

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

(A)

O.A. No. 215/92
P.D.X.X.M.D.

1992

DATE OF DECISION 16.4.92

<u>Dr. Raghunath Menon</u>	Petitioner
<u>Mr. Neeraj Jain with Sh. S. S. Tiwari</u>	Advocate for the Petitioner(s)
Versus	
<u>Union of India & Another</u>	Respondent
<u>Mrs. Raj Kumari Chopra</u>	Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Justice Ram Pal Singh, Vice Chairman (J).

The Hon'ble Mr. I. P. Gupta, Member (A).

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not? Yes.
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

I. P. Gupta
Member (A).

Ram Pal Singh
V.C. (J).

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A.215/1992

Date of decision: 16.4.92

(10)

Dr.Raghunathaman Opeh .. Applicant

Versus

Union of India & Another .. Respondents.

Ms.Neeraj Jain with
Sh.S.S.Tiwari .. Counsel for the applicant.

Mrs.Raj Kumari Chopra .. Counsel for the respondents.

CORAM:

The Hon'ble Sh.Justice Ram Pal Singh, Vice Chairman(J).
The Hon'ble Sh.I.P.Gupta, Member(A).

J U D G E M E N T

(Delivered by Hon'ble Sh.Justice Ram Pal Singh, V.C.(J)).

The applicant is a Doctor and is employed as a Medical Officer in the C.G.H.S. at New Delhi under the Union of India, Ministry of Health, New Delhi. On 31.10.1984 he was detailed for duty at the residence of the late Prime Minister Smt.Indira Gandhi. On 31.10.84 Hon'ble the late Prime Minister Smt. Indira Gandhi fell to the assassin's bullets. She was to be transported immediately to the All India Institute of Medical Sciences (A.I.I.M.S for short). It is alleged that the applicant did not perform the duties according to the Rules and A.I.I.M.S. was not informed prior to shifting the injured Prime Minister to the Institute. She is said to have been transported in an Ambassador Car to the A.I.I.M.S., whereupon she was attended in emergency but in absence of prior information, there was delay. To enquire this incidence, a Commission headed by Hon'ble Mr.Justice Thakar (known as Thakar Commission), was appointed under the Commission of Enquiries Act of 1952. It is alleged that the applicant did not perform his duties i.e., not sending prior information to the A.I.I.M.S.

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and not transporting the injured late Prime Minister in the Ambulance. Consequently, the disciplinary authority by an order dated 18.10.1989 informed the applicant that a departmental enquiry is proposed to be held against the applicant under Rule 14 of the C.C.S.(C.C.A.) Rules, 1965 (hereinafter referred as the Rules). The applicant, as directed, filed his written statement within 10 days in his defence to the article of charges, statement of imputation and misconduct. List of documents ^{were} and list of witnesses ^A supplied to him (Annexure B). One Dr.A.K.Mukerjee was appointed as the Enquiry Officer to enquire into misconduct allegedly committed by the applicant. The applicant by a letter dated 16.8.91, which he addressed to Respondent No.1, requested therein that he should be allowed to be represented by a duly qualified counsel (advocate) of his choice (Annexure C). On 27.8.91 the preliminary enquiry was conducted by the enquiry officer. This letter was placed before the enquiry officer. Hence, the preliminary enquiry was adjourned. The letter of the applicant was directed to be placed before the disciplinary authority to decide about the request made by the applicant. By a letter dated 19.9.91 the disciplinary authority informed the applicant that his request for being represented by a legal practitioner was not accepted. Thereafter the enquiry officer intimated the applicant that the preliminary hearing shall be resumed from 7.11.91. On that date the documents were to be produced for inspection, instead they were produced on 16.11.91. During this preliminary enquiry the applicant was directed to produce list of documents and list of witnesses,

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upon which he was to place reliance. Minutes are at Annexure 'M'. It is alleged by the applicant that he was not allowed to inspect the documents nor the documents were produced for his inspection and the hearing of the preliminary enquiry commenced on 12.12.91 was adjourned to 10.1.92.

2. The applicant contends that as the enquiry is complex and involves the aid and help of a trained legal brain, which he has not, he should be permitted to be represented by an advocate. The applicant also contends in this O.A. that he is not capable of handling the enquiry without such legal aid. He further contends that the prayer, which was turned down by the disciplinary authority does not contain any reason. He further contends that as the enquiry is based on the findings of the Thakkar Commission, with regard to the alleged lapses on the part of the applicant, he shall not get justice in the enquiry without the help of a proper legal assistance. Another ground of the applicant is that the Presenting Officer, who is from Central Vigilance Commission and has been attending enquiries of this nature, is a legally trained person, whereas the applicant has no experience of any enquiry or of the procedure or law involved in such enquiry and if the applicant is not provided with an opportunity of being represented by a legal practitioner, he will be prejudiced in his defence and this will amount to denial of natural justice to him. According to him in the Indian History this is a sensitive episode. Hence he should be permitted to get the aid and help of a trained legal hand. By filing this O.A. under

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Section 19 of the Administrative Tribunals Act of 1985 he prays for a direction to the respondents to allow the applicant to be represented by a legal practitioner/ advocate/lawyer of his choice to act on his behalf in the proposed enquiry.

3. The respondents were issued notice and they have filed their counter. They have opposed the prayer of the applicant on the ground that he has no right to make such a demand. They have in great detail quoted the relevant provisions of Rule 14 of the Rules and contended that the Presenting Officer is working as an Under Secretary in the Ministry of Health and Family Welfare.

4. We have heard the learned counsel for the applicant Ms. Neeraj Jain with Sh. S. S. Tiwari and also Mrs. Raj Kumari Chopra, learned counsel for the respondents, in great length.

Rule 14 of the Rules contains Decision No. 21 which deals with the question of providing assistance of legal practitioner to the charged officer against whom departmental enquiry is to be held, is reproduced below:-

"(21) Assistance of legal practitioner to be decided on merits of each case- The assistance of a legal practitioner should not be refused to the officer concerned if the Presenting Officer is a legal practitioner. The rule, however, vests discretion in the Disciplinary Authority to permit assistance of a legal practitioner having regard to the circumstances, that such assistance is justified. No orders exist laying down guidelines to the Disciplinary Authority as to in what circumstances such justification may be said to exist. The matter has been carefully considered and after taking into account the

judgements delivered by some High Courts on this point it has been decided that the Disciplinary Authority should bear in each case, such circumstances in mind as the status of the Presenting Officer, his experience in this type of job and the volume and nature of documentary evidence produced in the case before taking a decision to whether or not the services of a legal practitioner should be made available to the officer concerned. It is reiterated that the discretion of the Disciplinary Authority is vast and it should exercise such discretion in the most impartial manner on the merits of each case and be guided solely by the criterion whether the denial of assistance of a legal practitioner is likely to be construed as denial of reasonable opportunity to the officer concerned to defend himself".

5. As this provision has been quoted and relied upon by the respondents in para 5.1 of their counter, we shall proceed to examine this provision minutely. This decision No.21 of Rule 14 of the Rules, relied upon by the respondents, in the first place, does not prohibit the assistance of a legal practitioner to the charged officer. The only condition it lays down is that the assistance of such legal practitioner should not be refused if the presenting officer is a legal practitioner; secondly it provides that while considering the question, the Disciplinary Authority should bear in mind the status of the Presenting Officer and his experience in this type of job. The applicant in para 5.3 of the O.A. has specifically mentioned that the "Presenting Officer is from Central Vigilence Commission and is regularly attending enquiries of this sort. Therefore, the respondents are being represented by legally trained persons, whereas the applicant has

no experience of any enquiry or of any legal formalities".

Respondents in para 5.3 of their counter have replied, "5.3) The argument of the applicant is baseless. The Presenting Officer is working as an Under Secretary in the Ministry of Health & Family Welfare (emphasis supplied). The respondents in their counter have not denied the contentions of the applicant in para 5.3 of the O.A. They have not denied the fact that the Presenting Officer is from Central Vigilance and is regularly attending the enquiries of this sort... If the Presenting Officer was not from Central Vigilance and was not experienced in the enquiries the respondents should have denied this fact specifically and should also have supplied the data indicating his educational and vocational qualifications, experience and other facts which may have rebutted the contentions of the applicant; non-denial or evasive denial of facts alleged, amounts to admission of a fact and we, therefore, conclude that the Presenting Officer in this enquiry is trained in Vigilance work and has been attending enquiries of this nature.

6. An enquiry under Rules 14 of the Rules contains the procedure for imposing major penalties upon the charged officer. Statement of Articles of charges framed against the applicant and statement of imputations of misconduct indicate, that he is facing very grave and serious allegations in the enquiry. The applicant is the Doctor who does not possess either the knowledge of law or procedure. The persons of this profession are not expected to know the principles of natural justice, service jurisprudence and procedural law involved

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in a domestic enquiry. Service jurisprudence by now has become a complex and specialised branch of law beyond the understanding of a common "man". Complex judgements of the Supreme Courts, High Courts and this Tribunal, laying down the law, cannot be expected to be understood by a man like the applicants. Even an advocate, who has not specialised in service jurisprudence cannot follow this law and procedure correctly and is liable to cause more damage to the case of a delinquent than help, in getting justice.

7. When the applicant applied to the Disciplinary Authority for engaging a legal practitioner to represent his case in the enquiry, the Disciplinary Authority conveyed its decision to him by annexure 'A' dated 9.9.91 that "the same has been carefully considered but not accepted by the competent authority". This cryptic order does not contain any reason for turning down his request. An order of this nature should have contained reasons as to why the Disciplinary Authority has not accepted the request of the applicant. In a Departmental Enquiry the Disciplinary Authority exercises a quasi-judicial function and he is expected to pass a speaking order. Only because the request of the applicant has not found favour with him, cannot be a justifiable reason to reject the prayer. It also appears that the Disciplinary Authority has not applied his mind to the provisions of Decision (1) of rules 14 of the Rules, which has been quoted hereinabove. In such a situation, the impugned order at annexure 'A' dated 9.9.91, passed by the Disciplinary Authority, cannot be sustained in law as it appears to be arbitrary in nature.

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8. The Apex Court has thrown sufficient light on the subject in hand. In the case of Board of Trustees of the Port of Bombay Versus Dilip Kumar, 1983(1) S.C.R. 828 it has observed:-

"In our view we have reached a stage in our onward march to fairplay in action that wherein an enquiry before a domestic Tribunal the delinquent officer pitted against a legally trained mind, if he seeks permission to appear through a legal practitioner, the refusal to grant this request would amount to denial of a reasonable request to defend himself and the essential principles of natural justice would be violated" (emphasis supplied).

Direction 21 under Rule 14 of the Rules in essence itself vests a discretion, in the matter of exercise of this discretion one of the relevant factors is, whether there is likelihood of the combat being unequal entailing a miscarriage or failure of justice and a denial of a real and reasonable opportunity for defence by reason of the applicant being pitted against a Presenting Officer who is trained in law. Another aspect which should be kept in view by the Disciplinary Authority while exercising this discretion is, whether an untrained person like the applicant will be able to cross examine the witnesses appearing against him, effectively? A list of witnesses in this enquiry shows that some of them are highly placed officials, who are well versed in law and also perform judicial and quasi-judicial functions. Whether effective cross-examination by an untrained person can be done without the assistance of a law practitioner?.

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9. In a recent judgements the Apex Court in the case of J.K.Agrawal, (1991 (2) A.T.J. 502) (relying upon Pell Versus Gray Hound Racing Association Ltd. 1969(1) Q.B.125, observed:-

"On the consideration of the matter, we are persuaded to the view that the refusal to sanction the service of a lawyer in the enquiry was not a proper exercise of the discretion under the rule, resulting in a failure of natural justice, particularly in view of the fact that the Presending Officer was a person with legal attainments and experience .. in defending himself, one may tend to become 'nervous' or 'tongue-tied' .. The refusal of the service of a lawyer in the facts of a case results in the denial of natural justice".

In another case C.L.Subramanian Vs. Collector of Customs Cochin, 1972(3) Supreme Court Reports 485. His Lordship Justice Hegde, who spoke for the Bench, observed, "The fact that the case against the applicant was being handled by a trained prosecuter, was a good ground for allowing the applicant to engage a legal practitioner to defend him, lest the scales should be weighed against him. The Disciplinary Authority completely ignored that circumstance. Therefore, that authority clearly failed to exercise the power conferred upon it under the Rules".

10. Though the learned counsel for the applicant has also argued about the sweep and scope of Articles 21 and 39 A of the Constitution of India on the subject we need not dwell upon it while examining the provisions of decision No.21 of rule 14 of the Rules. Though the learned counsel for the respondents has cited some old decisions of different High Courts, they are not

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relevant for adjudicating the question.

11. The applicant is facing very serious allegations in this enquiry and under Rule 14 of the Rules, major penalty like removal/dismissal from service, may be imposed. All the more it is imperative that he should get a fair chance of defending himself when the Presenting Officer is an experienced and trained person. Justice should not only be done, but should seem to have been done. This enquiry is being held, on the basis of Thakkar Commission Report which enquired into the lapses in security and other matters, after the assassination of the late Prime Minister Smt. Indira Gandhi. The psychology and apprehensions can well be imagined which are lurking in the mind of the applicant who is facing serious allegations. It is, therefore, all the more necessary that Disciplinary Authority should indicate that the applicant will get a fair chance of defending himself.

12. Though we quash the impugned order, yet without usurping the powers of the Disciplinary Authority, direct the Disciplinary Authority to pass a reasoned order on the prayer of the applicant for permission to engage a legal practitioner in the departmental enquiry, on the basis of the principles enunciated by the above referred judgements, observations of this Bench and the provisions contained in Direction 21 of the Rule 14 of the Rules, as early as possible, preferably within a month from the date of the receipt of a copy of this judgement. Parties are directed to bear their own costs.

I.P.Gupta
(I.P.GUPTA) 16/4/92
MEMBER(A)

Ram Pal Singh
(RAM PAL SINGH)
VICE CHAIRMAN(J)