

IN THE HIGH COURT OF KARNATAKA
CIRCUIT BENCH AT DHARWAD

DATED THIS THE 5TH DAY OF NOVEMBER 2012

PRESENT

THE HON'BLE MR. JUSTICE RAM MOHAN REDDY

AND

THE HON'BLE MR. JUSTICE B.MANOHAR

WP No.62030 OF 2012 (S - DE)

BETWEEN:

1. PRAKASH
S/O. BABURAO OSEKAR
AGE: 47 YEARS, WORKING
AS I/C. JUNIOR ENGINEER (Ele)
KPTCL 110 KV MUSS, VADGAON,
BELGAUM. PETITIONER

(By Sri RAVI L PATIL, Sr.ADV. FOR Sri V K NAIK, ADV)

AND

1. KARNATAKA LOKAYUKTA
REPRESENTED BY ITS REGISTRAR
LOKAYUKTA, M.S.BUILDING,
BANGALORE.
2. KPTCL, CAUVERY BHAVAN
BANGALORE, REPTED. BY
ITS DIRECTOR, ADMINISTRATION
& HUMAN RECOURSES
3. THE EXECUTIVE ENGINEER (ELE)
TL & SS DIVISION, KPTCL NEHUR
NAGAR, BELGAUM.

4. THE UPALOKAYUKTA
MULTI STORIED BUILDING,
DR. AMBEDKAR VEEDHI,
BANGALORE. RESPONDENTS

(By Sri JAGADISH PATIL, ADV. FOR R1
Sri B S KAMATE, ADV. FOR R2 & R3)

THIS WP IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE ORDER OF THE 2nd RESPONDENT DATED:19/03/2012 ANNEXURE-K AND QUASH THE RECOMMENDATION OF RESPONDENT NO.4 UPALOKAYUKTA DATED:27/11/2010 ANNEXURE-D.

This W.P coming on for hearing this day, RAM MOHAN REDDY, J, passed the following:

ORDER

Petitioner while serving as a Junior Engineer in the respondent/KPTCL was subjected to a departmental enquiry by the 4th respondent/Upalokayukta under the Karnataka Lokayukta Act, 1984 for acts of misconduct, which when enquired into led to a report, which the petitioner questioned in WP No.3597/2003. The dismissal of the petition when carried in WA No.5091/2008, was allowed, and as a consequence, the writ petition was allowed, and the finding of the Enquiry Officer quashed and the proceeding remanded for fresh consideration after

extending an opportunity to the petitioner to cross-examine the IO. On remand, in deference to the order of this Court, the petitioner was extended a reasonable opportunity of hearing and the Enquiry Officer by report dated 5.8.2010 Annexure-B returned a finding that the charge levelled against the petitioner was not proved. The 4th respondent/Upalokayukta disagreed with the finding of the Enquiry Officer and by communication dated 27.11.2010 Annexure-D held the charge proved and recommended imposition of the penalty of compulsory retirement, following which, the KPTCL by order dated 28.3.2012 Annexure-K imposed the punishment of compulsory retirement w.e.f. 28.3.2012. Hence, this writ petition.

2. Heard the learned counsel for the parties. Perused the pleadings and examined the communication Annexure-D and the order Annexure-K. We find considerable force in the submission of Sri R L Patil, learned counsel for the petitioner that the 4th respondent/Upalokayukta without extending an opportunity of hearing by way of a second

show cause notice, disagreed with the finding of the Enquiry Officer to hold the petitioner guilty of the charge. According to the learned counsel, principle of natural justice requires that the 4th respondent/Upalokayukta to issue to the petitioner a second show cause notice indicating the tentative reasons for disagreement with the findings of the Enquiry Officer and call upon him to submit an explanation, an opportunity to persuade the 4th respondent/Upalokayukta to agree with the finding of the Enquiry Officer. Learned counsel places reliance upon the following reported opinions:

1. H R Ravindranath -vs- Syndicate Bank represented by its General Manager (ILR 2005 Karnataka 2350)
 2. Punjab National Bank and others -vs- Kunj Behari Misra (AIR 1998 SC 2713)
 3. State Bank of Patiala and others -vs- S K Sharma (AIR 1996 SC 1669)
 4. State Bank of India, Staff Association and another -vs- State Bank of India and others (AIR 1996 SC 1685)
3. Sri Jagadish Patil, learned counsel for the 4th respondent/Upalokayukta seeks to sustain the impugned communication as being well merited, fully justified and

not calling for interference. Sri B S Kamate, learned counsel for respondents No.2 and 3 submits that following impugned communication Annexure-D, the competent Authority, none other than the Disciplinary Authority/employer, on an independent assessment of the facts, circumstances and evidence on record and exercising a jurisdiction vested in it under the Karnataka Electricity Board Employees Classification, Disciplinary Control Regulations, 1987, (for short 'Regulations') imposed the punishment of compulsory retirement on the petitioner by order Annexure-K, which does not call for interference.

4. In the circumstances, the following question arises for consideration:

“Whether in view of the finding in the departmental enquiry that the charge against the petitioner was not proved, the 4th respondent/Upalokayukta was justified in recording an adverse finding to hold that the charge was proved, by communication Annexure-D without notice to the petitioner?”

5. The law relating to “natural justice” and adherence of principle of natural justice as recognized by all civilized states, being of supreme importance when a quasi judicial body embarks on determining the dispute between the parties or any administrative action involving civil consequence is in issue, is well settled by a catena of decisions. It is useful to notice that the first and foremost principles is what is commonly known as *audi alterem partem* Rules which says that one should not be condemned/unheard. Therefore, notice being the first limb of the principles, must be precise unambiguous and apprise the party to determine the case that he has to meet and the time given for him to putforward his explanation/representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed is vitiated. Thus it is essential that the party should be put on notice of the case before any adverse order is passed against him. This is one most important principle of natural justice while it is an approved Rule of fair play. It is unnecessary to dilate further on the principles of natural justice. Suffice it to state that in the

departmental enquiry, petitioner was exonerated of the charge by assigning reasons, which if disagreed by the 4th respondent/Upalokayukta, the principles of natural justice would come into play entitling the petitioner to a show cause notice, so as to put forth his say and persuade the 4th respondent/Upalokayuka to agree with the finding of the Enquiry Officer. The failure to issue the show cause notice this petition deserves to be allowed.

In the result, this petition is allowed.

The communication dated 27.11.2010 Annexure-D of the 4th respondent/Upalokayukta in the circumstances is read down as a show cause notice containing tentative reasons or grounds to differ with the finding of the Enquiry Officer entitling the petitioner to file an explanation within three weeks from today whereafterwards the 4th respondent/Upalokayuta to consider the same and pass appropriate orders and submit a report in compliance with Section 12 of the Karnataka Lokayukta Act, 1984. Reserving liberty to the Disciplinary Authority to thereafter take action under the 'Regulations', the order dated

28.3.2012 Annexure-K of KPTCL imposing the punishment of compulsory retirement on the petitioner stands quashed.

SD/-
JUDGE

SD/-
JUDGE

Bkm.

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