

(1987) 01 KAT CK 0001

Karnataka Administrative Tribunal

Case No: None

Shivaswamy

APPELLANT

Vs

Dy. Commissioner, Mysore and
Others

RESPONDENT

Date of Decision: Jan. 12, 1987

Acts Referred:

- Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957 - Rule 11(3)

Citation: (1987) 1 KarLJ 17

Hon'ble Judges: K. R. Chamayya, J.M.; R. A. Naik, Vice Chairman

Judgement

@JUDGMENTTAG-ORDER

R.A. Naik, Vice-Chairman-The applicant, who was appointed as a Village Accountant in Mysore District by respondent-1, i.e., the Deputy Commissioner, Mysore District, Mysore, in his Order No. VOC 179/1972-73 dated 1-2-1973, reported for duty the Tahsildar, K.R. Nagar Taluk, on 15-2-1973, and, on 21-2-1973, he received a memo, posting him as Village Accountant, Adaganahalli. He contends that he suddenly fell ill and was confined to bed for two to three months, regarding which he had made reports to the Tahsildar requesting for leave on medical grounds, accompanied by a medical certificate, which was sent by him to the Tahsildar by registered post acknowledgement due. However, when he recovered from his illness and reported for duty to the Tahsildar, K.R. Nagar, again, he come to know that some other official had already been posted in his place and, consequently, he was not taken on duty. He contends that he, therefore, submitted a representation dated 23-4-1973 to the Tahsildar, K.R. Nagar Taluk, requesting him to take him on duty, (Vide: Annexure "A"), which representation was followed by another representation addressed by the applicant to the Deputy Commissioner, Mysore District, Mysore, on 10-5-1973, (Vide: Annexure "B"). He submits that a reference to his representation is made in the Official Memorandum No. VOC 288/72-73 dated 27-5-1973, (Vide: Annexure "C"), issued by the Deputy Commissioner, Mysore District, Mysore, ordering several

postings and transfers of Village Accountants; but there is no order on or reference to the representation in the body of the said Official Memorandum. Again, the applicant made a representation dated 13-8-1973, (Vide: Annexure "D"), bringing to the notice of the Deputy Commissioner that in spite of several representations he had not been given any posting. These representations were followed by two more representations dated 3-1-1974 and 23-9-1974, respectively, which are at Annexures "E" & "F".

In spite of this, on some report made, apparently by the Tahsildar, that he had failed to report to duty and that he has been a "deserter", a memo was issued by respondent-1, i.e., the Deputy Commissioner, Mysore District, Mysore, in his No. A6 VOC 177/73-74 dated 24/25-2-1975, (Vide: Annexure C), stating that the applicant had contravened the provisions of Rule 108 of the Karnataka Civil Services Rules and has thus rendered himself liable for disciplinary action under Rule 11 of the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957, (hereinafter referred to as "the Rules"), and ordering respondent-2, i.e., the Assistant Commissioner, Hunsur Sub-Division, Hunsur, who was appointed as the Inquiry Officer, to conduct regular inquiry against the applicant in this behalf after imputing the charges against the applicant and after giving adequate opportunity to him to defend himself. Respondent-2, thereafter, issued the notice dated 17-3-1975, (Annexure "H"), asking the applicant to show cause why he should not be dismissed or removed from service as per Rule 108 of the Karnataka Civil Services Rules for the reasons stated in the first para of the show cause notice.

The applicant gave a reply to this show cause notice and he was called upon to appear before the Inquiry Officer; respondent-2, on 25-4-1975, for "inquiry". Thereafter, respondent-2 sent up his inquiry report in his No. VOC PR 122/74-75 dated 9-5-1975, (Annexure "M"), to respondent-1 who issued a show cause notice on 22-7-1975, (Annexure "L"), to the applicant on the basis of the findings submitted to him by respondent 2, calling upon the applicant to furnish his explanation as to why he should not be removed from service, in view of the gravity of the offence and the unauthorised absence, which have been held proved against him. The final dismissal order was issued by respondent 1 in his No. A6 VOC 177/73-74 dated 24-4-1978, (Annexure "N-1"). The applicant's appeal against this order, made to the Divisional Commissioner, Mysore Division, Mysore, was also dismissed. The applicant has, therefore, come before us challenging the order of dismissal for the reasons stated above.

2. When the case came up for hearing, neither the applicant nor his Counsel was present. The learned Government Advocate, representing the respondents, was unable to defend the action of the respondents in view of the fact that no formal charges have been framed against the applicant as required under the procedure laid down in Rule 11 of the Rules.

3. Rule 11 of the Rules, which is required to be followed while imposing major penalties, very clearly lays down in sub-rule (3) as follows:

"Where it is proposed to hold an inquiry against a Government servant under this rule and rule 11-A, the Disciplinary Authority shall draw up or cause to be drawn up.-

(i) the substance of the imputations of misconduct or misbehaviour into definite and distinct articles of charge;

(ii) a statement of the imputations of misconduct or misconduct in support of each article of charge, which shall contain,- (a) a statement of all relevant facts including any admission or confession made by the Government servant;

(b) a list of documents by which, and list of witnesses by whom, the articles of charge are proposed to be sustained."

4. No such substance of imputations of misconduct nor any statement of definite and distinct article of charge has been drawn against the applicant in this case. Though the orders of the Deputy Commissioner (respondent-1), the Assistant Commissioner (respondent-2) and the Divisional Commissioner (respondent-3) are very detailed, the inquiry itself is wholly vitiated in the absence of proper articles of charges duly supported by statement of imputations of misconduct on which such charges would be based. It follows that neither the statement of relevant facts, including any admissions or confessions made by the applicant, nor a list of documents by which and list of witnesses by whom the articles of charges are supposed to be sustained are available in this case.

5. The Inquiry Officer (respondent-2) is obviously wholly unaware of the proper procedure to be followed in such cases and though the order of respondents very clearly directed him to follow the procedure laid down under Rule 11 of the Rules and to frame charges, etc., he has completely ignored the said instructions as well as the mandatory requirements which are to be followed while conducting such inquiries and has proceeded straightway to issue the show cause notice at Annexure "H" to the applicant and proceeded with the inquiry. Though his proceedings, (Vide: Annexure "M"), are very detailed and go into various facts of the alleged incidents and the failure on the applicant and questions most of his assertions in the light of the information the Inquiry Officer had, based on the reports received by him from the Tahsildar, the Village Panchayat Chairman and others, there is no indication anywhere that these officials were examined duly allowing the applicant to cross-examine them so as to establish the truth of either of the versions. Strangely, neither the Deputy Commissioner nor the Divisional Commissioner has any comment on the utter failure of the Inquiry Officer to follow the mandatory procedure of Rule 11 of the Rules even though they also have passed detailed orders while either awarding the punishment or rejecting the applicant's appeal as the case may be.

6. In view of the Inquiry Officer's failure to follow the prescribed procedure required to be followed while imposing major penalties, we hold that the inquiry is vitiated. We have, therefore, no hesitation in quashing the orders at Annexures "N-1" & "N-3" and concluding that the applicant is entitled to be taken back in service.

7. The next question is about payment of pay and allowances to which the applicant should be held entitled till the date of his reinstatement. The Deputy Commission, in Annexure "C" has clearly stated that the applicant did not take charge of the post of Village Accountant, Adaganahalli, to which village he was posted. In Annexure "A", "B" and "D", which are representations sent by the applicant, he has clearly admitted that he "could not go on duty regularly" as Village Accountant of Adaganahalli and that now he intends "to go on regular appointment as Village Accountant." The imputation made in the show cause notices at Annexure "H" and "L" are that he failed to take charge as Village Accountant, Adaganahalli. In his statement at Annexure "K", the applicant has clearly admitted that he did not take charge of the post of Village Accountant, Adaganahalli, The relevant portion of his statement reads thus:

"I Was appointed as a Village Accountant of Adagnahalii Village Panchayat, K.R. Nagar Taluk, by the Deputy Commissioner, Mysore District, in his order dated 1-2-1973. On receipt of the said order, I went to Taluk Office, K.R. Nagar, and reported for duty before the Tahsildar, on 15-2-1973. The Tahsildar, in his Village Accounts pertaining to Adaganahalli Panchayat from one Sri Ramaswamy, who was in additional charge in Adaganahalli Panchayat. I received the abovesaid Official Memorandum on 23-2-1973 which I acknowledged. I see the signature signed by me on 23-2-73 on the Official Memorandum of the Tahsildar, which is shown to me to-day, and which is true. On receipt of the said O.M. I went to Adaganahalli village on 23-2-75 soon after receipt of the O.M. of the Tahsildar cited above. I contacted the Village Accountant, Sri Ramaswamy, and the Revenue Inspector, one Sri Nanjaiah, and requested them to hand over the charge of the village accounts of Aadaganahalli Village Panchayat. The Revenue Inspector one Sri Nanjaiah and the Village Accountant Sri Ramaswamy informed me to take charge of the records after the Huzur Jamabandi was over. I did not take charge of the Panchayat records on that day. I returned the same day to K.R. Nagar. I did not see Panchayat Chairman on 23-2-73 when I visited Aadaganahalli. I stayed at K.R. Nagar till 28-2-73. In the mean time I contacted the Tahsildar and appraised the position about the Revenue Inspector's instructions in not giving records. The Tahsildar informed me to take charge of the village accounts as per the instructions of the Revenue Inspector, after the Huzur Jamabandi was over as I am new to the work. I got sick on 27-2-73 and immediately I left K.R. Nagar and came back to my village in Nanjangud Taluk."

It is thus clear that the applicant was no doubt appointed as Village Accountant but he has not taken charge of any post of Village Accountant upto this date. In pursuance to the appointment order, he went to the Tahsildar, K.R. Nagar, obtained

posting orders from him and went to Adaganahalli village but did not take charge of the post. He has, therefore, not functioned as Village Accountant so far even for a day.

According to Rule 221 of the Karnataka Civil Services Rules, service of a Government servant starts from the date on which he assumes charge of a post. It reads thus:

"In cases other than those referred to in Rule 220, unless it be otherwise provided by special rule or contract, the service of every Government servant begins when he takes charge of the office to which he is first appointed."

Rule 23 of the Karnataka Civil Services Rules is also relevant for the purpose. It reads thus:

"Unless it be otherwise provided by special rule or contract the pay of a Government servant begins when he takes charge of the appointment in respect of which it is earned. If the charge is transferred afternoon, the transfer does not affect allowances until the next day. Twelve Noon will be treated as Forenoon."

Rule 220 of the Karnataka Civil Services Rules deals with service prior to attaining the age of 18 years. Hence, it is not relevant to this case.

8. There is no special rule or contract governing the appointment of the applicant as Village Accountant. Admittedly, the applicant has not taken charge as Village Accountant of Adaganahalli to which office he was appointed and posted. Hence, it is clear that the service of the applicant has not yet commenced. It may be said that the applicant's appointment has not yet become complete. In other words, he has not yet commenced his service as a Government servant. He will be entitled to salary and allowances only from the date he commences his service by taking charge of the post or office to which he was appointed and posted. Hence, he is not entitled to any pay and allowances till he assumes charge of a post of Village Accountant to which he would be posted in pursuance to this order.

9. While allowing the application, we, therefore, direct the respondents to give a posting to the applicant within a month from the date of receipt of this order.

No costs.

Application is Allowed