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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.NO.1181/2002

Friday, this the 3rd day of May, 2002

Hon'ble Shri Justice Ashok Agarwal, Chairman
Hon'ble Shri S.A.T. Rizvi, Member (A)

K.K.Datta
C/O Sh. S.L.Mehta
R/O 69, Bhart Nagar, Delhi-52

..Applicant

(By Advocate: Shri K.B.S.Rajan)

Versus

The Union of India through Secretary
Department of Company Affairs
Vth Floor, Shastri Bhawan
New Delhi

..Respondents

O R D E R (ORAL)

Shri S.A.T. Rizvi:

Applicant's prayer for appointing a legal practioner as his defence assistant in the disciplinary proceedings has been rejected vide respondents' letter dated 22.4.2002 (A-1). The ground taken therein is that Shri H. Banerjee, who holds a LLB Degree, cannot be termed a legal practioner in view of fact that under the CCS (Conduct) Rules, 1965, a serving Govt. servant is not allowed to engage himself in legal profession either independently or otherwise. Hence, the present OA.

2. The relevant rules, being Rule 14 (8), provides that a delinquent official in a disciplinary proceedings can appoint a legal practioner as his defence assistant if the presenting officer appointed by the disciplinary authority happens to be a legal practioner. If that is not so, the same rule provides that the disciplinary authority will consider the prayer of the delinquent official for appointment of a legal practioner as defence

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assistant on the basis of the circumstances of the case. Since Shri Banerjee cannot be termed a legal practitioner in accordance with the CCS (Conduct) Rules, 1965, the respondents have rejected the applicant's prayer without examining the circumstances of the case.

3. The learned counsel appearing on behalf of the applicant submits that a similar issue came up before the Supreme Court in the case of Board of Trustees of the Port of Bombay Vs. Dilipkumar Raghavendranath Nadkarni reported as (1983) 1 SCC 124 when the Court, after examining the facts and circumstances of the case, held as follows:-

" 7. The narrow question which we propose to examine in this appeal is whether where in a disciplinary enquiry by a domestic tribunal, the employer complaining misconduct appoints a legally trained person as Presenting-cum-Prosecuting Officer the denial or refusal of a request by the delinquent employee seeking permission to engage a legal practitioner to defend him at the enquiry, would constitute such denial of reasonable opportunity to defend oneself and thus violate one of the essential principles of natural justice which would vitiate the enquiry."

4. We have considered the submissions made by the learned counsel and find that even if it is not possible to hold that the said Shri Banerjee is a legal practitioner, it would still ~~not~~ be possible to regard him as a legally trained person inasmuch besides holding the Degree of LLB, in his official capacity as Liquidator, he is regularly engaged for appearing before the High Court. That being so, the ratio of the judgement laid down in the aforesaid case will seem to find application in the

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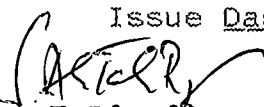
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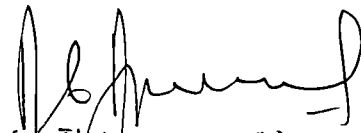
present situation. There is thus, in our judgement, a case for reconsideration of the applicant's prayer for appointment of a legal practitioner as defence assistant. The respondents are best equipped to judge the matter in the light of the aforesaid judgement of the Supreme Court and pass a reasoned and a speaking order in the matter.

5. Having regard to the facts and circumstances stated in the preceding paragraphs, we are inclined to dispose of the present OA at this very stage even without issuing notices with a direction to the respondents to consider the present OA as a representation made on behalf of the applicant and pass a reasoned and a speaking order in the matter expeditiously and in any event within a period of one month from the date of receipt of a copy of this order. Needless to add that while passing orders, the respondents will have due regard to the judgement rendered by the Supreme Court in the aforesaid case. The respondents are also directed not to proceed to examine witnesses until orders as above have been passed by them.

6. The present OA is disposed of in the aforestated terms at the admission stage itself. No costs.

Issue Dasti.


(S.A.T. Rizvi)
Member (A)


(Ashok Agarwal)
Chairman

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