

(1984) 11 OHC CK 0011

In the Orissa High Court

Case No : Original Jurisdiction Case No. 1402 of 1980

P.K. Kunjumon

APPELLANT

Vs

Managing Director, Central Ware Housing Corporation and
Others

RESPONDENT

Date of Decision : 23-11-1984

Acts Referred:

Central Warehousing Corporation (Staff) Regulations, 1986 — Regulation 18(6)

Citation : (1985) 1 OLR 1

Hon'ble Judges : K.P. Mohapatra, J;B.N. Misra, J

Bench : Division Bench

Advocate : R.K. Kar, for the Appellant; R.K. Mohanty, for the Respondent

Final Decision : Allowed

Judgement

B.N. Misra, J.—Though notice of admission and hearing had been issued, with consent of Mr. R.K. Kar, learned counsel appearing for the petitioner and Mr. R.K. Mohanty, learned counsel appearing for the opposite parties, the matter is heard.

2. Admit.

3. The facts of, this case may be briefly noted. The petitioner was working as the Ware House Manager of the Central Ware House, Nayabazar, Cuttack, in 1978. On 19.12.1978 the petitioner was placed under suspension on certain allegations of misconduct. Opposite party No. 1 decided to hold an enquiry into the allegations levelled against the petitioner and issued statements of charges to him, vide Annex-1 dated 15.1.1980. Thereafter, opposite party No.- 1 appointed opposite party No. 2 as the enquiry officer, vide Annex-2 dated 27.2.1980. On 27.3.1980 the petitioner applied to opposite party No. 3 for permission to take the assistance of one Mr. K.A. Nayar, Ware House Manager, Rampur, U. P., to conduct his case in the departmental enquiry instituted against him. Annex-3 is the said application. Vide memorandum dated" 3.4.1980, Annex-4 opposite party No. 3 refused to accede to the request of the petitioner. The refusal was

reiterated in Annex-5 dated 23.4.1980. The petitioner again requested opposite party No, 3 by his application dated 11th May, 1930, Annex-6, but this request was again, turned down vide Annex-7 dated 3.6.1980. In these circumstances, the petitioner has filed the present writ application with the prayer that as enjoined in the rules governing departmental enquiries, he is entitled to be defended by any other employee of his choice of the corporation and, therefore he should/be permitted to be represented by the said Mr. K.A. Nayar.

4. In the counter the opposite parties have taken the stand that "permission to the petitioner to be represented by Mr. K.A. Nayar had to be refused as MR. Nayar is in charge of an important Ware House and if permitted to assist the petitioner in the departmental enquiry, the work of the corporation is likely to be seriously dislocated. It is further pointed out that as consent of Mr. Nayar was not submitted by the petitioner along with his application, the opposite parties had no option but to refuse permission. The opposite, parties have accordingly prayed that the writ application should be dismissed.

5. In view of the rival stands of the parties, it would be useful to refer to the Central Ware Housing Corporation (Staff) Regulations, 1966, made u/s 42 of the Ware Housing Corporation Act, 1962. Regulation 18 deals with the procedure for imposing major penalties, Regulation 18(6) provides :

"The disciplinary authority may nominate any person to present the case in support of the charges before the enquiring authority. The employee may present his case with the assistance of any other employee, but shall not engage a legal practitioner for the purpose unless. the person nominated by the disciplinary authority as aforesaid is a legal practitioner or unless the disciplinary authority, having regard to the circumstances of the case, so permits."

6. It is clear from the aforesaid provision that an employee facing a departmental enquiry may choose any other employee of the corporation to assist him in defending his case before the disciplinary authority. This is a valuable right of an employee and surely this right cannot be denied merely on the ground that there would be dislocation of work. It is however necessary that the employee chosen to defend or assist in the departmental enquiry must be willing to undertake the assignment. It would, therefore, be proper that in this case the petitioner must first obtain the consent of Mr. K.A. Nayar to accept the assignment.

7. This writ application is accordingly allowed. The petitioner shall be permitted to be assisted by Mr. K.A. Nayar provided that Mr. Nayar gives his consent to assist the petitioner. The disciplinary proceeding pending against the petitioner for the last four years should now be expeditiously disposed of. In the circumstances of this case there shall be no order as to costs.

K.P. Mohapatra, J.

8. I agree.