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Court : Karnataka

Decided On : Mar-31-2005

Reported in : [2005(106)FLR26]; ILR2005KAR1884

Judge : N.K. Patil, J.

Appeal No. : W.P. Nos. 36717/1999 c/w 32124/2000

Appellant : D.K. Ganapathy and ors.

Respondent : The Managing Director and the Disciplinary Authority Karnataka Fisheries Development Corporation Lim

Advocate for Def. : S.S. Sripathy, Adv. for Respondents 1 and 2, ;A. Anand Shetty and ;N. Rajashekar, Adv. for R3

Advocate for Pet/Ap. : A. Anand Shetty, ;N. Rajashekar and ;Sharath Chandra Bijai, Adv.

Disposition : Petition allowed

Judgement :

ORDER

N.K. Patil, J.

1. In these writ petitions, the petitioners have assailed the correctness of the order dated 17-9-1999 bearing No. STAFF/36/1995-96. Further, they have sought for a direction to the first respondent to conduct a fresh enquiry on the basis of the documents produced and also having regard to the facts and circumstances explained in the respective writ petitions

2. Petitioner in W.P. No. 36717/1999 is working as a Field Assistant and the petitioner in W.P. No. 32124/2000 is working as a Manager in the first respondent-Corporation. It is the case of the petitioners that they were discharging their duties with utmost sincerity and honesty and without having any unblemished record in their service. On the basis of alleged misappropriation of cash by the petitioners, not being remitted well in time, the first respondent-Corporation had appointed an Enquiry Officer. The Enquiry Officer, after conducting the enquiry and after affording opportunity to the petitioners and the other official (Respondent No. 3 in W.P. No. 36717/1999) who is working as a Senior Accounts Assistant, submitted the report stating that the charges levelled against the three officials working in the first respondent-Corporation are proved. The matter was taken up by the disciplinary authority in pursuance of the report submitted by the Enquiry Officer. The petitioner in W.P. No. 36717/1999 filed his reply to the report. The disciplinary authority the first respondent herein after considering the said reply, has proceeded to pass the order on the basis of the material available on records and confirmed the report submitted by the Enquiry Officer by holding that charges have been proved against the petitioners and the other official and directed to recover the amount from the petitioners. Further, the case of the petitioners made out in the instant writ petition is that, the disciplinary authority without conducting an enquiry in strict compliance of the mandatory provisions of the Rules and without affording an opportunity to them has passed the impugned order contrary to the material on record. Hence, the petitioners felt necessitated to present the instant writ petition.

3. The principal submission canvassed by the learned Counsel for the petitioners is that, the entire enquiry proceedings initiated against the petitioners and the impugned order passed thereon are totally contrary to the mandatory provisions of the Act since the impugned order has been passed without conducting proper

enquiry, without looking into the material on record and without even fixing the respective percentage of negligence and the alleged charges against the petitioners and another official. They therefore submitted that the entire proceedings are totally illegal, arbitrary and cannot be enforced against the petitioners. Further, they vehemently submitted that the impugned order has been passed on the basis of the report submitted by the Enquiry Officer and on the basis of unconnected records, that too, without looking into the original cash account book and challan remitting the amount which were made available by the petitioners when demanded by the respondent. He further submitted that if an opportunity was given to the petitioners, they might have substantiated their case and therefore, the impugned order is vitiated for non-compliance of the principle of natural justice. Further, they submitted that the impugned order does not contain any reasons, discussions or finding and in short, it is not a speaking order. They therefore submitted that the matter requires to be re-examined afresh on the basis of the original cash account book and other necessary ancillary records such as challan, remitting the amount and unauthorised rough note book.

4. Per contra, learned Counsel for the first respondent, inter alia, contended and substantiated the report submitted by the Enquiry Officer and the impugned order passed by the disciplinary authority. He submitted that the impugned order has been passed in strict compliance of the relevant provisions of the Rules and no error or illegality as such has been committed by the first respondent-disciplinary authority.

5. Heard the learned Counsel for the petitioners and the learned Counsel for the respondents.

6. When the petitions had come up earlier, this Court directed the first respondent to secure the original records such as unauthorised rough notebook and the original cash book entries, etc. Today, the learned Counsel for the first respondent has made available the original records and other ancillary original records. After having heard the learned Counsel appearing for both the parties for considerable length of time, after thorough evaluation of the original records made available by the learned Counsel for respondent No. 1 and after careful perusal of the

impugned order passed by the disciplinary authority, it emerges that the disciplinary authority has committed an error of law much less irregularity in passing the impugned order without conducting proper enquiry, without affording sufficient opportunity to the petitioners and without appreciating the oral and documentary evidence available on record. Further, there is no reference in the impugned order regarding the original entries found in the cash book, challan, etc., which are made available today by the learned Counsel for the first respondent. The first respondent has proceeded to pass the impugned order unilaterally on the basis of the report submitted by the Enquiry Officer. Being a statutory authority, it is a duty cast on the first respondent to assign reasons and findings after available on record. If sufficient opportunity was afforded to the petitioners, they might have substantiated their cases. It is the case of the first respondent that amount has been misappropriated, but the original entry in the cash book and challan shows that amount has been remitted to the bank. The only aspect to be gone into in these writ petitions is regarding the respective responsibility and negligence of the petitioners and respondent No.3 in W.P. No. 32124/2000. The disciplinary authority has utterly failed to fix the respective negligence of the petitioners which shows that it has passed the order in a mechanical manner and without application of mind. Therefore, in my considered view, at any stretch, the impugned order cannot be sustained.

7. Having regard to the facts and circumstances of the case as stated above, these writ petitions are allowed. The impugned order vide Annexure-A dated 17-9-1999 bearing No. STOCK/36/1995-96 is hereby set aside. The matter stands remitted back to the first respondent for reconsideration afresh. The first respondent is directed to dispose off the matter in accordance with law, after thorough evaluation of the original records available on the file and after affording opportunity to the petitioners and respondent No. 3 in W.P. No. 32124/2000, as expeditiously as possible within six months from the date of receipt of this order.