

Sri Eswarasa Vs. the Chairman and the Disciplinary Authority

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Court : Karnataka

Decided On : Nov-28-2006

Reported in : ILR2007KAR3303; 2008(1)KarLJ719; ILR2007(3)Kar3303; 2007(5)AIRKarR515(DB)

Judge : Cyriac Joseph, C.J. and ;B.S. Patil, J.

Acts : Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957 - Rules 8 and 11(8)

Appeal No. : Writ Appeal No. 1413/2006

Appellant : Sri Eswarasa

Respondent : The Chairman and the Disciplinary Authority

Advocate for Pet/Ap. : B.V. Puttegowda, Adv.

Disposition : Appeal dismissed

Judgement :

Cyriac Joseph, C.J.

1. The appellant is the petitioner in Writ Petition No. 22160/2004 which was dismissed by the Learned Single Judge. The challenge in this Writ Petition was against Annexure-'L' order dated 17.10.2002 and Annexure-'N' order dated 24.6.2003. As per Annexure-'L' order dated 17.10.2002, issued by the respondent

Chairman and Disciplinary Authority, Bangalore water Supply and Sewerage Board, a penalty of withholding five increments with cumulative effect was imposed on the appellant as per the provisions contained in Rule 8(iii) of the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957. As per Annexure-'N' Endorsement Dated 24.6.2003, the appellant was informed that the Appeal filed by him against Annexure-'L' order was examined and rejected by the Appellate Authority, namely Bangalore Water Supply and Sewerage Board. After considering the rival contentions of the petitioner and the respondent, the Learned Single Judge upheld Annexure-'L' and 'N' and dismissed the Writ Petition.

2. Having heard Learned Counsel for the appellant and having considered the materials placed on record, we do not find any valid and sufficient ground to interfere with the impugned order of the Learned Single Judge. In the Writ Petition, the petitioner had raised mainly two grounds:

(1) The disciplinary proceedings were held against the petitioner in violation of the principles of natural justice inasmuch as the material documents requested by him were not supplied, to him;

(2) The petitioner was not allowed to take the assistance of a co-worker to defend his case in the inquiry;

3. It is seen that as per Annexure-'B' letter dated 12.4.2001, the appellant had requested the respondent to issue to him certain documents to enable him to reply to the show cause notice dated 31.3.2001. It is also seen from Annexure-'C' Endorsement dated 2.5.2001 that in response to Annexure-'B' letter, the appellant was informed by the respondent that he could meet the Administrative Officer during the working hours of the office and peruse the documents in question and take notes. Even though Learned Counsel for the appellant submitted that when the appellant went to the Administrative Officer to peruse the documents and take notes, he was not allowed to do so, there is no such averment or allegation in the Writ Petition. Therefore, the story of the appellant that he was not allowed to peruse the documents and take notes in terms of Annexure-'C' Endorsement cannot be believed or accepted. Inasmuch as the appellant was given opportunity to peruse the documents and take notes, there was no violation of any principles

of natural justice. The fact that copies of the documents were not supplied to the appellant will not amount to violation of principles of natural justice. To satisfy the requirement of principles of natural justice, it is sufficient that the delinquent employee is given opportunity to peruse the documents and to take notes. This requirement was satisfied in this case and therefore, the first contention of the appellant is devoid of merit.

4. It is seen from Annexure-'D' letter dated 17.6.2001 that the appellant had requested the respondent to allow him to take the assistance of a co-worker as the appellant was not well versed with the enquiry matter. Annexure-'D' letter was submitted at a time when the appellant had received the show cause notice and had not submitted his written explanation. In reply to Annexure-'D' letter dated 17.6.2001, the respondent issued Annexure-'E' Endorsement dated 13.7.2001 informing the appellant that it was not possible to give the assistance of a co-worker at that stage as he had not filed any reply to the show cause notice. If the appellant required the assistance of a co-worker to prepare the written explanation, it was open to him to do so and no permission of the respondent only at the stage of submitting the written explanation to the show cause notice. It is clear from Annexure-'E' that the request was rejected at that stage only. There is no material to show that after submitting the written explanation during the inquiry proceedings, the appellant made any request for availing the service of a co-worker to assist him in the inquiry proceedings. Even though Learned Counsel for the appellant submitted that the appellant had made oral request to the Enquiry Officer and such a request was turned down by the Enquiry Officer, there is no such averment in the Writ Petition. In the absence of any averment or allegation that the appellant had requested the Enquiry Officer to permit him to make use of the service of a co-worker to assist him in the inquiry proceedings and that it was rejected by the Enquiry Officer, this Court cannot proceed on the assumption that such request was made by the appellant and it was turned down by the Enquiry Officer. In other words, there is no acceptable material before the Court to come to the conclusion that the appellant made a request to the respondent or the Enquiry Officer to permit him to make use of the service of a co-worker to assist him during the inquiry proceedings and that it was turned down resulting in violation of any statutory provision or principles of natural justice. It is true that under Rule 11(8) of

the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957, the Government Servant is permitted to take the assistance of any other Government Servant or a retired Government Servant to present the case on his behalf. Unless the Government Servant seeks to exercise the said right and it is denied by the Enquiry Officer or the Disciplinary Authority, the Government Servant cannot later contend that the disciplinary proceedings are vitiated on the ground that the Government Servant was not extended the assistance of another Government Servant or retired Government Servant. We refer to the above Rule only because the Learned Counsel submitted that the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957 are applicable to the employees of the Bangalore Water Supply and Sewerage Board.

5. For the reasons stated above, we are of the view that there is no merit in the Writ Appeal. The Writ Appeal is dismissed.

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