
(2008) 08 AP CK 0031

In the Andhra Pradesh High Court

Case No : Writ Petition No. 17350 of 2008

K. Krishna Murthy and Another

APPELLANT

Vs

National Insurance Co. Ltd. and Others

RESPONDENT

Date of Decision : 26-08-2008

Acts Referred:

General Insurance (Conduct, Discipline and Appeal) Rules, 1975 — Rule 2, 25(6)

Citation : (2008) 6 ALD 382 : (2009) 1 SLR 222

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : Pavan, for Kowturu Vinaya Kumar, for the Appellant; Vedula Srinivas, for the Respondent

Judgement

L. Narasimha Reddy, J.—The petitioners are the employees of National Insurance Company Limited, 1st respondent herein. Disciplinary proceedings were initiated against them, by issuing a charge-sheet, dated 8.5.2008. The petitioners denied the allegations against them. Not being satisfied with the explanation, the disciplinary authority appointed the 3rd respondent as Enquiry Officer.

2. In the course of domestic enquiry, the petitioners submitted a representation, dated 31.7.2008, with a prayer (a) to permit them to avail the services of Sri Y. Sudhakar Rao, Senior Assistant, Oriental Insurance Company Limited, Hyderabad, as Defence Assistant; and (b) to change the enquiry officer and appoint a retired officer in the place of the 3rd respondent. Through proceedings, dated 22.7.2008, the 3rd respondent turned down the request of the petitioners to avail the services of Sri Y. Sudhakar Rao. The petitioners feel aggrieved by the same and pray for the two-fold relief claimed by them, through their representation, dated 31.7.2008.

3. During the pendency of the writ petition, the 1st respondent is said to have rejected the request of the petitioner for change of the 3rd respondent also, vide communication, dated 7.8.2008.

4. The petitioners contend that they are entitled to avail the services of an employee of a separate organization as per the General Insurance (Conduct, Discipline and Appeal) Rules (for short "the Rules") and there is no basis for the 3rd respondent in not acceding to their request. They further contend that the Rules, as amended from time to time, provide for appointment of a retired employee also, as enquiry officer and having regard to the nature of allegations against them, it is not at all safe to appoint an employee, who is in service, as enquiry officer.

5. The respondents filed counter-affidavit, justifying their action in rejecting the request of the petitioners. According to them, Rule 2(g) of the Rules is to be interpreted, to mean, the employee of the concerned insurance company, particularly in view of the changed set up from the year 2000 onwards.

6. Heard Sri Pavan, learned Counsel for the petitioners and Sri Vedula Srinivas, learned Counsel for the respondents.

7. The grievance of the petitioners is two-fold. The first is that the 3rd respondent did not permit them to avail the services of Sri Sudhakar Rao as Defence Assistant, and the second is that the 3rd respondent cannot be continued as an Enquiry Officer, in view of the potential institutional bias.

8. The General Insurance Corporation (GIC), a Government of India Company, had control over four national insurance companies, including the 1st respondent. Common Service Rules were framed in the year 1975, to govern the services of the employees in the GIC as well as its subsidiaries. The Rules prescribe the procedure to be followed in the disciplinary proceedings and other related matters. Rule 25(6) of the Rules enables an employee facing the disciplinary proceedings, to avail the assistance of any other employee in the enquiry. He is not permitted to avail the services of a legal practitioner. The term "employee" is defined under Rule 2(g) of the Rules as under:

"Employee" means any employee of the Corporation and/or its subsidiaries other than the casual, work-charged or contingent staff.

A perusal of this definition makes it clear that a person, who is employed in the GIC or its subsidiaries, answers the description of "employee" and there is no reason as to why the said definition does not cover Rule 25(6) of the Rules.

9. On behalf of respondents 1 and 2, it is urged that in the year 2002, autonomy was conferred on the subsidiary companies of GIC and each company is an independent unit. Their effort is to impress upon the Court that the definition of "employee" under Rule 2(g) of the Rules needs a second look. It is, however, not disputed that even after the changes in the structure or establishment of the subsidiaries, the Rules framed by the GIC alone govern the services of the employees in all the four insurance companies. Even if two interpretations are possible, the one, which protects the interests of an employee facing disciplinary charges, needs to be adopted. The reason is that providing assistance to a

delinquent employee can be treated as one of the facets of the principles of natural justice.

10. The request of the petitioners, to avail the services of an employee, was rejected, only on the ground that the said employee is of a different insurance company. The fact, however, remains that the person, whose assistance is sought by the petitioners, is employed in one of the subsidiary companies. Therefore, the impugned order, dated 22.7.2008, deserves to be set aside.

11. Coming to the second question, the grievance of the petitioners is about the appointment of the 3rd respondent as enquiry officer. They have nothing personal against the 3rd respondent. Their objection is that the charges against them are in the nature of their general behaviour and conduct, towards the superior officers of the 1st respondent-company, and being one such superior, the 3rd respondent is prone to have the institutional bias. It is too difficult to accept the contention of the petitioners. The charges have clearly named the officer, with whom the petitioners are said to have misbehaved. It is not a case, where the petitioners are alleged to have misbehaved with every possible officer in the 1st respondent-company. The mere fact that the Rules provide for appointment of a retired employee also, as an enquiry officer does not justify the demand of the petitioners to replace the 3rd respondent, with a retired employee. If such a plea is accepted, a situation may arise, wherein no employee in service of an organization can be appointed as enquiry officer, since the institutional bias can be projected, through one form of logical extension, or the other. The plea of the petitioners in this regard cannot be accepted.

12. Hence, the writ petition is partly allowed, setting aside the order, 22.7.2008, and directing the 3rd respondent to permit the petitioners to avail the assistance of Sri Y. Sudhakar Rao, as Defence Assistant, in the domestic enquiry; and rejecting the claim of the petitioners for replacement of the 3rd respondent with a retired employee. There shall be no order as to costs.