

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

O.A.No.340/95

NEW DELHI THIS THE 24<sup>th</sup> DAY OF FEBRUARY, 1995.

HON'BLE SHRI J.P. SHARMA, MEMBER (J)  
HON'BLE SHRI B.K. SINGH, MEMBER (A)

Shri Des Raj,  
S/o Shri Dev Dutt,  
Technician Gr VI  
Central Road Research Institute,  
P.O. CRRI, New Delhi-110 020.

R/o Qtr No.B-38, CRRI  
Staff Colony,  
Maharani Bagh,  
New Delhi-55.

....Applicant

(By Advocate : Shri K.N. Bahuguna )

VERSUS

1. Counsel of Scientific &  
Industrial Research,  
'Anusandhan Bhawan'  
Rafi Marg,  
New Delhi  
(Through its Jt Secretary (Admn.)

2. Director,  
Central Road Research Institute,  
P.O. C.R.R.I.  
Delhi Mathura Road,  
New Delhi-110 020.

....Respondents

JUDGEMENT

Shri B.K. Singh, Member (A)

This application has been filed against the rejection of the request of the applicant to engage a Practising Advocate to defend his case before Enquiry Officer dated 14.2.1995 vide Annexure A-1 of the Paper-book.

Contd...2

B


2. We heard the Counsel Shri K.N. Bhauguna for the applicant on the question of issue of direction to the respondents to permit the applicant to engage a practising advocate to represent him in the D.E.

3. The doctrine that the parties should be given adequate notice and an opportunity to be heard Audi Alteram Partem requires only that (i) the accusation is made known to the accused and that this should be clearly stated and should not be vague; (ii) he is given full opportunity of defence to state his case; (iii) The I.O. acts in good faith; (iv) The disciplinary/appellate authorities pass speaking orders and that their findings flow from the facts and circumstances of the case. In case of any disagreement with E.O. to Disciplinary authority is required to record reasons and these reasons must be communicated to delinquent employee before imposing the punishment. The appeal is provided in order to enable the government servant to approach the appellate authority for any issue not looked into by the disciplinary authority in arriving at his finding.

4. Where there are no rules governing

B


procedure to be followed in a disciplinary enquiry enabling the accused to be represented by a legal practioner at such an enquiry or prohibiting him to be represented by another the discretion rests with the E.O. person/ The question of his representation by a fellow colleague where he has difficulty in stating his case is conceded but since such enquiries are not bound by rules of evidence and are bound by only statutory rules in regard to framing of charge and procedure to be followed and is not tied down by the technical rules and procedure contained in the evidence act or Civil Procedure Code and since E.O. and Presenting Officer are departmental officers and are guided by CCS(CCA) Rules or any other rules and administrative instructions the delinquent is required to adduce all relevant defence on which he relies and he is given the opportunity to cross-examine the prosecution witnesses whose evidence is taken in his presence the enquiry is not open to challenge when documents relied upon are shown to him or copies given and list of witnesses furnished to him. Where witnesses are cited to prove statements made by them and documents produced from their custody the copies of which have already been furnished to the delinquent employee,




it would be sufficient for them to give formal evidence regarding these documents provided that they are tendered for cross-examination. This has been held in T.K. Joseph, appellant Vs Tribunal (1981) 2 SLR 787 at Page 790-92, Thus accused cannot as of right claim that he be represented by another person or by a practising advocate at the enquiry. A defence assistant is provided if such a request is made. Even in such a case the I.O. should consider his request if he is likely to be prejudiced by not providing a defence assistant with reference to the facts and circumstances of the case, the nature of the enquiry, and the subject matter under enquiry.

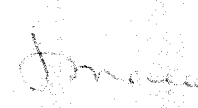
5. The question whether a legal practitioner should be allowed or not is the sole discretion of I.O. who is holding the enquiry and it will depend on the status of enquiry officer and presenting officer. If the I.O. is a legal expert I.O. may consider the question of allowing a legal practitioner.

6. There is no averment to the effect that I.O. and Presenting Officer have a legal background. There are no rules of procedure which stipulate that



the delinquent can claim as a matter of right defence by a legal practioner or that he is entitled to be represented by another person in a disciplinary enquiry. The I.O. while holding the enquiry has to consider the status of the delinquent employee, his capacity to defend himself before allowing even the help of a defence assistant. It is for I.O. to decide on the basis of the facts and cicumstances whether a legal practioner can be allowed or not. His discretion in the matter is final where he refuses taking a synoptic view of all the facts and circumstances of the enquiry representation by a legal practioner it is not open to challenge before the Tribunal. It cannot be said in the circumstances of the present case that the I.O. has exercised his discretion improperly. This principle is contained in the judgement of Standard Pottery Works Alwe Vs SPW Employees Union, 1981 Lab IC 1132. Thus we find that no <sup>prima facie</sup> case is made out under section 19 and the application is dismissed under Sub section 3 of Section 19 of the C.A.T. Act, 1985 at the notice stage itself.

  
(B.K. SINGH)  
MEMBER (A)

  
(J.P. SHARMA)  
MEMBER (J)