

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.06.2016

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THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH
and
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Writ Appeal No.231 of 2016
and C.M.P.No.3651 of 2016

Joy Aich

..Appellant

Vs.

1.Chairman & Managing Director
Container Corporation of India
A Government of India Undertaking
Ministry of Railways
Concor Bhavan
C-3, Mathura Road
New Delhi-110 076

2.Chief General Manager
Container Corporation of India
Southern Region, 8th Floor
Office of Southern Railway
EVR Periyar Salai
Egmore, Chennai

3.N.K.Subash,
Retired Senior Superintendent of Post Offices
House No.F3, First Floor
Soundariya, 8th Main Road
Kasturibai Nagar, Adyar
Chennai-600 020

..Respondents

Writ Appeal filed under Clause 15 of Letters Patent against
the order passed in W.P.No.38617 of 2015 dated 22.01.2016.

WP.No.38617 of 2015:Writ Petition is filed under Article 226 of
the Constitution of India for issue of Writ of Mandamus
Directing the respondents to permit the petitioner to have the
assistance of Shri Shernik Runwal Retired Senior Vigilance
Officer Western Railway as Petitioner Defense Assistant in the
enquiry held against the petitioner pursuant to the charge memo
issued by the 1st respondent in No. CON/VIG-NWR/19/2015/AV dated
14/08/2015.

For appellant : Mr.V.Selvaraj

For respondents : Mr.A.Thiyagarajan, Senior counsel
for Mr.V.G.Suresh Kumar for R1 and R2.

JUDGMENT

(Judgment of the Court was delivered by HULUVADI G. RAMESH, J.)

This Writ Appeal is filed against the order passed in W.P.No.38617 of 2015 dated 22.01.2016, wherein, the learned Single Judge, rejected the prayer made by the appellant herein, in seeking assistance of Shri.Shernik Runwal, a Retired Senior Vigilance Officer as petitioner's defense Assistant.

2. The appellant/petitioner was employed as General Manager-Finance and Accounts in the Southern Regional Office of the Container Corporation of India. Based on the allegations of some misconduct, a charge memo dated 14.08.2015 was issued on the appellant, in all containing 19 charges. One N.K.Subash, a retired Senior Superintendent of Post Offices, the 3rd respondent herein, was appointed as the enquiry officer. The petitioner by letter dated 05.11.2015, nominated Shri.Shernik Runwal, a Retired senior Vigilance Officer, Western Railway as petitioner's defense assistant, but the enquiry officer, vide letter dated 07.11.2015, rejected the nomination of the petitioner, informing that the petitioner has to nominate only an employee of the respondent corporation as his defense assistant.

3. The contention of the appellant/writ petitioner is that during the year 2004-2005, in similar facts and circumstances, an employee of Custom & Excise Department was allowed to be nominated as defense assistant and therefore, the defense assistant of appellant's choice should also be accepted.

4. The learned Single Judge, referred to a judgment of the Hon'ble Supreme Court reported in AIR 2007 SCC 1211 (Union of India and Others Vs. S.K.Saigal and Others), wherein, it is held that no mandamus can be issued which would be contrary to the Act and the Rules. The decisions of the Hon'ble Supreme Court are to the effect that a delinquent has no vested or absolute right of his choice to claim assistance of a particular person unless such right has flown from the relevant statute or rules. The appellant herein is bound by the restrictions imposed by law or statute in regard to representation before the departmental proceedings and in such cases, the charge sheeted employee cannot complain violation of principles of natural justice.

5. In the counter affidavit filed by the 2nd respondent-Chief General Manager, Container Corporation of India, the stand taken is that though the request of the appellant/employee to engage and take the assistance of a non-employee of Container Corporation of India as a defense assistant was negated by the disciplinary authority, namely the 1st respondent, vide his communication dated 17.11.2015, the appellant herein has not challenged the said order of the 1st respondent, but on the other hand filed a writ of mandamus praying of the same stated relief and therefore, it is not sustainable.

6. It is further submitted by the respondent Corporation that what is contemplated under Rule 11(iv) of Container Corporation of India (Discipline and Appeal) Rules, is that the delinquent employee can have the assistance of an employee of the Respondent Corporation in preparing his defense of any other employee but may not include a legal practitioner for the purpose. Thus, having defense assistant outside the department is not contemplated under the Rules.

7. We have given our anxious consideration to the arguments made by both parties and in the light of the decisions of the Apex Court, we make it clear that the appellant has no vested right of nominating defense assistant of his choice that too an outsider which is prohibited under the rule.

8. The learned Single Judge, while dismissing the Writ Petition filed by the appellant herein, relied on the decision of the Hon'ble Supreme Court, in the State of U.P., VS. Harisha Chandra, reported in 1996 (9) SCC 309, wherein, it is held as under:-

"Further question that arises in this context is whether the High Court was justified in issuing the mandamus to the appellant to make recruitment of the Writ Petitioners. Under the Constitution a mandamus can be issued by the Court when the applicant establishes that he has a legal right to the performance of legal duty by the party against whom the mandamus is sought and said right was subsisting on the date of the petition. The duty that may be enjoined by mandamus may be one imposed by the Constitution or a Statute or by Rules or orders having the force of law. But no mandamus can be issued to direct the Government to refrain from enforcing the provision of law or to do something which is contrary to law. "

Further, Rule 11(iv) of the Container Corporation of India is also very clear wherein it contemplates that only an employee of the respondent Corporation can be nominated as defense assistant and no outsider is permissible.

9. In view of the aforesaid discussions, the argument of the learned counsel for the appellant to have an outsider to defend his case could not be entertained by this court.

10. In view of the above, we find no ground to interfere with the order passed by the learned Single Judge. Accordingly, this writ appeal being devoid of merits, is dismissed. However, the appellant is at liberty to engage some other person within the department to assist him in the enquiry proceedings. In any event, the exercise shall be concluded within one month from the date of receipt of a copy of this order. No costs. Consequently, connected MP is closed.

-s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

nvsri

To

1.Chairman & Managing Director
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Southern Region, 8th Floor
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+1 cc to Mr.V.Selvaraj Advocate sr.29780

Writ Appeal No.231 of 2016

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