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Central Administrative Tribunal, Principal Bench

Original Application No. 328 of 2004

New Delhi, this the 9th day of February, 2004

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.K. Naik, Member (A)

Shri Virender Kumar Dhall
S/o Shri Om Prakash Dhall,
R/o House No. 119, Pocket G-27
Sector-3, Rohini,
Delhi

....Applicant

(By Advocate: Shri Tanveer Ahmed)

Versus

1. Union Public Service Commission
through its Secretary,
Shahjahan Road, New Delhi
2. Shri M.P. Singh, (Inquiry Officer)
through Secretary U.P.S.C.
Dholpur House
New Delhi

....Respondents

O R D E R (ORAL)

By Justice V.S. Aggarwal, Chairman

The applicant is facing disciplinary proceedings. Simultaneously, it is being stated that he is facing a criminal trial before the learned Metropolitan Magistrate at Delhi.

2. The applicant had earlier filed O.A. 2982/2003 which came up for consideration before this Tribunal on 10.12.2003. The precise grievance of the applicant at that time as it is in the present petition was that he should be allowed a legal practitioner to conduct on his behalf the departmental proceedings and this Tribunal disposed of the said petition with the following directions:

"In this backdrop, in our considered view, it would be in the interest of justice to direct respondent No. 1, UPSC through its Secretary to reconsider applicant's request for nominating an advocate as his defence assistant in the disciplinary proceedings against him in the light of the observations made above by passing a detailed

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speaking order within a period of one month from the date of communication of these order and till then further proceedings in the enquiry shall remain in abeyance. Ordered accordingly."

3. In pursuance of the directions of this Tribunal, the impugned order dated 16.1.2004 has been passed. The respondents have rejected the request of the applicant. The operative part of the order reads:

"And whereas on reconsideration of the request of Shri V.K. Dhall for permission to engage an Advocate as his defence assistant, the undersigned disciplinary authority is of the view that:-

(a) The decision of the departmental disciplinary proceedings against Shri V.K. Dhall is not likely to affect the criminal proceedings pending against him under Section 409, 420, 468 and 471 of IPC because while decisions in departmental proceedings are based on the principle of preponderance of probability, the standard of proof required to convict an accused in criminal proceedings has to be beyond reasonable doubt.

(b) The charges framed against Shri V.K. Dhall in the disciplinary proceedings are not complicated and the Presenting Officer is not a legally trained officer. In the facts and circumstances of the case, there is no justification for invoking the discretion vested in the disciplinary authority vide sub-rule 8(a) of rule 14 of the CCS (CC&A) Rules, 1965."

4. Learned counsel for the applicant contends that the defence of the applicant would be highly prejudiced and would be disclosed if he is not allowed a legal practitioner to conduct the disciplinary proceedings. It would prejudice his matter because according to the learned counsel, the facts in any case involved, are complicated and serious in nature.

5. We have considered the submissions made by the learned counsel. Rule 14 (8) (a) of Central Civil Service (Classification, Control and Appeal Rules) permits

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engagement of a legal practitioner in disciplinary proceedings and reads as under:

"(8) (a) The Government servant may take the assistance of any other Government servant posted in any office either at his headquarters or at the place where the inquiry is held, to present the case on his behalf, but may not engage a legal practitioner for the purpose, unless the Presenting Officer appointed by the disciplinary authority is a legal practitioner, or, the disciplinary authority, having regard to the circumstances of the case, so permits:

Provided that the Government servant make take the assistance of any other Government servant posted at any other station, if the inquiring authority having regard to the circumstances of the case, and for reasons to be recorded in writing so permits."

6. It is abundantly clear that it is ^{not} a right of any person facing disciplinary proceedings to have the services of a legal practitioner. Necessarily, the services of the legal practitioner can be availed of if the Presenting Officer appointed by the disciplinary authority is a legal practitioner, or, the disciplinary authority, having regard to the circumstances of the case, so permits.

7. It is being contended on behalf of the applicant that in the present case keeping in view the nature of the assertions, the facts were complicated and legal practitioner should be allowed.

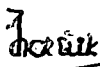
8. We are not impressed by this aspect of the matter. After going through the nature of the charge that has been drawn against the applicant, it cannot be termed that they are so complicated that the applicant should be allowed the services of a legal practitioner during the


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course of the disciplinary proceedings. Therefore, the discretion so exercised does not require a judicial review.

9. Otherwise also, the purpose of criminal proceedings against a particular person is to punish him for the alleged offence he is stated to have committed. The purpose of the disciplinary proceedings is to maintain discipline in the department. The position in one case normally will not affect or prejudice the other. Therefore, to contend that if the disciplinary proceedings end up in what is being feared which will affect the applicant, would not be correct.

10. On totality of the facts and circumstances, therefore, we find that there is no ground to interfere in the facts of the case. The O.A. must fail and is dismissed in limine.


(S.K. Naik)
Member (A)


(V.S. Aggarwal)
Chairman

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