

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A.No.39/99

Wednesday, this the 3rd day of March, 1999.

CORAM:

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN

HON'BLE MR R.K.AHOOJA, ADMINISTRATIVE MEMBER

K.V.Prakash,
Junior Telecom Officer,
Mattannur Exchange,
Mattanur.

- Applicant

By Advocate Mr P.Ramakrishnan

Vs

1. Union of India represented by
Secretary,
Ministry of Communications,
New Delhi.

2. The Deputy General Manager
(Operations & Disciplinary Authority),
Office of the General Manager,
Telecom District,
Cannanore.

3. A.H.Pillai,
Divisional Engineer
(DE& Inquiring Authority),
Office of the General Manager,
Telecommunications,
Thiruvananthapuram.

- Respondents

By Advocate Mr K.Kesavankutty, ACGSC(for R.1&2)

The application having been heard on 3.3.99, the
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN

The applicant a Junior Telecom Officer is facing a
departmental disciplinary proceeding on the basis of a memorandum
of charges dated 28.10.93. The misconduct alleged is that he
demanded and accepted a sum of Rs.500 as illegal gratification

from a customer of the Telecom department. The charge sheet was laid on the basis of a trap made by the CBI. Instead of prosecution, a departmental proceeding was recommended and that was how the charge sheet was issued. The applicant denied the charge and an enquiry is being held. The applicant sought permission to engage a legal practitioner to defend him on the ground that as the misconduct alleged against him has a highly technical nature and as the witnesses listed in the annexure to the memorandum of charge are CBI officials, he should be allowed to engage a counsel. The request was turned down by the impugned order A-3 of the disciplinary authority on the ground that the presenting officer is not a legally trained person and that the case is not a complicated one requiring the engagement of a legal assistant. The applicant has filed this application impugning the said order praying that the impugned order may be set aside, it may be declared that the applicant is entitled to have the assistance of a lawyer in the proceedings initiated pursuant to A-1 and the respondents be directed to allow the applicant to engage a lawyer on his behalf in the enquiry proceedings.

2. The applicant alleged in the application that the witnesses whose names are given in the Annexure to the memorandum of charge are all CBI officials and that he lacks the capacity to cross examine them and that therefore the decision contained in A-3 not to permit him to engage a lawyer to defend himself amounts to deprival of a reasonable opportunity enshrined in Article 311 of the Constitution.

3. The respondents contend that the presenting officer not being a legally qualified person and the allegations of misconduct are of a simple nature the decision taken by the disciplinary

authority not to permit the applicant to engage a lawyer to defend him is justified and is in accordance with the rules.

4. Shri P Ramakrishnan, learned counsel of the applicant referred us to the ruling of the Supreme court in C.L.Subramaniam Vs Collector of Customs, Cochin, AIR 1972 SC, 2178 in which it was held that the action of the disciplinary authority in not permitting appellant to engage a lawyer in that case was unjustified. He also referred to another ruling of the Apex Court in J.K.Agarwal Vs Haryana Seeds Development Corporation Limited, 1991 LAB IC, 1008, where also similar view was expressed. We have perused the said judgements. We find that the facts of the cases under citation do not bear any comparison to the fact of the case on hand. In the two cases cited by the learned counsel, the presenting officers were legally trained persons and therefore the Supreme Court directed that the petitioners before it should also be allowed to engage advocates to defend them. In this case there is no case for the applicant that the presenting officer is a legally trained person. Sub rule 8 of Rule 14 of the CCS(CCA) Rules reads thus:

"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 enquiry 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"

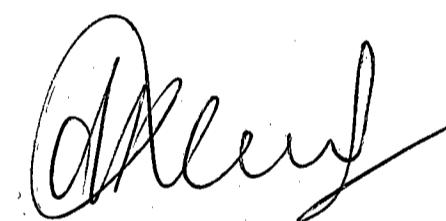
It is evident from the rule that unless the presenting officer is a legally qualified person or the disciplinary authority having regard to the facts and circumstances of the case permitted, the delinquent Government servant facing the charge to engage a lawyer

to defend himself a Government servant is not entitled to engage a legal practitioner to defend him in the departmental disciplinary proceeding. Having gone through the statement of imputation attached to the memorandum of charge, we are not convinced that the matter is highly technical or complicated to say that the disciplinary authority was not right in deciding that it was not a case where the applicant should be permitted to engage legal practitioner. To bring home the guilt of the applicant in the proceedings what is to be established is that the applicant demanded and obtained a sum of Rs.500 as illegal gratification from a customer. We are of the view that this aspect is not highly technical. The fact that some of the witnesses are CBI officials also does not entitle the applicant to claim permission to engage a legal practitioner.

5. In the result the application is devoid of any merit and is dismissed. No costs.

Dated, the 3rd of March, 1999.


(R.K.AHOOJA)
ADMINISTRATIVE MEMBER


(A.V.HARIDASAN)
VICE CHAIRMAN

trs/4399

LIST OF ANNEXURES

1. Annexure A1: True copy of memorandum No.X-1/DGMO/Disc/KVP/13 dated 28.10.1998 issued by the second respondent to the applicant.
2. Annexure A3: True copy of letter No.X-1/DGMO/Disc/KVP/35 dated 4-1-1999 issued by the second respondent to the applicant.

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