

(2007) 12 KAR CK 0002
In the Karnataka High Court
Case No : W.A. No. 2206 of 2006

Peerless General Finance and Investment Company Ltd. and Others APPELLANT

Vs

Harikrishna Althal RESPONDENT

Date of Decision : 14-12-2007

Acts Referred:

Industrial Disputes Act, 1947 — Section 10 (4A), 2

Citation : (2008) 1 LLJ 935

Hon'ble Judges : S.R. Bannurmath, J;A.N. Venugopala Gowda, J

Bench : Division Bench

Advocate : Kasturi Associates, for the Appellant; S.V. Shastri, for the Respondent

Final Decision : Allowed

Judgement

A.N. Venugopala Gowda, J.—The respondent was a workman under the appellant. On the allegation that while in employment, Rs. 12,600/-belonging to the appellant was misappropriated by the acts of forgery of the field staff and other executives, respondent was issued with a charge sheet dated August 19, 1988 by the appellant, to which, he has submitted a reply dated September 25, 1988. The appellant ordered for holding of a disciplinary enquiry and an enquiry officer was appointed by the appellant on July 27, 1989, to enquire into the allegations of misconduct, which was the subject matter of the charge sheet dated August 19, 1988. Based on the report of the enquiry officer, the respondent having been found to be guilty of the charge levelled against him, he was dismissed from service by an order dated August 16, 1989. An appeal having been preferred by the respondent, the appellate authority by its order dated September 28, 1989, has rejected the appeal. Respondent thereafter filed an application u/s 10(4-A) read with Section 2 of the Industrial Disputes Act, 1947 ("the Act" for short), on the file of the Additional Industrial Tribunal, Bangalore. The application was contested by the appellant. Based on the pleadings, the Labour Court has raised two issues viz.,

(1) Whether the domestic enquiry conducted against the I Party is fair, reasonable and valid?

(2) Whether the dismissal of the I Party by the Orders dated August 16, 1989 and September 28, 1989 are not justified?

2. Respondent has deposed as WW.1 and on behalf of the appellant MW.1 has deposed in the Industrial Tribunal. Taking into consideration the evidence placed on record, an order dated December 22, 1999 was passed holding that the domestic enquiry held was fair, proper and valid. After hearing the arguments, by an award dated October 19, 2001, the application filed by the respondent was dismissed. Respondent filed W.P. 41265/2002 impugning the said order and award. Learned single Judge by an order dated August 8, 2006 taking into account that, before the enquiry officer, certain witnesses were examined and certain documents were produced, the list of which, was not furnished at the commencement of the enquiry, in view of which, prejudice was caused to the workman and since the offence was one punishable under Indian Penal Code and the charge being serious, the rejection of request for assistance of an advocate, amounted to violation of principles of natural justice and the Tribunal has only referred to Exhibit M7, confession statement, it cannot be held that the charge levelled against the workman as proved and consequently it was held that the enquiry is not fair, proper and has quashed the impugned order and award and has remanded the case for fresh disposal to the Tribunal.

3. Along with the appeal, appellant has filed I.A.3 seeking permission to file additional records i.e., Exhibits R1 to R9, being the copies of the proceedings relating to the domestic enquiry held against the respondent. No objections were filed to the said application. No objection was also raised to receive the records accompanying I.A.3 on record. We have perused the application and the documents enclosed thereto. The documents pertain to the proceedings of enquiry before the enquiry officer. In order to decide the appeal, the said records are necessary. Hence, we deem it appropriate to allow the application and receive the records.

4. We have heard Sri Kasturi, learned Senior advocate for the appellant and Sri S.V. Shastry, learned advocate for the respondent. We have perused the records.

5. It was contended by the learned senior counsel on behalf of the appellant that, learned single Judge was not justified in allowing the writ petition without noticing, that fact, whether any prejudice was caused to the respondent because of non supply of list of witnesses and. documents along with the charge sheet. It was contended that unless prejudice is shown to have occasioned on account of not making available such a list at the threshold, mechanically the proceedings cannot be. faulted. Learned senior counsel in support of the submission referred to and relied upon case of Delhi Cloth and General Mills Co. Ltd. v. Ganesh Dutt, 1972 (1) LLJ 172 (SC) Learned senior counsel would contend that there is no provision under the Service Rules of the appellant, for permitting the assistance

of an advocate in disciplinary enquiry and that the respondent was allowed the assistance of a co-employee which was not availed by him. It was submitted that there is no violation of principles of natural justice. It was contended that by series of decisions, the Hon"ble Supreme Court has held that permitting the assistance of an advocate in domestic enquiry is not a ritual and unless the standing orders of the establishment provides for it. Learned senior counsel support of the submission relied upon the case reported at Volume 82 FJR 213. Learned senior counsel would further contend, that it is a case of admission of the guilt by the workman which can be seen from Exhibit M7. It was contended that Exhibit M7 could not have been brushed aside by the learned single Judge. Learned senior counsel by taking us through the proceedings of the disciplinary enquiry contended that there was no justification for the learned single Judge to have allowed the writ petition, much less, remanded the case for fresh disposal to the Industrial Tribunal. Learned senior counsel would contend that the learned single Judge has misdirected himself in the matter of passing the order allowing the writ petition and hence interference is called for.

6. Per contra, Sri. S.V. Shastri, learned Counsel appearing for the respondent strenuously urged that it is a clear case of violation of principles of natural justice, in that, the list of witnesses and documents pertaining to the disciplinary enquiry were not furnished along with the charge sheet, in view of which, the respondent could not effectively defend himself. It was contended that Exhibit M7 is a document which was taken by adopting coercive methods and as such, the same ought not to have been considered much less relied upon to hold the employee guilty either by the enquiry officer or by the employer much less by the Industrial Tribunal. Learned Counsel would contend that since the charge levelled against the respondent was grave in nature, refusal of permission to take assistance of an advocate in the disciplinary enquiry, has made the enquiry" proceedings a farce, which was not noticed and appreciated by the Industrial Tribunal, in which, on proper consideration, the learned single Judge was justified in holding the disciplinary enquiry is not fair, proper and valid. Learned Counsel contended that in the background of the case, the order made by the learned single Judge does not call for interference. Alternatively learned Counsel would contend that it is a case of no evidence and the misconduct alleged, has not been proved in the disciplinary enquiry and hence the appellant was not justified in dismissing the respondent from service.

7. The points that arise for our consideration are:

- (1) Has the respondent suffered any prejudice on account of non-furnishing of the list of witnesses and the list of documents, along with the charge sheet dated August 19, 1988?
- (2) Is there violation of principles of natural justice on account of not allowing an advocate to assist the respondent in the Disciplinary enquiry?
- (3) Has the Industrial Tribunal committed any error or illegality in dismissing the

application filed by the respondent u/s 10(4-A) of the Act"?

8. Re. Point No. 1: The appellant has issued the charge sheet dated August 19, 1988 to the respondent. The charge related to the forging of signatures of the concerned field staffs as well as Sri Madhav Kumar, the then Branch Manager and Sri Y. Adinarayana, Assistant Administrative Officer, Bangalore Branch. The charge sheet contains the details, i.e., the names of the Field Officers, M/C No's, and the amount. By issuing the charge sheet, the appellant had proposed to take action against respondent under clause 26(a) II of the Service Rules of the Company. Respondent was called upon to submit his explanation, if any, to the charge sheet. Respondent has submitted his reply dated September 26, 1988, to the charge sheet. Appellant finding the explanation as not satisfactory, has decided to hold a detailed enquiry against respondent and an enquiry officer was appointed to conduct the enquiry. The enquiry which was scheduled to be held after due notice, on October 14, 1988 was postponed to October 18, 1988. The enquiry has commenced on October 18, 1988, on which day, the respondent has appeared before the enquiry officer and has submitted a letter requesting for adjournment on the ground that he could not avail the assistance of co-employee, as most of them, were said to be on leave. Acceding to his request, the enquiry was adjourned to November 2, 1988 by directing management representative to furnish a copy of the Service Rules to the respondent. Respondent has also submitted a letter dated October 18, 1988 to the enquiry officer, about the response of the management in refusing to allow an advocate in the enquiry and permitting him to take the assistance of co-employee. Request was made by the respondent to postpone the enquiry to some other day in the month of November. The enquiry has resumed on November 2, 1988, on which day, copy of the Service Rules was handed over to the respondent and at his request, to enable him to study the Service Rules, enquiry was adjourned to November 17, 1988. On November 17, 1988, management representative has sought for adjournment of one week to file the documents and to lead the evidence. Preliminary statement of respondent was recorded on December 7, 1988, wherein he has stated as follows:

Q by E.O. Have you received the list of documents filed by the Mgt on December 1, 1988.

Ans. Yes I have received the proceedings of December 1, 1988 giving out the list of documents.

Q by E.O. Do you know or are you told the names of witnesses to be examined on behalf of the Mgt?

Ans. Yes, I know or I have been told that Mr. J.L.N. Prasad and Mr. H. Madhavkumar are going to be examined as witnesses in this case by the Mgt.

Q by E.O. Do you want to be assisted by your co-employer?

Ans. No. I do not want anybody from my co-employees as assisting me in my

defence. I wanted the assistance of an advocate but the Mgt has refused to grant the permission to bring an advocate as per their letter dated October 14, 1998. That letter is marked as Exhibit M6.

Q by E.O. How far have you studied?

Ans. I have passed by degree examination in Commerce from Bangalore University in 1981.

Q by E.O.. Can these proceedings be in English?

Ans. I have no objection for the proceedings being written in English as I know English well.

Q by E.O. Do you want to examine any of your witnesses and produce any documents

Ans. I will consider examining my defence witnesses after the Management concludes its evidence. I have already produced two documents on the last date i.e. on December 1, 1988. I have no more documents to be produced.

Q by E.O. Do you want to say anything at this stage?

Arts. I do not want to say anything at this stage. If any thing is their I will do so at a later date.

Respondent was also instructed to file the documents, if any, on his side and the enquiry was adjourned to December 1, 1988. On December 1, 1988, management representative has filed the file containing 11 documents, the list of which, was furnished to the respondent. Respondent was permitted to peruse the documents filed before the enquiry officer. Respondent has filed two rolls of paper containing commission vouchers cum cash paid adding rolls dated March 2, 1988 and March 14, 1988 and he has stated that he has no other documents. Enquiry was adjourned for recording the preliminary statement of the respondent and for evidence on December 7, 1988. On December 7, 1988, management representative was informed to name the witnesses, proposed to be examined on behalf of the management. Preliminary statement of the respondent was recorded and copies of the documents mentioned at Sl. Nos. 2, 10 and 11 were furnished to him and other items were all found to be correspondence between the management and the respondent, copies of which, were also directed to be furnished to the respondent and enquiry was adjourned to December 15, 1988 to commence the recording of the evidence. Respondent was furnished with xerox copies of two letters addressed to the Sub-Inspector, Upparpet police station, Bangalore, dated November 9, 1988 and to the Manager, Security Services of India, Bangalore, dated November 4, 1988, along with the letter of the appellant dated December 8, 1988. On the request of the respondent, enquiry was adjourned to December 26, 1988.

9. Evidence of MW.1 Sri J.L.N. Prasad was recorded by the enquiry officer on August 12, 1988. At the request of the respondent, on the around that he

wanted to consult someone, the enquiry was adjourned for cross-examination of the said witness to January 19, 1989. On January 19, 1989, respondent has cross-examined MW1 and the enquiry was adjourned to January 25, 1989. On January 25, 1989, MW.2 Sri Madhav Kumar was examined in chief. On the request made by the respondent to enable him to consult his lawyer and to cross-examine MW2, overruling the objections for grant of time by management representative, to enable the respondent to consult his lawyer and to cross examine the witness, enquiry was adjourned to February 16, 1989. On February 16, 1989, respondent has cross examined MW.2. In order to enable the respondent to produce defence evidence, enquiry was adjourned to February 17, 1989, March 7, 1989, March 10, 1989, March 17, 1989, March 23, 1989. Noting the request made by the respondent for adjournment to examine defence witnesses, an opportunity was granted, as a last opportunity to produce defence evidence. It was also recorded that since defence evidence had not commenced, the request made by the management representative to examine one more witness was noted. The respondent has stated that he has no objection for the management to produce further evidence which was also recorded and the enquiry was adjourned to April 4, 1989. On April 4, 1989, management representative has examined MW.3 Sri. S.K. Chakravarthy and has produced 5 documents. Cross examination of MW.3 was deferred holding that, unless the copies are furnished to respondent, cross examination cannot take place and enquiry was adjourned to April 19, 1989. Management representative was directed to furnish copies of the documents produced on April 4, 1989 to the respondent, before April 6, 1989. On April 9, 1989 in the enquiry, acknowledgement of receipt of documents marked as Exhibits M 10 to M 13(a) was received on record and noting the absence of MW3, enquiry was adjourned to April 27, 1989. On May 2, 1989 the respondent has stated that he was not ready to cross examine MW3 on the ground that, his file was with his lawyer and he has sought adjournment. Over ruling the objection raised by management representative, enquiry was adjourned. Request of the respondent that he has to get the questions drafted by his lawyer and therefore he needs adjournment, was recorded and enquiry was adjourned for cross examination of MW3 and for defence evidence to May 5, 1989. On May 23, 1989, MW3 was cross examined by the respondent and the respondent has stated that he has no witnesses to examine on his behalf. Two weeks' time was given to the respondent to produce witnesses, if any, and enquiry was adjourned to June 12, 1989. On the request made by the respondent to produce witnesses, enquiry was adjourned to July 4, 1989, July 13, 1989 and July 24, 1989. On July 24, 1989 respondent has stated that he is not able to get any witnesses and thus he has closed his side. Statement of respondent was recorded and enquiry was concluded.

In the final statement of the respondent recorded on July 24, 1989 by the enquiry officer, he has stated as follows:

Q by E.O. Have you heard the evidence of all the management witnesses?

Ans. Yes. 1 have.

Q by E.O. Have you cross-examined those witnesses?

Ans. Yes I have cross-examined them.

Q by E.O. Were you given the copies of the documents and depositions?

Ans. Yes, 1 have received the copies on day to day basis.

Q by E.O. Were you given enough opportunities to produce and examine your witnesses in defence?

Ans. Yes, I am given sufficient time to produce and examine my witnesses in my defence. But I was not able to bring any witnesses on my behalf.

10. From the proceedings, it is clear that the respondent was informed of the charge against him and he was given the opportunity to submit his explanation. Respondent has admitted that he knew the names of witnesses to be examined by management and he was furnished with list of documents. After availing sufficient time, in respect of each of the management witnesses examined in the enquiry, respondent has cross-examined them, on the subsequent enquiry dates. Respondent was also furnished with the copies of documents marked in evidence by the management. Before cross-examining MWs 1 to 3, respondent had sufficient opportunity and the materials. Respondent in his statement has also not stated that he was in no way prejudiced on account of non-furnishing of the list of witnesses and documents, along with the charge sheet. From the sequence of events, it is clear that no prejudice has occasioned to the respondent on account of non-furnishing of the list of witnesses and the list of documents, along with the charge sheet dated August 19, 1988.

11. From perusal of the record, it is clear that respondent did not make any grievance about the non-furnishing of copies of list of documents and the list of witnesses along with the charge sheet. Thus the reliance placed by the learned senior counsel for the appellant on the case of Delhi Clothes and General Mills Co. Ltd., (supra), is justified. Hence, point No. 1 is answered by holding that, no prejudice is shown to have occasioned to the respondent.

12. Re. Point No. 2: Sri Kasturi, learned senior counsel by inviting our attention to the decision of the Apex Court in the case of Crescent Dyes and Chemicals Ltd. Vs. Ram Naresh Tripathi, , contended that the workman has no right to be represented through counsel unless law specifically confers such a right. Learned senior counsel submitted that the Service Rules of the appellant do not provide for the workman to be represented by an advocate in a domestic enquiry. It was submitted that Rules of the Company provide for right to be represented through a co-employee, which right was conceded to the respondent, vide Exhibit M6, which he did not avail. Per contra, Sri S.V. Shastry, learned Counsel for the respondent would contend that the charge was of a serious and complex nature and hence respondent ought to have been permitted to be represented through

counsel. It was contended that by not allowing the request for being represented through counsel, serious prejudice has been caused to the respondent.

13. It is not in dispute that the Service Rules of the appellant do not provide for the right to be represented through counsel in a disciplinary enquiry. To the requisition submitted by the respondent for taking assistance of an advocate in the enquiry, appellant as per its letter dated October 14, 1988 marked as Exhibit M6, has informed the respondent as follows:

We have received your representation seeking for the assistance of an advocate as defence representative in the Enquiry Proceedings against you.

In this connection we would like to inform you that the Management Representative is not a Law graduate, and also service Rules of our Company do not permit us to allow you to take assistance of an advocate as defence representative in the Enquiry. As such it is not possible for us to accord to your request of taking assistance of advocate in the Enquiry against you.

However, you can take assistance from any of your Co-employee in the Enquiry Proceedings.

Though respondent was allowed to be represented by a co-employee, he has not chosen to avail the services of a co-employee. Respondent himself is a graduate. During the course of disciplinary enquiry, he has availed sufficient opportunity, even on the ground of taking assistance from outside as well as consulting his advocate in the matter of cross-examination of witnesses in the enquiry. Opportunity to consult an advocate or person of the choice of respondent, has been allowed by the enquiry officer. Unless the Service Rules of the appellant had conferred the right of representation through a counsel or the management representative was a law graduate, the claim cannot be entertained. In view of the enunciation of law by the Apex Court in the case of Crescent Dyes and Chemicals Ltd. (supra), in our view there is no merit in the contention put forth on behalf of the respondent. Inasmuch as, reasonable opportunity has been granted to enable the respondent to consult his advocate and thereafter the respondent has cross-examined MWs.1 to 3 and has made the submissions in the enquiry, in our view there is no violation of principles of natural justice. In the case of Crescent Dyes and Chemicals Ltd." (supra), the Hon"ble Supreme Court has held as follows Crescent Dyes and Chemicals Ltd. Vs. Ram Naresh Tripathi, at p. 914:

11. The law in India also does not concede an absolute right of representation as an aspect of the right to be heard, one of the elements of principle or natural justice. It has been ruled by this Court in (i) Kalindi and Others Vs. Tata Locomotive and Engineering Co. Ltd., (ii) Brooke Bond India (P.) Ltd. v. Subbo Raman (S.) 1961 II LLJ 417 (SC), and (iii) The Dunlop Rubber Co. Vs. Workmen, , that there is no right to representation as such unless the company by its standing orders recognises such a right.

Learned single Judge has held that when a serious charge punishable under Indian Penal Code is levelled, in all fairness, request to take assistance of an advocate ought to have been allowed. In our view the same is not the position of law, in view of the declaration of law by the Hon''ble Supreme Court, as extracted, hereinabove.

14. Both on facts and in law, the contention of respondent is not well founded and we do not find any violation of principles of natural justice by merely not allowing the respondent to be represented by an advocate in the disciplinary enquiry. Point No. 2 is answered accordingly.

15. Re. Point No. 3: In the enquiry before the enquiry officer, management has examined 3 witnesses. Evidence of MW.2 Sri N. Madhav Kumar and MW.3 Sri Chakravarthy is very relevant, in the context of Exhibit M7, which is admittedly a statement of the respondent, admitting the misconduct. The contention of the respondent is that Exhibit M7 was obtained by coercion. It is the case of respondent that he gave Exhibit M7 at the instance of MW.2 Sri N. Madhav Kumar. MW.2, in his deposition before the enquiry officer has deposed that when he was the Branch Manager at Bangalore, he traced out some commission vouchers which had been forged. The commission vouchers contained his signatures and that of one Sri Adinarayanan, by acts of forgery. The payments in respect of those vouchers were effected through respondent. On enquiry, respondent told him that he had effected the payments and he gave a confessional statement, which is written and signed by respondent, which has been identified and marked as Exhibit M7. In cross examination, the said witness has denied the suggestion that he had called the respondent to give a statement as per Exhibit M7 and therefore such a statement was given. No suggestion about any acts of coercion has been attributed to MW.2 by respondent. Burden of establishing coercion to obtain Exhibit M7 was on the respondent. Nothing has been elicited in the evidence of MW.2 to come to the conclusion that there was acts of coercion to obtain Exhibit M7. Even respondent in his statement before the enquiry officer on July 24, 1989, after conclusion of the evidence of the management witnesses, has not stated anything about Exhibit M7 or any coercive acts by MW.2. Respondent has failed to establish that Exhibit M7 was obtained by exerting pressure and using coercive methods. The burden of proof which lies on the respondent has not been discharged.

16. Relevant portion of Exhibit M7, which is admittedly in the hand writing of respondent, containing his signature, reads as follows:

I have sat in the payment cash counter on March 2, 1988 and also March 14, 1988. On March 2, 1988 two vouchers serial No. 163 & 168 and March 14, 1988 6 vouchers serial No. 454 to 4591 forged the officers signature and utilised the money of Rs. 12600-00 for my own use.

Sir my father was expired on January 21, 1938. Due to some financial difficulties I made the mistake. This is the last time and I never repeat in future. As I

recently married. I am having lot of responsibilities. So kindly pardon me and I will be great thankful to you if you excuse in this regard.

From perusal of Exhibit M7, it is clear that there is an admission on the part of the respondent regarding utilisation of money of Rs. 12,600/- for his own use. Though the respondent took the plea that Exhibit M7 was obtained by coercion in the cross-examination of MW.2, appellant has not elicited any material with regard to the theory of coercion set up by him. Burden of proof of coercion was on the respondent, which he has failed to discharge.

Learned Counsel for the respondent placed reliance on the decision in the case of *Syndicate Bank Vs. Sri Venkatarama Murlidhar Shenoy*, Cal-DB) to contend that, since fair opportunity has not been given to the respondent and the relevant documents and the witnesses have not been produced in the enquiry, action taken by the appellant, is arbitrary and unsustainable. We do not find merit in the submission. In the instant case, appellant has examined the concerned witnesses and has produced the documents to establish the charge. Evidence of MWs.2 and 3 with regard to the charge levelled against the respondent is relevant, which has been considered by the enquiry officer and also by the Industrial Tribunal. The said decision, in the facts and circumstances of this case, has no application.

17. Enquiry Officer, by taking into consideration the evidence of MWs.1 to 3, the documents marked as Exhibits M7, M10, M11, M12 and M13, also the two adding rolls of March 2, 1988 and March 14, 1988 produced by the respondent, has arrived at the conclusion that the charge levelled against the respondent, as established and respondent was held to be guilty.

18. Industrial Tribunal on re-consideration and reassessment of evidence of MWs. 1 to 3, and the documentary evidence exhibited during the course of disciplinary enquiry, has held that the respondent is guilty of misappropriation of the amount. Taking into account the gravity of the proved misconduct, it is held that the question of exercise of discretion u/s 11-A of "the Act" does not arise and viewed from any angle, order of dismissal passed by the appellant is proper.

19. We have perused the evidence placed on record of the enquiry officer as well as before the Industrial Tribunal. Both the enquiry officer and Industrial Tribunal have correctly appreciated the relevant oral and documentary evidence. The conclusions arrived by the enquiry officer and the Industrial Tribunal to hold respondent as guilty of misappropriation, do not suffer from any error. There is no omission on the part of either the enquiry officer or the Industrial Tribunal in the matter of consideration of evidence placed before them. There is proper exercise of jurisdiction by the Industrial Tribunal and its findings being in consonance, with the record and the law, cannot be faulted. Learned single Judge has not considered these material aspects. Hence the order passed by learned single Judge cannot be sustained.

20. For the foregoing discussion and the reasons, we allow this appeal, set aside

the order dated August 8, 2006 passed in W.P.41265/2002 by the learned single Judge.

Consequently, the order of dismissal passed by the appellant and upheld by the Industrial Tribunal, stands restored. No costs.