

Judgment

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH.

Registration O.A. No. 1584 of 1992

V.K. Srivastava Applicant.

Versus

Union of India
and others Respondents.

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Hon. Mr. Maharaj-Din, Member(J)
Hon. Mr. S. Das, Gupta Member(A)

(By Hon. Mr. S. Das Gupta, Member(A))

In this Original Application No. 1584 of 1992, the applicant has prayed for a direction of this Tribunal to the respondents to permit him to engage a legal practitioner to defend him in the on going disciplinary proceedings and to furnish him with a copy of the report of the fact finding enquiry. He has also sought a direction from this Tribunal for completion of the enquiry in ^a ~~the~~ time-bound manner.

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2. The brief facts of the case are that on 30.4.1991, the applicant along with others allegedly took part in wrongful confinement of certain officers and other staff members inside the factory to press their demand for peice work wages during the 4th week of April, 1991. They allegedly threatened the officials confined and mis-behaved with them. The petitioners along with others were placed under suspension pending enquiry into their conduct w.e.f. 4.5.1991. Subsequently, he was charge-sheet vide

vide charge memo dated 12.8.1991. Subsequently, the disciplinary authority appointed ~~an~~ ^a Inquiry officer to enquire into the charges. The applicant made request for being allowed the assistance of legal practitioner to defend his case. The same was turned down by the respondents. It is primarily this decision of the respondents which is under challenge.

3. The respondents, in their counter have contested the petition and have averred that the request of the petitioner for being allowed to engage a legal practitioner was turned down correctly in terms of the relevant rules, since the presenting officer in this case was not a legal practitioner, nor the facts and circumstances of the case were such that ^{as to} ~~it was~~ warrant engaging ^{the} lawyer to defend the delinquent.

4. Regarding the engagement of legal practitioner to assist the delinquent in his defence, ^{the} provisions of sub-rule-8(a) of rule -14 of C.C.S.(C.C.SA) rule, 1965 are quite specific. According to this sub-rule, "the Government Servant 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 or the disciplinary authority having regard to the circumstances of the case, so permits." In the instant case, admittedly, the presenting officer is not a legal practitioner. The applicant,

therefore, is not normally entitled to the permission to engage a legal practitioner, though, he may be permitted to do so by the disciplinary authority if, the circumstances of the case would so warrant. It appears, from the order dated 10.3.1992 (Annexure-A 2) that the disciplinary authority had come to the conclusion that the facts and circumstances of the case did not at all warrant the engagement of a legal practitioner.

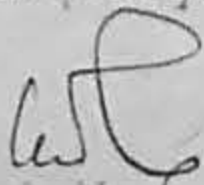
5. As long as the presenting officer is not a legal practitioner, the delinquent government servant cannot engage a legal practitioner as a matter of right. In such a case, whether or not, he should be permitted to engage a legal practitioner is at the discretion of the disciplinary authority having regard to the facts and circumstances of the case. Unless such discretion is exercised without proper application of mind, or malafides are proved, the decision of the disciplinary authority in this regard cannot be challenged. In any case, the refusal to permit the petitioner to engage a legal practitioner is in the nature of an interlocutory order in the disciplinary proceedings. The propriety or otherwise and the exercise of the discretion ~~power~~ of the disciplinary authority in permitting or refusing to permit engagement of a legal practitioner cannot be challenged at an interlocutory stage. A similar view was taken by


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the Madras Bench of this Tribunal in the case of Barathapunnian Vs. Union of India and others, ATR 1987(1) CAT, 311.

6. As regards the prayer for furnishing of the report of preliminary enquiry, it does not appear from the records that any preliminary enquiry was conducted nor does it appear that the charge-memo relied on such preliminary enquiry. In view of this, there is no force in the prayer.

7. In view of the foregoing discussion, the petition is found to be devoid of merits and hence dismissed. It is, however, directed that the respondents shall complete the enquiry within a period of 3 months from the date of communication of this order. The applicant shall fully cooperate with the enquiry authority for the completion of the enquiry. There will be no order as to costs.


A.M.


J.M.

Dated: 8th November, 1993.
(n.u.)

ORDER SHEET

M.H. No. 648/94 m

CH. 1584/92 (D)

VERSUS

| SL. | DATE | OFFICE REPORT | ORDER |
|-----|------|---------------|-------|
| 1. | 2 | 3 | 4 |

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M.H. No. 648/94 (U) 15-3-94
has been filed by
respett counsel
on 8-3-94.

DRB has ordered to
the list the same
on 15-3-94 for and
before Hable Court.

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10/3/94

Hon'ble Mr S.D. Gupta AB
Hon'ble Mr T.L. Verma JM

Advocates have
resolved not to
work for today.
Case is adjourned
for 7-4-94 for
orders.

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Sh. L

M.P. No. 648 of 1994
IN

O.A. No. 1584 of 1992

7.4.1994

Hon. Mr. S. Das Gupta, A.M.
Hon. Mr. T.L. Verna, J.M.

Sri Amit Sthaleker has moved M.P. No. of 1994 praying that further 6 months time be allowed to complete the departmental enquiry. Sri M.A. Siddiqui present in the court submits that the time prayed for is too long and meanwhile, the applicants are all under suspension ^{for a} long time, therefore, no further extension of time will be granted.

In view of the submissions made in the M.P. and also orally by Sri Amit Sthaleker, counsel for the applicant in M.P., we hereby extend the time for completion of enquiry by 6 months from 1.3.1994. However, in case the enquiry is not completed within the extended period, the suspension of the applicant shall stand revoked.


J.M.


A.M.