CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 296/92

DECIDED ON 14.10.1992

Mahesh Ahluwalia ... Applicant

Vs.

Union of India & Others ... Respondents

CORAM : THE HON'BLE MR. T. S. OBEROI, MEMBER (J)
THE HON'BLE MR. P. C. JAIN, MEMBER (A)

1. Whether to be referred to the Reporter ? Yes.

2. Whether reporters of local newspapers may be allowed to see the Judgment ? Yes.

3. Whether Their Lordships wish to see the fair copy of the Judgment ? No.

4. Whether to be circulated to other Benches ? ~~Yes~~ No.

(P. C. Jain)
Member (A)

(T. S. Oberoi)
Member (J)

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(13)

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CORAM : THE HON'BLE MR. T. S. OBEROI, MEMBER (J)
THE HON'BLE MR. P. C. JAIN, MEMBER (A)

Shri B. B. Raval, counsel for the Applicant

Shri P. P. Khurana, Counsel for the Respondents

JUDGMENT

Hon'ble Shri P. C. Jain, Member (A) :-

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant who is a Field Assistant (FA) in the Research and Analysis Wing (R & A W), Cabinet Secretariat, Government of India, New Delhi, has impugned two memoranda -- (1) memorandum dated nil (Annexure-A) with reference to memo dated 23.12.1991 in which he was asked to nominate his defence assistant, and which asked him to now inspect the documents listed in the memorandum of charges; and (2) memorandum dated 10.1.1992 (Annexure-B) in which he has been informed for the reasons mentioned therein that his request regarding engagement of a legal practitioner as his defence assistant cannot be accepted, and that he may nominate a working or retired Government official as his defence assistant in the case. He has prayed for quashing of the aforesaid two memoranda and for a direction to the respondents to permit the services of a legal practitioner to the applicant, if they are adamant to still go ahead with the disciplinary inquiry. As an interim measure, he has prayed for a direction to the respondents restraining them from going ahead with the departmental inquiry without allowing him the assistance of a legal practitioner. By order dated 5.2.1992, the

respondents were restrained, as an interim measure, from proceeding further with the inquiry. This interim order has since continued.

2. Skipping the averments in the pleadings which are not directly relevant for the issue for consideration in this case, it may be stated that the applicant was served with a memorandum dated 1.1.1991 (Annexure A-6 (Colly.) for holding an inquiry against him under Rule 14 of the C.C.S. (C.C.A.) Rules, 1965. The articles of charge comprised -- (1) that he obtained a loan of Rs.5.87 lakhs from the Delhi Financial Corporation and purchased a tanker bearing registration No. DIG-7420 but failed to report the acquisition of this moveable property to the prescribed authority, as required under Rule 18(3) of the C.C.S. (Conduct) Rules, 1964; and (2) that he used the said tanker for his private business in which he engaged himself without prior sanction of the Government. The applicant denied the charges. Before the inspection of the documents could be commenced, he inter alia prayed for permission to engage a legal practitioner to be employed as his defence assistant. This request was rejected. The applicant made further representations on this point and finally he was informed vide impugned memorandum dated 10.1.1992 (Annexure-B) that the educational qualification of the presenting officer in the case who is working as Inspector in the Central Bureau of Investigation (CBI), is only B.Com., and that he is neither a legal practitioner nor a public prosecutor. It was also stated that the articles of charges served on him and the list of documents supplied therewith do not warrant engagement of a legal practitioner as his defence assistant in the above departmental inquiry, and that the case can be well defended by a working or retired Government official. With reference to the case of one Shri Chitar Pal Singh, SFA quoted by the applicant in his representation dated 22.11.1991 and in which the assistance of a legal practitioner was allowed, it was stated that every case is considered on its merit and that the departmental inquiry against the applicant can well be defended by a working or retired Government servant.

3. The respondents have contested the O.A. by filing a return to which a rejoinder has also been filed by the applicant. As the pleadings in this case were complete, it was decided with the consent of the parties to dispose of the case finally at the admission stage itself. Accordingly, we have perused the material on record and also heard the learned counsel for the parties.

4. The main contentions of the applicant are two-fold. Firstly, it is stated that the inquiry initiated against him amounts to a very complicated case in which the assistance of a legal practitioner is essential. It is contended that the presenting officer appointed in the disciplinary inquiry on behalf of the respondents is an Inspector in the CBI which in itself is adequate enough to prove that he is a legally trained prosecutor because all CBI officers are given thogough training in legal laws, Evidence Act, and method of investigation and prosecution, and, therefore, the presenting officer should be considered as more than a public prosecutor. It is, therefore, contended that he should also be allowed the assistance of a legal practitioner. Secondly, it is contended that one Shri Chitar Pal Singh, SFA, a similarly situated employee under the same respondents, was allowed the assistance of a legal practitioner, and the denial of such an assistance to the applicant amounts to discrimination.

5. Sub-rule (8) of Rule 14 (under which a disciplinary inquiry has been initiated) of C.C.S. (C.C.A.) Rules and which is relevant for the issue before us is extracted below :-

> "(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 may take the assistance of any other Government servant posted at any other station, if the inquiry authority having regard to the circumstances of the case, and for reasons to be recorded in writing so permits.

(b) The Government servant may also take the assistance of a retired Government servant to present the case on his behalf, subject to such conditions as may be specified by the President from time to time by general or special order in this behalf."

A perusal of the above provisions shows that the charged official may not engage a legal practitioner to present the case on his behalf unless the presenting officer appointed by the disciplinary authority is a legal practitioner. There can be no dispute that the presenting officer appointed by the disciplinary authority is not a legal practitioner but is an Inspector in the CBI. He is not even a law graduate but he is only B.Com. Further, the respondents have stated in their reply that "the contention of the applicant that all CBI officers are public prosecutors, is not borne out by the facts." There is nothing on record to show that the presenting officer appointed by the disciplinary authority is a public prosecutor. Thus, it is clear that the presenting officer appointed by the disciplinary authority is neither a legal practitioner nor a public prosecutor. In such an event what is required to be seen, under the provisions of sub-rule (8) ibid, is whether the decision of the disciplinary authority in rejecting the request of the applicant for permission to engage a legal practitioner to defend him in the disciplinary inquiry, can be said, on the facts and in the circumstances of the case, to be arbitrary.

5. Government of India's instruction No.19 below Rule 14 of C.C.S. (C.C.A.) Rules (Ministry of Home Affairs, Department of Personnel and Administrative Reforms O.M. No. 11012/7/83-Estt.(A) dated 23.7.1984) clarifies that, when on behalf of the disciplinary authority

the case is being presented by a prosecuting officer of the CBI or a Government law officer (such as legal adviser, junior legal adviser), there are evidently good and sufficient circumstances for the disciplinary authority to exercise his discretion in favour of the delinquent officer and allow him to be represented by a legal practitioner, and any exercise of discretion to the contrary in such cases is likely to be held by the court as arbitrary and prejudicial to the defence of the delinquent Government servant. Government of India instruction No. 20 below Rule 14 contains the decision of the Government (D.G., P. & T., letter No. 6/8/72-Disc.I dated 29.8.1972) that a 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 as to whether or not the services of a legal practitioner should be made available to the officer concerned. It is also 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. Keeping these instructions in view and also the proposition of law laid down by the Supreme Court in the case of The Board of Trustees of the Port of Bombay vs. Dilipkumar Raghevendranath Nadkarni and others — AIR 1983 SC 109, we have to see whether the appointment of a Inspector of CBI as presenting officer on behalf of the disciplinary authority places the applicant in the position of an unequal combat in the matter of his defence in the disciplinaty proceedings. In the above case, the main question :"where as a sequal to an adverse verdict in a domestic inquiry serious civil and pecuniary consequences are likely to ensue, in order to enable the person so likely to suffer such consequences with a view to giving him a reasonable opportunity to defend himself, on his request, should be

permitted to appear through a legal practitioner, is kept open. However, the limited question whether in such a disciplinary inquiry by a domestic tribunal, the employer appoints presenting-cum-prosecuting officer to represent the employer by persons who are legally trained, the delinquent employee, if he seeks permission to appear and defend himself by a legal practitioner, a denial of such a request would vitiate the inquiry on the ground that the delinquent employee had not been afforded a reasonable opportunity to defend himself, thereby vitiating one of the essential principles of natural justice, was considered and their lordships of the Supreme Court held as below :-

> "...In our view we have reached a stage in our onward march to fairplay in action that where in an inquiry before a domestic tribunal the delinquent officer is 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...."

In the case of A. K. Roy vs. Union of India, (1982) 1 SCC 271, their lordships of the Supreme Court observed that if the department is represented before the Advisory Board by a legally trained mind, the detenu should be permitted to appear by a legal practitioner. The relevant observations are extracted below :-

> "We must therefore make it clear that if the Detaining Authority or the Government takes the aid of a legal practitioner or a legal adviser before the Advisory Board, the detenu must be allowed the facility of appearing before the Board through a legal practitioner. We are informed that officers of the Government in the concerned departments often appear before the Board and assist it with a view to justifying the detention orders. If that be so, we must clarify that the Boards should not permit the authorities to do indirectly what they cannot do directly; and no one should be enabled to take shelter behind the excuse that such Officers are not "legal practitioners" or "legal advisers."

6. In a recent judgment delivered on 25.9.1992 by Court-I of the Principal Bench of the Central Administrative Tribunal in the case of

Shri Krishan Lal vs. Union of India through the Secretary to the Government of India, Ministry of Works & Housing, New Delhi & Anr. (T-1263/85 (CW-2923/85), the issue involved in this case has been examined in very comprehensive manner and judgments of the Supreme Court in the following three cases were considered —

i) C. L. Subramaniam v. Collector of Customs, Cochin AIR 1972 SC 2178;

ii) Board of Trustees, Port of Bombay (supra); and

iii) J. K. Aggarwal vs. Haryana Seeds Development Corporation Ltd. & Ors. 1991 (2) ATJ SC 502 —

and observed as below :-

> "...In our opinion the essence of the decisions is that the delinquent official should not be deprived of a reasonable opportunity to defend himself by engaging a counsel if the facts and circumstances of the case so warrant. In no circumstances reasonable opportunity for putting up a defence can be denied to the delinquent official, as such an action would be violative of Article 311 and principles of natural justice. The pith of these principles is that it would amount to denial of reasonable opportunity in the absence of a statutory right to engage a lawyer in the following cases:-
>
> a) when the complexity of the case is such as is likely to involve intricate legal propositions making it well nigh impossible for the delinquent official to defend himself properly without the assistance of a lawyer.
>
> b) when the combat between the parties becomes unequal and tilted against the delinquent official.
>
> In deciding the latter point it is not very material whether the Presenting Officer appointed by the respondents is not a legal practitioner. What is relevant is whether the Presenting Officer so appointed is as competent and proficient as a lawyer."
>
> "Regarding the second principle it is not disputed that the Presenting Officer was an Inspector of the CBI. But he was not a legal practitioner. Nonetheless, he could be considered as reasonably capable and competent as a legal practitioner."

From an analysis of the above discussion, we hold that even though the presenting officer is neither a legal practitioner nor has been established to be a prosecutor, yet because of the training for the

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work which is assigned to him it would not be unreasonable to assume that though he is only a B.Com. and not a law graduate but he should be treated to be having a legally trained mind and as such the applicant shall be prejudiced in his defence if he is deprived of the assistance of a legal practitioner to defend his case before the inquiring officer. It is true that the articles of charges levelled against the applicant, as already adverted to above, cannot be deemed to involve complex questions of law so as to warrant the assistance of a legally trained person. However, in view of the second principle as analysed in the judgment in the case of Shri Krishan Lal (supra), the appointment of an Inspector of CBI as the presenting officer is likely to tilt the scale in favour of the employer in the absence of assistance of a legally trained mind to defend the applicant.

7. The impugned memorandum at Annexure-A does not really involve any substantive question for adjudication; it only asks the applicant to nominate a defence assistant and for inspecting the documents. When the applicant is allowed the assistance of a legal practitioner to defend his case, the inspection of documents can be made by the applicant with the assistance of the counsel. As such, it is not necessary to quash the impugned memorandum at Annexure-A.

8. Before parting with this case, we may refer to the contention of the learned counsel for the respondents urged by him during the course of oral hearing, though not pleaded in the counter affidavit, that the impugned order being only an inter-locutory order, the Tribunal should not and cannot interfere in this matter. For this purpose he relied on a judgment of the Madras Bench of the Tribunal in the case of V. P. Sidhan vs. Union of India & Ors. — (1988) 7 ATC 402. In that case the inquiry officer had held the charges not proved but the disciplinary authority decided to remit the case to the inquiring authority as only four out of twenty seven prosecution witnesses mentioned in the annexure to the charge memo had been examined during

the inquiry. The disciplinary authority, therefore, decided to remit the case to the inquiring authority for examining the remaining twenty three witnesses and also for examination of Government Examiner of Questioned Documents. It was this remission order which was challenged in that case. It was held that —

> "...We are therefore, of the view that though the Section 19 of the Act does not use the words 'final order', insofar as the disciplinary proceedings are concerned, an order which can be challenged under Section 19 of the Act can only be a final order in respect of an applicant who is said to be an aggrieved person. Therefore the application cannot be maintained before the Tribunal at this stage."

However, the Bench also dealt with the merits of the case and held that no case has been made for interference at this stage and the O.A. was, therefore, dismissed. We have carefully considered this aspect of the matter. It is true that if in a disciplinary proceeding each order of the inquiry officer is challenged before the Tribunal for a judicial review, more often than not the disciplinary proceedings themselves would be unduly delayed. On the other hand, we are also conscious of the fact that there can be certain situations where allowing disciplinary proceedings to culminate into a final order may result in unnecessary waste of public time and expenditure if the issue involved during the pendency of the proceedings is such which may ultimately vitiate the whole proceedings. For example, if an applicant comes to the Tribunal with a case that the charges levelled against him in the disciplinary proceedings are the same which have already been finally disposed of by the competent authority, it may not be appropriate for the Tribunal not to entertain the O.A. at the admission stage itself and thereby put the employer and the employee to unnecessary proceedings. Similarly, if the competence of the authority which has initiated disciplinary proceedings is challenged on the basis of the rules and the instructions on the subject, it may not be proper to defer decision on this point till a final order in

the disciplinary proceedings is passed. Thus, it would depend on the facts and circumstances of each case whether the Tribunal should entertain petitions in respect of inter-locutory orders in disciplinary proceedings. Normally, the occasions for such interference should not arise and the Tribunal should be circumspect in entertaining such petitions, but if there is a case in which interference may appear fully justified, there should be no bar as such to entertain petitions.

9. In the light of the foregoing discussions, impugned memorandum dated 10.1.1992 (Annexure-B to the O.A.) by which the request of the applicant for permission to engage a legal practitioner to defend his case, has been rejected, is quashed and the respondents are directed to permit the applicant to engage a legal practitioner of his choice to work as his defence assistant in the disciplinary proceedings initiated against him vide memorandum dated 1.1.1991. No costs.

14/10/92

(P. C. Jain)
Member (A)

14/10/92

(T. S. Oberoi)
Member (J)

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