
(2014) 06 KAR CK 0225

In the Karnataka High Court

Case No : Writ Petition No. 28527/2014 (S-KSRTC)

Ramesh

APPELLANT

Vs

Managing Director, Karnataka State Road Transport
Corporation

RESPONDENT

Date of Decision : 26-06-2014

Acts Referred:

Citation : (2014) LLR 1224

Hon'ble Judges : S. Abdul Nazeer, J

Bench : Single Bench

Advocate : K. Hanumantharayappa, Advocate for the Appellant; H.R. Renuka, Advocate for the Respondent

Judgement

S. Abdul Nazeer, J.—The petitioner was appointed for the post of Chargeman in the establishment of the respondent-Corporation in the year 1995. Later, he was promoted as Depot Manager. When he was working as such, disciplinary proceedings was initiated against him. Three charge memos were issued against him. The first charge memo No. 703/1399/2012-13 is in relation to securing the employment in the Corporation by forging the marks card and the certificate of another person having the same name as that of the petitioner. Other two charge memos, namely, No. 704/1852/2013-14 and No. 732/1865/2013-14 are in relation to receipt of illegal gratification by the petitioner. The petitioner made an application before the disciplinary authority under Regulation 23(8) of the Karnataka State Road Transport Corporation Servants (Conduct & Discipline) Regulations, 1971 (for short the Regulations) seeking permission of the disciplinary authority to engage an advocate to represent him before the Enquiry Officer. The said application was dismissed by the Disciplinary Authority by his order at Annexure-C dated 6.6.2014 The petitioner has called in question the validity of the said order in this writ petition.

2. I have heard the learned counsel for the parties.

3. The disciplinary authority has rejected the application by holding that

Regulation No. 23(8) does not provide for legal practitioner to defend him before the Enquiry Officer Regulation 23(8) reads as under:

"Regulation 23(8): The Corporation servant may take assistance of any other Corporation servant from the same Division or Unit where the accused Corporation servant is working, to present the case on his behalf but may not engage a legal practitioner for the purpose."

4. Having regard to the language contained in this provision, particularly, the expression "may not", there cannot be a bar to engage an Advocate to represent a workman before the enquiry officer. A Division Bench of this Court in North West Karnataka Road Transport Corporation Vs. Mohammad Kamil Sindgikar, has held that the Regulation does not prohibit a workman to engage the services of legal practitioner. The Division Bench has relied on an unreported decision of in W.A. No. 2967/1992 between G.M. Cholaiah v. Karnataka State Road Transport Corporation DD 18.6.1996, wherein it has been held thus:

"On the language of the Regulation, depending upon the history of the disciplinary proceedings, the seriousness of the charge, the nature of the complaint, the nature of the evidence to be led in support of the charges and other attendant circumstances surrounding the proceedings would indicate as to whether refusal to engage assistance of a legal practitioner would expose an employee to serious prejudice or not. Tested on that basis, in each case, the Authorities will have to decide the matter. In this case, the concerned Authority has not exercised that discretion at all. On the other hand, it has been stated that Regulation 23(8) bars engaging the services of a legal practitioner, therefore, such permission cannot be granted. Regulation cannot be understood as prohibiting an employee from engaging the services of an advocate with the permission of the employer and if the circumstances to which we have adverted to earlier were available, it may become necessary to engage the services of an Advocate, as otherwise, the opportunity given before the inquiring Authority will be only an empty formality",

(emphasis supplied by me)

5. It is thus clear that there is no bar for engaging the services of an Advocate by the employee to defend him before the disciplinary authority. Ultimately, it is for the disciplinary authority to take a decision depending on the facts and circumstances of the case. I am of the view that the Disciplinary Authority has to consider the application of the petitioner on merits. It cannot reject the application on the ground that Regulations do not provide for appointment of a legal practitioner

6. Learned counsel for the petitioner has confined this writ petition to disciplinary enquiry in case No. 703/1399/2012-13 in relation to the charge of forging the marks card and certificate of another person having the same name as that of the petitioner in securing the employment. In the result, writ petition succeeds and it is accordingly allowed in part. The endorsement/order at Annexure-C

dated 6.6.2014 passed by the 2nd respondent is hereby quashed only insofar as the rejection of the application for engaging a legal practitioner in respect of disciplinary proceedings in relation to the charge memo of forging the marks card and the certificate. The 2nd respondent is directed to consider the application afresh in accordance with law only in respect of the first case, namely, case No. 703/1399/2012-13. Until this application is considered, the 3rd respondent shall not proceed with the disciplinary enquiry in the said case. No costs.