

(3)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 305/88

198

~~Decided on~~DATE OF DECISION 15/6/1988

Shri C.K. Sunder, Bhusawal.

Petitioner

Shri Mohan Sudame.

Advocate for the Petitioner(s)

Versus

Union of India, through Min. of Railways,
New Delhi. Respondent

Shri V.G. Raga.

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P. SRINIVASAN, MEMBER(A)

The Hon'ble Mr. M.B. MUJUMDAR, MEMBER(J)

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

(A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY

O.A. No. 305/88

Shri C.K. Sunder
Additional Divisional Railway
Manager (E.C.T.)
Central Railway,
BHUSAVAL.

.. Applicant

V/s.

Union of India
through Ministry of Railways
(Through Joint Secretary(E)/
Railway Board)
NEW DELHI.

.. Respondent

Coram: Hon'ble Member(A) P. Srinivasan
Hon'ble Member(J) M.B. Mujumdar.

Appearance :

Shri Mohan Sudame
Advocate
for the applicant

Shri V.G. Rege
Advocate
for the respondent.

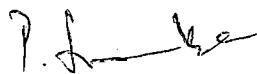
ORAL JUDGMENT

DATED : 15/6/1988.

(PER : P. Srinivasan, Member(A))

This application has come up before us today for admission with notice to the respondents. Shri Mohan Sudame, learned counsel for the applicant and Shri V.G. Rege, learned counsel for the respondents are present. Both of them agree that this matter can be heard finally and disposed of today itself. We, therefore, admit this application, we have heard counsel on both sides on merits.

2. The applicant who is currently working as Additional Divisional Railway Manager has been issued a memo dated 31-12-1986 intimating him that the Railway Administration proposed to initiate an inquiry against him in respect of an article of charge attached with the memo. The charge against the applicant is that he possesses assets disproportionate to his income. An inquiry officer has been appointed. An Inspector of Police attached to the CBI has been appointed as Presenting Officer. The applicant sought the permission of the Disciplinary Authority to take the assistance of a lawyer,



but this request was rejected by letter dated 1.9.1987 issued by the Deputy Chief Personnel Officer (G), Bombay V.T. to the Divisional Railway Manager, Bhusawal and communicated by the latter to the applicant through endorsement dated 3.9.1987 appearing as Annexure C to the application. The applicant is aggrieved with this letter and wants a direction from this Tribunal to permit him to engage a lawyer for his defence in the inquiry proceedings. We are told that the applicant made a further representation to the Railway Board which was also rejected.

3. Shri Sudame submitted that the charge against the applicant was a major one and if held to be proved, the applicant will be liable for a major penalty. The presenting officer appointed for the purpose is not a Railway Servant but an Inspector from the C.B.I. who is a Law Graduate and by virtue of being an Officer of CBI, an expert on such matters. It was therefore, necessary for the applicant to engage a lawyer to assist him.

4. Mr. Rege strongly refuted the contentions of Mr. Sudame. He submitted that though the Presenting Officer is a Law Graduate, the charge was not such that the applicant would require the assistance of a Lawyer to defend himself. The Railway Board would permit the applicant to engage any other Railway Servant who is a Law Graduate to act as his defence assistant, even if he be working in some other department. The Railway Board had considered the request of the applicant carefully and after due deliberation had rejected the application. In the circumstances, Shri Rege submitted, this application deserves to be dismissed.

5. We have considered the matter carefully. The charge levelled against the applicant is one of gross misconduct and possession of disproportionate assets amounting to nearly Rs.3,00,000. The other charges also affect the integrity of the applicant. We are impressed with the argument of Shri Sudame that the Presenting Officer in this case not being a Railway Servant, but an Inspector of C.B.I. with a law Degree, the applicant should also be allowed to engage a person trained in Law who can defend him properly. We are satisfied that the facts and circumstances of this case are



such that the applicant should be allowed to engage a Lawyer to defend him. In this connection we may refer to a Circular of the Railway Board to which Mr. Sudame drew our attention. The Circular dt. 25.11.1985, reads as follows :

"It has now been decided that in rare cases where, on behalf of the disciplinary authority, the case presented by a Prosecution Officer of the C.B.I. or a Government Law Office such as Legal Advisor/Junior Legal Advisor, the disciplinary authority may allow the delinquent Railway Servant also be corresponding represented by a Legal Practitioner."

It would also be useful in this connection to refer to the decision of the Supreme Court in Board of Trustees vs. D.R. Nadkarni and Ors. A.I.R. 1983 S.C. 109. After citing a passage from the judgment of Lord Denning in a case that came up before the Court in England, their Lordships of the Supreme Court observed that "the trend therefore, is in the direction of permitting a person who is likely to suffer serious Civil or pecuniary consequences as a result of an enquiry, to enable him to defend himself adequately he may be permitted to be represented by a legal practitioner".

6. In the present case the presenting officer is admittedly an officer of the C.B.I. who is expected to be an expert in his line. The consequence to the applicant, if held guilty would also be serious. In view of this we set aside the impugned order of the Board conveyed to the applicant ^{by} endorsement dated 3/9/1987 (Annexure ^{H.C} 11 to the application) and direct the respondents to permit the applicant to engage a legal practitioner to defend him in the enquiry. The subsequent letter of the Railway Board, again rejecting the applicant's request, which is not attached to the application but a copy of which was shown to us by Shri Rege also stands cancelled. Shri Rege expressed an apprehension that if the applicant is permitted to engage a legal practitioner, that might delay the proceedings. Shri Sudame gave us an assurance that the applicant will submit the name of the legal practitioner to be engaged by him within one month from to-day and that he will cooperate in the enquiry without adopting delaying tactics.



In result we pass the following order :

1. The impugned orders referred to above rejecting the applicant's request for engaging a legal practitioner are hereby set aside.
2. Respondents are directed to permit the applicant to engage a legal practitioner to defend him in the enquiry proceedings initiated against him. The applicant will submit the name of the legal practitioner as promised within a month and fully cooperate in the inquiry.
3. In the circumstances of the case the parties to bear their own costs.



(P. SRINIVASAN)
MEMBER(A)



(M.B. MUDUMBAR)
MEMBER(J).