

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

ALLAHABAD.

Allahabad this the...^{15th} day of...^{Sept}... 1997.

CORAM : Hon'ble Dr. R.K. Saxena, Member (J)

Hon'ble Mr. D.S. Baweja, Member (A)

CIVIL MISC. CONTEMPT PETITION NO. 76 OF 1994.

IN

ORIGINAL APPLICATION NO. 1584 OF 1992.

Shri V.K. Shrivastava,

T. No. 619/N.S.M./OFC (Under suspension)

Son of Late S.P. Srivastava,

R/o 3/170 'B', Vishnupuri,

Nawabganj, Kanpur.

(By Advocate Shri M.A. Siddiqi) Petitioner.

Versus

1. Sri A.K. Rastogi,

General Manager, Ordnance Factory,

Kanpur-9.

2. Sri Rajiv Agarwal,

Dy. G.M. (Admn.),

Ordnance Factory, Kanpur.

(By Advocate Shri Amit Sthalekar) Respondents.

ORDER

By Hon'ble Dr. R.K. Saxena, Member (J)

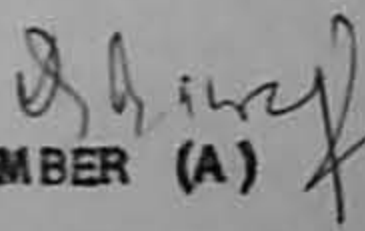
1. The applicant V.K. Shrivastava has moved this application with the prayer that the respondents fail to comply with the directions given by the Tribunal in O.A. no. 1584/92 V.K. Shrivastava Versus U.O.I & others decided on 8.11.1993 and, therefore, the respondents be punished.


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2. The notices were issued to the respondents on 28.1.1995 and in response thereto, the counter affidavit was filed wherein the disobedience of the directions has been contended.

3. When we go through the judgement given by the Tribunal in O.A. no. 1584/92 on 8.11.1993, we find that the O.A. was dismissed because it was found devoid of merits. However, a direction was given to the respondents to complete the enquiry within a period of three months from the date of communication of the order. It appears that this period was subsequently extended to six months vide order dated 7.4.1994. It was further observed that if the enquiry was not completed within the said period of six months, the suspension order of the applicant would stand automatically revoked. It has been averred on behalf of the respondents that the enquiry could not be concluded within the said period of six months and thus the suspension order of the applicant was revoked w.e.f. 1.1.1994.

4. From these facts, we conclude that no case of contempt is made out. Thus, the proceedings against the respondents are dropped and the notices discharged.


MEMBER (A)


MEMBER (J)

as/

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.

...

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

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

In this Original Application No. 1584 of

1991, 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 time-bound manner.

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 piece 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 charge memo dated 12.8.1991. Subsequently, the disciplinary authority appointed 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.



Addl. Secy. Adv. Secy.
 Allahabad Bench

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 as to warrant engaging 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. & A) 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 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 the Madras Bench of this Tribunal in the case of Sarathapunnian 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 ~~is~~ such preliminary enquiry. In view of this, there is no force in the prayer.

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.

Sd/-

A.M.

Sd/-

J.M.

Dated:-6th November, 1993.

TRUE
COPY

Under Seal
26.11.93
V. K. SRIVASTAVA
Section Officer
Central Administrative Tribunal
ALLAHABAD



True Copy
Attested
Advocate