that matter was accepted by Government, the whole charge falls to the ground by reason of the fact that the basic ingredient of the charge was held not established. It was, therefore, not possible for the disciplinary authority after the exoneration of the petitioner on the charge of misrepresentation, to proceed to impose a punishment on the basis of the other ingredient of the charge which was after all only an ingredient and not an independent or separate charge.

20. This writ petition, therefore, succeeds and we set aside the punishment imposed on the petitioner.

21. No costs.

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