

**BEFORE THE PRINCIPAL SECRETARY TO GOVERNMENT
EDUCATION DEPARTMENT (HIGHER EDUCATION)
BANGALORE, DATED:25-05-2015
APPEAL NO.11 OF 2014
(File No.ED 166 TPE 2014)**

Between:

B.V.JAYANTH

R/o.171, Karthika Rathnagiri Bore,
Chikmagalore

..... Appellant

And

1. State of Karnataka
Represented by its Secretary
Dept. of Personnel and Administrative Reforms
3rd Floor, Podium Block, Visveshwaraiah Tower
Dr.Ambedkar Veedhi, Bangalore
2. The Secretary to Government
Education Department
(Technical Education) M.S.Buidling
Bangalore
3. The Director of Technical Education
Bagalore
4. The Principal
DACG Government Polytechnic
Chikmagalur.
5. The Principal of Technical Education
Government Smt.L.V. Government Polytechnic,
Hassan

..... Respondents

The above appeal has been filed by the Appellant under Rule 18 of the Karnataka Civil Service (CC & A) Rules, 1957 with a prayer to set-aside the Order No.DTE 08 DEQ(1) 2011 dt.25.2.2014 passed by the 3rd Respondent dismissing the appellant from service and to direct the Respondent No.3 to reinstate the appellant with continuity of service/without break in service of whatsoever effect from the date of termination on the basis of the order dt.25.2.2014.

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25/6/15

2. The matter has earlier been heard on 23.12.2014 and ordered that the appeal be filed before the Disciplinary Authority and then transmit to this authority. Accordingly, he has filed an application before the Director of Technical Education on 24.12.2014 requesting him to receive and transmit the same to the competent authority.

3. The Director of Technical Education in his letter dt.16.1.2015 has forwarded the appeal filed by the Appellant stating that the Appellate Authority is the Government as per KCS (CCA) Rules. The case has been heard on 1.4.2015 and posted for orders.

facts of the case in brief.

4. The appellant was working as an instructor in Government Polytechnic, Chikmagalur from 2003. On the complaints of the Principal of the Polytechnic against the Appellant, who was making baseless allegations against the Principal and as well as the Appellant writing letters/representations to the higher authorities both at the Director level and the Government and also to the Hon'ble Lokayukta making false and baseless allegations, the Director of Technical Education, who is the Cadre Managing Authority with respect to transfer of Group 'C' officials, has sent the proposal of transfer of some Group 'C' officials including the Appellant during 2011. The 3rd Respondent -Director of Technical Education has recommended to Government to transfer the Appellant from Chikmagalore to Bidar. Accordingly, Government has issued an order of transfer of 119 Group-C officials of the Directorate including the Appellant on 14.7.2011

5. Being aggrieved of his transfer, the Appellant has written a letter on 14.9.2011 enclosing a cheque of Rs.1,00,000/- to the Hon'ble Governor with a request to hand it over to the then Under Secretary for cancellation of his transfer. Being a government servant the Appellant has violated the Conduct Rules, he was suspended from service pending enquiry. Since the charges leveled against him was proved by a report from the Enquiry Officer, the 3rd Respondent has passed an order dt.25.2.2014 dismissing the Appellant from service. Hence, the Appellant filed an appeal before this Authority.

Contentions of the Appellant:

6. It is submitted that the Appellant while working as Instructor in Government Polytechnic, Chikmagalur from 2006, was opposing the illegal activities of the

Principal-4th Respondent who later written a letter to the 3rd Respondent for taking action under CCA Rules against the Appellant who made false and baseless allegations against him. It is further submitted that the Appellant has written to the 1st Respondent and the Lokayukta to take against the 3rd Respondent who has committed misdeeds.

7. The Appellant has submitted that he has been transferred to Bidar at the instance of the 3rd Respondent who has recommended for the same in order to stop the Appellant pursuing the charges made against the Respondent No.3. He also submits that without giving him an opportunity to give charge to the next incumbent, he was relieved from his duties by the 4th respondent at the instance of the 3rd Respondent.

8. It is further submitted that he has later challenged his transfer to Bidar by filing an application before the Hon'ble KAT which has considered his prayer and subsequently he has been transferred to Hassan. He further submits that suspecting malafide intention in his transfer, in a fit of rage, he wrote a letter directly to the Governor to take proper action against the concerned officials. It is further submitted that he became desperate and out of frustration and deeply distressed state of mind finally tried to draw the attention of the Governor by writing a letter on 14.9.2011 along with cheque of Rs.1,00,000 explaining his miseries. It is submitted that as per the directions of the Secretary to Governor and this authority, the 3rd Respondent passed an order of his suspension on 4.10.2012 for violating conduct rules.

9. The Appellant further submits that on the basis of the report of the Enquiry Officer, the 3rd Respondent issued a 2nd show cause notice on 15.10.2013. He further submits that he prayed this Authority for 15 days' time to file his reply, but the 3rd Respondent has passed an order of dismissal on 25.2.2014 which is arbitrary, illegal, biased and also against the principles of natural justice.

10. The Appellant has submitted that the punishment of dismissal for the said allegation is disproportionate to the quantum of punishment the charge it deserves and therefore the order of dismissal is unsustainable under law and the same is liable to be set aside. He further states that the Enquiry Officer has erred in recording reasons of his report and he has failed to consider the facts and circumstances of the case with proper perspective and humane approach.

11. The Appellant submits that it was in the very unusual circumstances he made misadventure out of sheer pain frustration and in a fit of anger and he has now

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realized the mistakes he has unwittingly committed. He further submits that he repents and prays to forgive his mistakes and condone his erratic behavior as a onetime exception.

STATEMENT OF OBJECTIONS OF RESPONDENT NO.3.

12. Respondent No.3 has submitted that the Appellant who was working in Government DACG Polytechnic, Chikmagalore from 3.11.2003 to 18.7.2011 was in the habit of writing letters to the Hon'ble Chief Minister, Hon'ble Ministers, Hon'ble Lokayukta making baseless allegations against the Officers and the staff of the Directorate and hence during general transfers, the Cadre Managing Authority headed by the Director had recommended for his transfer to Bidar and accordingly, the transfer as approved by the Hon'ble Minister/Chief Minister was issued by the Government under the signature of the Under Secretary.

13. It is further submitted that the Appellant has questioned his transfer order to Bidar before the Hon'ble KAT and as per the orders of the Hon'ble KAT, his transfer order was modified by the 3rd Respondent-Director and posted him to Smt. L.V.Polytechnic, Hassan and he reported for duty in the said Institution on 24.2.2012. It is submitted that the Appellant after 7 months of his modified order, has sent a cheque for Rs.1,00,000 drawn in favour of the Hon'ble Governor with a request to hand over the same to the Under Secretary for cancellation of his transfer from Chikmagalore to Bidar and has also made baseless allegations against the Under Secretary.

14. The Respondent has submitted that the Secretary to the Hon'ble Governor in his letter dt.17.9.2012 has directed to take action against the Appellant for his act of unbecoming of a government servant, including referring to Police. He further submits that complaint has been lodged with the jurisdictional police against the Appellant under Prevention of Corruption Act, 1988.

15. The Respondent further submitted that the Appellant without the permission of the department, has made statements in the newspaper and the television against the Higher authorities and the Government thereby violated Rules 9 and 10 of Conduct Rules.

16. It is further submitted that he has not appeared for a preliminary enquiry by the disciplinary authority for his act of misconduct of making baseless allegations against the higher authorities even though he was directed to appear for the said enquiry.

17. It is further submitted that the Appellant was suspended by an order No.DTE 108 DFO(1)2011 dt.4.10.2012 under CCA Rules and he was also served with charge memo under Rule 11 of CCA Rules for violation of Rule 3(i), (ii) and (iii) and Rule 10 of Conduct Rules.

18. It is submitted that since the appellant has rejected the charges leveled against him, but the disciplinary has not accepted his explanation and proceeded to hold an enquiry in order to know the truth of the case under Rule 11 of CCA Rules and accordingly retired District Judge was appointed to conduct the enquiry.

19. It is submitted that the Enquiry officer after conducting the enquiry held that the charges leveled against the Appellant have been proved and submitted the report. It is submitted that a second show cause notice was issued to the Appellant on 15.10.2013 asking him to furnish his replies within 30 days. But the Appellant instead of furnishing replies to the second show cause wrote to the Principal Secretary, DPAR making allegations questioning the authority of the Under Secretary and sought 15 days' time for furnishing reply.

20. It is submitted that since the Appellant has not submitted his written reply to the second show cause, the Disciplinary authority accepted the report of the Enquiry Officer and in exercise of the powers conferred under CCA Rules, the Director has dismissed the Appellant from service by an order dt.25.2.2014.

21. It is submitted that since the Appellant has not furnished his reply to the second show cause notice even after two months, permission of government was sought on 18.12.2013 for his dismissal and the Government on 10.1.2014 has conveyed his approval for his dismissal and therefore, the contention of the Appellant that he was not given opportunity to reply to the Second Show Cause Notice cannot be accepted. It is submitted that the contention of the Appellant that the dismissal order is biased cannot be accepted since the Enquiry Officer after holding a detailed enquiry as per CCA Rules and after considering the evidence adduced by both the parties has held that the charges leveled against the Appellant have been proved and based on the enquiry report, the Appellant has been dismissed from service.

22. It is submitted that the Appellant has claimed that the punishment of dismissal for the said allegation is disproportionate to the quantum of punishment the charge it deserves. It is submitted that the Enquiry Officer has held as under:

" I am of the clear opinion that the delinquent has not only violated the provision of rule 10 of the Karnataka Civil Servant Conduct Rules 1966 but also violated the provisions of Rule 3(i)(ii)(iii) of Karnataka Civil Service-CCA Rules 1957, and also he has intentionally committed the offence of abetment u/s. 107 of IPC and his conduct also attracts penal provision of Prevention of Corruption Act, 1988.

23. It is submitted that the Hon'ble Supreme Court in its judgment dt.17.2.1998 in M.H.Devendrappa Vs.Karnataka State Small Industries Development Corporation case, has upheld the dismissal of employees who criticized the Government and making allegations against the higher authorities and therefore, there is no ground to consider the case of the Appellant and the action taken is in accordance with law and therefore his appeal may be dismissed.

Issue:

24. On consideration of the above Appeal, the issue that arises for consideration is whether the order of dismissal of the Appellant by the 3rd Respondent is in accordance with law.

My findings:

25. After considering the case and after perusal of records pertaining to the case, I hold that the order issued by the 3rd Respondent is proper.

Reasons:

26. As could be seen from the records, the Appellant was in the habit of writing letters making allegations against the Principal of the Polytechnic, where he was working. Further, he has been writing umpteen numbers of letters to the Director, Hon'ble Chief Minister, Ministers, Hon'ble Lokayukta, DPAR, Higher Education Department, Hon'ble Governor making baseless allegations against the higher authorities and this act is unbecoming behavior of the Appellant as a Government servant and in clear violation of Conduct Rules. It could be seen that while enquiry is under progress, he has written letters to the Hon'ble Chief Minister, DPAR and other authorities making baseless allegations against the higher authorities.

27. The appellant has himself admitted that he was in deeply distressed state of mind on account of his transfer and he has written letter to the Hon'ble Governor. Further, the appellant has submitted that it was in the very unusual circumstances he has made misadventure out of sheer pain, frustration and in a fit of anger and that he has now realized the mistakes he has unwittingly committed. He further submits that he repents and prays to forgive his mistakes and condone his erratic behavior as a onetime exception. The submission made by the Appellant with respect to his conduct and behavior that he has committed mistakes proves that he has violated conduct rules which the Government servant is bound to follow. He has questioned his transfer to Bidar before the Hon'ble KAT, and in pursuance of the orders of the Hon'ble KAT, the Director has posted him to Hassan where he reported for duty later. When things stood thus, he started writing letters to the higher authorities including sending a cheque drawn in favour of the Hon'ble Governor questioning the authority for his earlier transfer and making baseless allegations against the officers.

28. After reviewing the attitude and behavior of the Appellant and based on the report of the Principal, the Director of Technical Education as Cadre and Managing Authority for transfer of Group 'C' and 'D' officials, has sent proposals to Government recommending transfer of Group 'C' and 'D' officials including the name of the Appellant during 2011. The Government has given approval and issued transfer orders and therefore there is no violation of norms/rules in this regard.

29. Further, as per the report of the Director, it is seen that the Appellant has not bothered to reply to a memo or appear before him for a preliminary enquiry on the complaints made by him and this is nothing but disobeying the orders of the higher authorities.

30. The contention of the appellant that the Enquiry Officer has erred in recording reasons in his report and he has failed to consider the facts and circumstances of the case with proper perspective and humane approach cannot be accepted since the Enquiry Officer in his report has stated that the Appellant has himself admitted that he has sent the cheque for Rs. 1,00,000 drawn in favour of the Hon'ble Governor with a request to hand over to the Under Secretary for cancellation of his transfer orders and therefore, he held that he has violated the provisions of Rule 3(i)(ii)(iii) of the KCS (Conduct) Rules, 1966 and it is also punishable offence under the Prevention of Corruption Act. Further, the Enquiry Officer has stated that the Appellant has criticized the higher authorities and the Government both in print and electronic media and thereby violated Rule 10 of the Conduct Rules. Further he has opined that the Under Secretary has acted as per the provisions of the Secretariat Manual and the Karnataka Government (Transaction of Business) Rules, 1977 in issuing the

transfer orders of 119 Group 'C' employees including the Appellant as per the directions of the higher authorities and in the interest of public and therefore held that he has not violated any provisions and the allegations made by the Appellant against the Under Secretary are baseless. He has further observed that even though his transfer was modified in pursuance of the orders of the Hon'ble KAT from Bidar to Hassan, he has sent a cheque to the Hon'ble Governor for cancellation of his transfer orders is misconduct. The Enquiry Officer has also taken into consideration the other allegations made by the appellant against Sri Chandrashekar Rao, Principal, Government Polytechnic, Joida, Sri Sunil, Principal of Govt. Polytechnic, Hosadurga, Sri Basavaraj, Principal, Govt. Polytechnic, Kudligi, Sri Venkataswamy, Administrative Officer, Office of the Director of Technical Education and held that the same are baseless.

31. The Enquiry Officer has categorically opined that the Appellant is in the habit of making baseless allegations against his higher authorities and writing letters/petitions to the Government besides criticizing the Government and the higher authorities by misconstruing the facts in the print and electronic media show his malignant character. The Enquiry Officer has quoted citations of court orders on misconduct which applies to the facts and circumstances of the present case. After detailed analysis of the case, he has held as under:

" The delinquent in his defence statement has stated that in spite of his several letters to Government, no action has been taken against the concerned officials. In this regard, I am of the view that if at all he has aggrieved by any order of the Government or of the Director of Technical Education, he should have taken recourse to the legal action. This is to say he should have ventilated his grievance in a proper form. Instead, he has indulged in writing number of letters to higher officers, Hon'ble Governor and the Director.

This conduct of delinquent, in my opinion deserves condemnation. Because, he cannot also compel government to initiate action against the persons named by him at his WHIMS and FANCIES. Because, it is the prerogative of the government to take action against erred employee, but he cannot dictate terms to the Government to do a particular job.

Before concluding, after careful assessment of the oral and documentary evidence of both the parties, I am of the clear opinion that the delinquent has not only violated the provisions of rule 10 of the Karnataka Civil Servant Conduct Rules, 1966..... and he has also intentionally committed the offence of abetment u/s. 107 of IPC and his conduct also attract penal provisions of Sec. 12 of the Prevention of Corruption Act".

The Enquiry officer has concluded his report holding that all the charges leveled against the Appellant have been proved. Hence, there are no grounds to interfere with the views of the Enquiry Officer.

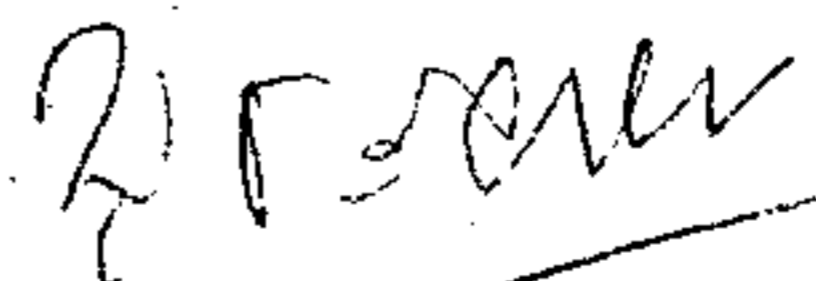
32. The further contention of the Appellant that he was not given an opportunity to reply for the second show cause notice cannot be accepted, because he has sent a letter to the Principal Secretary, DPAR again making malicious allegations against higher officers and sought 15 days' time for reply. The Appellant should have sent his reply to the second show cause notice to the Disciplinary Authority-3rd Respondent who has sent a copy of the report of the Enquiry officer directing him to reply within 30 days. Instead of sending his reply to the Disciplinary Authority, he has deviated from the procedure and deliberately written a letter to DPAR. The Disciplinary Authority after giving a reasonable opportunity has rightly taken action on the report of the Enquiry Officer and dismissed him from service by his order dt. 25.2.2014. Therefore, the contention of the Appellant that he was not given a reasonable opportunity cannot be accepted and the same is untenable.

33. The Appellant has in his appeal submitted that he has now realized and repented for the mistakes he has committed. The Appellant, who was a teacher whose duty was to teach in the class, has diverted his attention and has all along been for the last several years writing letters/petitions making false, frivolous and baseless allegations against the higher authorities/Government and therefore he has violated Conduct Rules and it is proved that he is an unbecoming of a government servant and the mistakes/offence committed by him is condemnable and attract the penal provisions of the Prevention of Corruption Act as rightly opined by the Enquiry Officer.

34. After going through the records and the Appeal, I find no reason to interfere with the orders of the Disciplinary Authority and accordingly, I proceed to pass the following order.

ORDER


35. The action taken by the Disciplinary Authority in dismissing the Appellant on the proven charges is proper and the Appeal filed by the Appellant is devoid of any merits to interfere with and the same is hereby dismissed.



(BHARAT LAL MEENA)
Principal Secretary to Government
Education Department (Higher Education)

ಹಿಂಬರಹ ಸಂಖ್ಯೆ: ಡಿಟಿಇ 08 ಡಿಇಕ್ಯೂ(1) 2011 ಭಾಗ-II (ಎಕಕಡತ) / 1003 ದಿನಾಂಕ: 04/07/2015

ಪ್ರಧಾನ ಕಾರ್ಯದರ್ಶಿ, ಉನ್ನತ ಶಿಕ್ಷಣ (ಶಿಕ್ಷಣ ಇಲಾಖೆ), ಕರ್ನಾಟಕ ಸರ್ಕಾರ ಇವರ ಮೇಲ್ಮನವಿ ಸಂಖ್ಯೆ 11 ಆಫ್ 2014ರ ಆದೇಶ (ಸಂಖ್ಯೆ: ಇಡಿ/166/ಟಿಪಿಇ/2014)ಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ, ದಿನಾಂಕ: 25/05/2015ರಂದು ಹೊರಡಿಸಿರುವ ಆದೇಶದ ಪ್ರತಿಯನ್ನು ಶ್ರೀ.ಬಿ.ವಿ.ಜಯಂತ್ ಇವರಿಗೆ ಕಳುಹಿಸಲಾಗಿದೆ.


ಆಡಳಿತಾಧಿಕಾರಿ

ಇವರಿಗೆ,

ಶ್ರೀ.ಬಿ.ವಿ.ಜಯಂತ್,
ಆರ್/ಒ 171, ಕಾರ್ತಿಕ ರತ್ನಗಿರಿ ಬೋರೆ,
ಚಿಕ್ಕಮಗಳೂರು.

ಪ್ರತಿ - ಮಾಹಿತಿ ಹಾಗೂ ಮುಂದಿನ ಕ್ರಮಕ್ಕಾಗಿ

1. ಮಹಾಲೇಖಪಾಲರು, ಕರ್ನಾಟಕ, ಬೆಂಗಳೂರು.
2. ಮುಖ್ಯಮಂತ್ರಿಗಳ ಪತ್ರಿಕಾ ಕಾರ್ಯಾಲಯ, ವಿಧಾನಸೌಧ, ಬೆಂಗಳೂರು.
3. ಪ್ರಾಂಶುಪಾಲರು, ಸರ್ಕಾರಿ ಡಿವಿಸಿಜಿ ಪಾಲಿಟೆಕ್ನಿಕ್ ಚಿಕ್ಕಮಗಳೂರು.
4. ಪ್ರಿನ್ಸಿಪಾಲರು, ಸರ್ಕಾರಿ ಶ್ರೀಮತಿ.ಎಲ್.ವಿ.ಪಾಲಿಟೆಕ್ನಿಕ್, ಹಾಸನ.
5. ನಿರ್ದೇಶಕರ ಆಪ್ತಶಾಖೆಗೆ ಮಾಹಿತಿಗಾಗಿ.
6. ✓ ಇ-ಆಡಳಿತ ವಿಭಾಗ, ಸದರಿ ಆದೇಶವನ್ನು ಇಲಾಖಾ ವೆಬ್‌ಸೈಟ್‌ನಲ್ಲಿ ಅಳವಡಿಸುವ ಸೂಕ್ತ ಕ್ರಮಕ್ಕಾಗಿ.
7. ಇಎಸ್‌ಟಿ(3), ಇಎಸ್‌ಟಿ(7), ನಿರ್ದೇಶನಾಲಯ, ತಾಂತ್ರಿಕ ಶಿಕ್ಷಣ ಇಲಾಖೆ, ಬೆಂಗಳೂರು ಇವರಿಗೆ ಮಾಹಿತಿಗಾಗಿ.