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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI
NEW BOMBAY BENCH

O.A. No. 125/89 198
T.A. No.

DATE OF DECISION 21.2.1989

Shri Pannalal Bharat & 3 Ors.

Petitioner

Shri L.M.Nerlekar

Advocate for the Petitioner(s)

Versus

Dy. Chief Engineer (S & C)

Respondent

Advocate for the Respondent(s)

CORAM

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

The Hon'ble Mr. M.Y.PRIOLKAR, MEMBER(A)

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

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

Original Application No.125/89.

1. Shri Pannalal Bharat,
2. Shri Abdul Gaffar Khan,
3. Shri Durjodhan Sahu, and
4. Shri Prabhatsingh Gulabsingh,
All working under IOW(C)
Bhayandar,
Bombay.

...Applicant.

V/s.

Deputy Chief Engineer (S & C)
VB-I Churchgate,
Bombay.

...Respondent.

Coram: Hon'ble Member(J), Shri M.B.Mujumdar,
Hon'ble Member(A), Shri M.Y.Priolkar.

ORAL JUDGMENT:

[Per Shri M.B.Mujumdar, Member(J)]

Dated: 21.2.1989.

The question involved in this case is whether a delinquent Railway employee has a right to engage a legal practitioner in a departmental inquiry.

2. The applicants are working as 'Khalasis' under the Inspector of Works (IOW) Construction, Bhayandar from August, 1984. In October, 1988 separate statements containing one charge were served on them. We need not quote the charges against all the applicants, but we may quote the charge against applicant No.1 Shri Pannalal Bharat as a specimen. The charge against him is as under:

"Shri Pannalal Bharat while functioning as Khalasi during the above period indulged in gross misconduct by securing the employment on the basis of fictitious Service Card showing previous employment with PWI (M) Lonavala from 20.10.1980 to 18.8.1981 (break in service) and thus violated Rule 3(1)(i) and (iii) of the Railway Service (Conduct) Rules 1966."

Only the dates are changed in the charges against the other applicants.

3. One Shri P.R.Ganu, Assistant Engineer (Survey & Construction) is appointed as Enquiry Officer. No Presenting Officer is appointed. Mr.Srinivasan the learned advocate for the

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respondents stated that a Presenting Officer is appointed only in the cases filed by the Vigilance Department and in the departmental inquiries against the applicants, no Presenting Officer is being appointed. Separate departmental inquiries are being held against the applicants.

4. The applicants have submitted separate, but similar replies regarding the charges framed against them. A copy of the reply submitted by applicant No.1 Shri Pannalal Bharat on 11.10.1988 is produced in this case. In the reply the applicants have requested for permitting them to take the assistance of an advocate during the departmental inquiry. The reasons given by them are these (1) they are illiterate, (2) charges levelled against them are grave and serious, (3) they will not be able to go through the documents and verify the genuineness or otherwise, (4) the witnesses are all Superior Officers and hence they will not be able to cross-examine them, and (5) complicated questions of law and fact are involved.

5. The Disciplinary Authority i.e. the Executive Engineer (Survey & Construction) Virar-Bhayandar - I Churchgate has replied to the applicants separately. A copy of the reply sent to applicant No.1 Shri Pannalal Bharat on 18.11.1988 is produced by the applicants. The applicants are informed that the inquiry against them is to be conducted in terms of the Disciplinary and Appeal Rules 1968 and they will be allowed to be assisted by the Railway Servant/Trade Unionist recognised by Railway Administration. The applicants have challenged the said replies sent to them by filing the present application.

6. In para 8 of the application the applicants have requested for directing the respondents to allow them to take the help of a legal practitioner for the purposes of taking inspection of documents and for representing them in the departmental proceedings.

7. We have just now heard Shri L.M.Nerlekar learned advocate for the applicants and Mr.N.K.Srinivasan learned advocate for the respondents.

8. The departmental inquiries against the applicants are being held separately under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968. Sub-rule 9 of that rule is relevant in this case and hence it reads as under:

"The Railway servant may present his case with the assistance of any other Railway servant (including a Railway servant on leave preparatory to retirement) employed on the same Railway Administration on which he is working. If the Railway servant is employed in the office of the Railway Board, its attached office or subordinate office, he may present his case with the assistance of any other Railway servant (including a Railway servant on leave preparatory to retirement) employed in the office of the Railway Board, attached office or subordinate office, as the case may be, in which he is working."

9. Applicants being Khalasis are non-gazetted railway servants. The disciplinary authority has sent replies to them in accordance with Note.I of the abovequoted Sub-rule.

10. After considering the nature of the charges framed against the applicants and after considering the fact that no Presenting Officer is appointed in the departmental proceedings which are being conducted against the applicants, we are of the view that the Disciplinary Authority ~~is~~ ^{was} justified in not permitting the applicants to engage a legal practitioner.

11. Mr.Nerlekar laid stress on the fact that the applicants are illiterate persons. But in our view this should not make any differences. The Disciplinary Authority has permitted them to take the assistance of a railway servant or an official of the Trade Union recognised by the Railway Administration. We have quoted the reasons given by the applicants in their replies for permitting them to engage a legal practitioner in the departmental proceedings. We are not impressed by any of these reasons. In the application they have given some additional reasons, but after considering these reasons also we are not inclined to have a different

view. There is no doubt that giving the assistance of a legal practitioner has some advantages but it cannot be forgotten it has some disadvantages also. Considering the fact that no Presenting Officer is being appointed in inquiries against the applicants we do not think that they should be allowed to engage a legal practitioner.

12. Mr.Nerlekar, learned advocate for the applicants relied on a judgment of the Supreme Court in Board of Trustees of the Port of Bombay v. Dilip Kumar R.Nadkarni, AIR 1983 S.C. 109. It is held in that case that wherein 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 that case the delinquent officer was an officer of the Bombay Port Trust. The ratio of the judgment in that case will not apply to the facts of this case, because no Presenting Officer is appointed by the disciplinary authority in the inquiries against the applicants. In C.K.Sunder v. Union of India this Bench comprising of one of us (M.B.Mujumdar) and P.Srinivasan had permitted the delinquent railway employee to engage a legal practitioner in the departmental inquiry against him, but the Presenting Officer in that case ^{was} an Inspector of the Central Bureau of Investigation with a Law Degree. We have quoted the passage from the Judgment of the Supreme Court in Nadkarni's case referred to above. The respondents in that case had preferred an S.L.P. in the Supreme Court but the Supreme Court has passed the following order on 14.12.1988 on the S.L.P.:

The order passed by the Tribunal on the basis of the circular dated 25.11.1985 could not be sustained. However, on the facts and circumstances of this case, that the Railway Administration will also keep the Prosecuting Officer on behalf of

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the CBI as the Presenting Officer, the order passed by the Tribunal in respect of this inquiry is maintained.

The appeal is disposed of accordingly."

13. Hence we find that the replies given by the Disciplinary authority to the requests of the applicants for engaging a legal practitioner are quite proper and legal. In result we find no merit in this application and hence reject the same summarily with no order as to costs.

14. At this stage Mr.Nerlekar requested for keeping this order in abeyance for a period of one month. But except rejecting the application summarily we have not passed any order. As ~~No~~ ^U interim stay is granted, in this case at any time. Hence the request of Mr.Nerlekar is rejected.


(M.Y.PRIOLKAR)
MEMBER(A)


(M.B.MUJUMDAR)
MEMBER(J)