

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

XXXXX XXXXXXXX
NEW BOMBAY BENCHO.A. No. 254/89
XXXXX

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DATE OF DECISION 24.4.1989

Shri K.N.Sabhnani

Petitioner

Shri S.Natarajan

Advocate for the Petitioner(s)

Versus:

Secretary, Atomic Energy, Bombay & ^{another.} Respondent(s)

Shri J.D.Desai for Mr.M.I.Sethna 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? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. Whether it needs to be circulated to other Benches of the Tribunal? No

(04)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY 400 614

OA NO. 254/89

Shri K.N.Sabhnani
Residing at 41, Union Park
ST Road, Chembur,
Bombay 400 071.

... Applicant

V/S.

1. Secretary,
Deptt. of Atomic Energy,
C.S.M Marg, Bombay.
2. Union of India
through
Secretary,
Ministry of Personnel
and Administrative Reforms,
Central Secretariat, New Delhi. ... Respondents

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

ORAL JUDGMENT

Dated: 24.4.1989

(PER: M.B.Mujumdar, Member (J))

Heard Mr. S.Natarajan, learned advocate for the
applicant.

2. The applicant is working as Scientific Officer/Engineer (SE) in the Atomic Energy Establishment at Trombay, Bombay. By order dated 24/26.6.1987 he is placed under suspension. Along with the Memorandum dated 3.8.1988 two articles of charge are served on him. Though the applicant has not produced a copy of the charges, the nature of the charges is mentioned in para 5 of the application. The charges in substance appear to be that the applicant in connivance with his senior officer and two subordinate Engineers recorded false certificates in respect of 23 works executed during the period from 1984 to 1987 without carrying out the said works at site. In support of the charges 238 documents mentioned in the list of documents are to be relied upon. 21 witnesses as mentioned in the list witnesses are to be examined.

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3. One Shri R.S.Goel, Commissioner for Departmental Enquiries, Central Vigilance Commission is appointed as an Enquiring Authority (EA) while one Shri S.S.Janwadkar, Scientific Officer (SE) is appointed as the Presenting Officer. Before the commencement of the enquiry, the applicant applied on 31.12.1988 for permitting him to engage a legal practitioner for defending him. However, that prayer was rejected by the Secretary of the Department of Atomic Energy and that decision was conveyed to the applicant by letter dated 9.1.1989 by the Director in the Department of Atomic Energy. It is pointed out in that letter that the applicant's request was rejected having regard to the nature of the case and the fact that the Presenting Officer is not a legal practitioner. Being dissatisfied with that order, the applicant again represented for permitting him to engage a legal practitioner. But the Secretary again turned down that request. That position was informed to the applicant by the Director by letter dated 13.2.1989. The applicant's 3rd representation dated 4.3.1989 was also rejected and the applicant was informed accordingly by the Director by the letter dated 3.4.1989. Against that order the applicant has filed the present application on 11.4.1989 under Section 19 of the Administrative Tribunals Act.

4. We have just now heard Mr. S.Natarajan, the learned advocate for the applicant and Mr.J.D.Desai for Mr.M.I.Sethna for the respondents. The relevant provision regarding appointment of a legal practitioner is to be found in Rule 14 (8) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (briefly, the Rules). Sub-rule is as follows :

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"(8) (a) 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 inquiry 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:

Provided that the Government servant may take the assistance of any other Government servant posted at any other station, if the inquiry authority having regard to the circumstances of the case, and for reasons to be recorded in writing so permits."

Admittedly, the Presenting Officer is not a legal practitioner.

He is an Engineer. Hence, in our view the provisions of the above sub-rule do not entitle the applicant to have the assistance of a legal practitioner.

5. However, Mr. Natarajan relied on a circular dated 29.8.1972 issued by the Director General, Posts & Telegraphs cited at page 76 of Swamy's compilation of CCS CCA Rules, 1985. The circular is as under :

"Assistance of legal practitioner to be decided on merits of each case. The assistance of a legal practitioner should not be refused to the officer concerned if the Presenting Officer is a legal practitioner. The rule, however, vests discretion in the disciplinary authority to permit assistance of a legal practitioner having regard to the circumstances, that such assistance is justified. No orders exist laying down guidelines to the disciplinary authority as to in what circumstances such justification may be said to exist. The matter has been carefully considered and after taking into account the judgments delivered by some High Courts on this point it has been decided that the disciplinary authority should bear, in each case, such circumstances in mind, as the status of the Presenting Officer, his experience in this type of job and the volume and nature of documentary evidence produced in the case before taking a decision as to whether or not the services of a legal practitioner should be made available to the officer concerned. It is reiterated that the discretion of the disciplinary authority is vast and it should exercise such discretion in the most impartial manner on the merits of each case and be guided solely by the criterion whether the denial of assistance of a legal practitioner is likely to be construed as denial of reasonable opportunity to the officer concerned to defend himself."

6. Mr. Natarajan laid stress on the fact that the respondents are relying on 238 documents and 21 witnesses in support of the charges and hence according to him the applicant should have been allowed to engage a legal practitioner. But in our view what the circular quoted above merely says is that the volume and nature of documentary evidence should be taken into account while deciding whether a delinquent should be allowed to engage a legal practitioner, along with other circumstances. In our view, the other circumstances will include the nature of the charge, the qualifications, status and profession of the Presenting Officer, etc. The applicant has not produced a copy of the charge, nor the respondents have brought it today. To our repeated queries, Mr. Natarajan replied that the nature of the charge is not relevant in this case. We do not agree with him. But apart from this, the nature of the charge is found from para 5 of the application itself. The charges appear to be simple, namely, the applicant in connivance with his senior officer and two subordinate Engineers recorded false certificates in respect of 23 works executed during the period from 1984 to 1987, without carrying out the said works at site. In our view the volume of evidence both oral and documentary is not the only circumstance which has to be considered while deciding whether the legal practitioner should be allowed in a departmental proceeding.

7. In this connection, Mr. Natarajan relied on the judgment of the Madras Bench of this Tribunal in P. Kanni vs. Superintendent of Post Offices, (1989) 9 Administrative Tribunals Cases 222. In para 5, the Bench has observed that when a request is made to engage a legal practitioner, ^{in a considered} the disciplinary authority is bound to pass ^{an} order as to whether the request should be allowed by taking into account the circumstances of the case.

8. But by the letter dated 9.1.1989 the applicant's request for engaging a legal practitioner was rejected. He was informed that the request was rejected having regard to the nature of the case and the fact that the presenting officer is not a legal practitioner. In our view, the observations in para 5 of the judgment of the Madras Bench of the Tribunal on which Mr. Natarajan has relied do not indicate that the order passed by the Disciplinary authority while rejecting the request should be either exhaustive or in the nature of a judgment. The reasons given in the letter dated 9.1.1989, in our view, are sufficient and legal.

9. Lastly, Mr. Natarajan relied on Section 30 of the ~~Heading of the~~ ^{Advocates' Act, 1961.} The Section is ~~titled as~~ 'Right of Advocates to Practise' and it lays down inter alia that subject to the provisions of the Act, every Advocate whose name is entered in the State roll shall be entitled as of right to practise throughout the territories to which the Act extends - (i) in all courts including the Supreme Court, (ii) before any tribunal or person legally authorised to take evidence, and (iii) before any other authority or person before whom such advocate is by or under any law for the time being in force entitled to practise.

10. Mr. Natarajan submitted that the enquiry officer was legally authorised to take evidence and hence an advocate has a right to appear before him. But in our view, this provision will be subject to the provisions of ~~some~~ ^{the} Acts or Rules by which the tribunal or authority is constituted and this provision does not authorises an advocate to appear before a tribunal or authority irrespective of the provisions of the Act or the rules by which the Tribunal or authority is constituted. Moreover, in this case we are not concerned

with the right of an advocate to appear in a departmental proceeding, but with the right a Government servant to engage an Advocate in a departmental proceeding.

11. In this connection, we may refer to the judgment of the Supreme Court in Paradip Port Trust v. Their Workmen, AIR 1977 Supreme Court 36. In that case the Supreme Court was required to consider the right of an advocate to practise before an Industrial Tribunal, under Section 30 of the Advocates Act 1961, vis-a-vis, Section 36 of the Industrial Dispute Act, 1947 which provides for representation of a workman in a proceeding under the Industrial Dispute Act. Sub-section (2) of that section lays down that no party to a dispute shall be entitled to to be represented by a legal practitioner in any conciliation proceedings under the Act or in any proceedings before a Court. In para 23 of the judgment, the Supreme Court has pointed out that the Industrial Dispute Act is a special piece of legislation and it will prevail over the Advocates Act which is a general piece of legislation with regard to the appearance of lawyers before all courts, tribunals and other authorities. In the next paragraph, the Supreme Court has pointed out that the matter is not to be viewed from the point of view of legal practitioners but from that of the employer and workmen who are the principal contestants in an industrial dispute under the Industrial Dispute Act. The Supreme Court has further observed that the restriction is upon a party as such and the occasion to consider the right of the legal practitioner may not arise. These observations from the judgment of the Supreme Court should meet the argument of Mr. Natarajan before us.

Support our view in the previous paragraph and

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12. In C.K.Sunder vs. Union of India, ATR 1988 (2) CAT 370 we had permitted the applicant to engage a legal practitioner in the departmental proceedings initiated against him by setting aside the disciplinary authority's decision by which the request was rejected. We relied on a Circular dated 25.11.1985 which read as follows : "It has now been decided that in rare cases where, on behalf of the disciplinary authority, the case present 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." We had also referred to the judgment of the Supreme Court in Board of Trustees, Port of Bombay v. Dilip Kumar, A.I.R. 1983 S.C. 109. But the respondents in that case filed an SLP in the Supreme Court and the Supreme Court ~~after granting Special leave~~ disposed of the appeal by observing as follows : -

"Special leave granted.

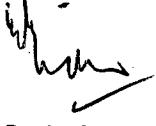
The order passed by the Tribunal on the basis of the circular dated 25.11.85 could not be sustained. However, on the facts and circumstances of this case, that the Railway Administration will also keep the Prosecuting Officer on behalf of the CBI as the Presenting Officer, the order passed by the Tribunal in respect of this inquiry is maintained.

The appeal is disposed of accordingly."

13. The correct legal position therefore appears to be that the disciplinary authority has to apply his mind, bearing in mind the circumstances of the case and decide whether the delinquent should be allowed to engage a legal practitioner or not. There is no doubt that it has a wide discretion but it is neither unfettered nor unjusticiable. Considering the facts and circumstances of the case, we are of the view that Disciplinary Authority has correctly exercised

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the discretion in this case by not allowing the applicant to engage a legal practitioner. We cannot forget that though allowing a legal practitioner in a departmental proceedings has some advantages, the dis-advantages are many times more. Each case shall have to be decided on its merits. In the present case, we do not find that the discretion is wrongly used by the Disciplinary Authority and hence we reject the application summarily under Section 19 (3) of the Administrative Tribunals Act, with no orders as to costs.


(M.Y. Priolkar)
Member (A)


(M.B. Mujumdar)
Member (J)