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CS. BOOVARAJAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH, BANGALORE

DATED THIS THE 20<sup>th</sup> DAY OF JULY, 1987

Present : Hon'ble Shri Ch.Ramakrishna Rao ... Member (J)

Hon'ble Shri P. Srinivasan ... Member (A)

APPLICATION NO. 1610/86(F)

S. Basavarajaiah,  
No.28/1, 20th Main Chord Road,  
Vijayanagar,  
Bangalore-560 040. ... Applicant

(Dr.M.S.Nagaraja .. Advocate)

v.

The Regional Provident Fund  
Commissioner, Karnataka,  
Bhavishyanidhi Bhavan,  
No.8, Rajaram Mohan Roay Road,  
P.B. No.2584,  
Bangalore-560 025.

The Central Provident Fund  
Commissioner, 9th Floor,  
Mayur Bhavan,  
Connaught Circus,  
New Delhi-110 001.

... Respondents

(Shri M.S.Padmarajaiah .. Advocate)

This application came up for hearing before this Tribunal on  
16th July 1987. Hon'ble Shri P.Srinivasan, Member (A) made the  
following:-

O R D E R

This is an application under Section 19 of the Administrative  
Tribunals Act, 1985. The applicant who was working as a U.D.C. in  
the Office of the Regional Provident Fund Commissioner, Bangalore,  
was charged inter alia, with having taken, as illegal gratification,  
a sum of Rs.30/- from a certain G. Jagannathan for settling the  
latter's provident fund and family pension account. The Central  
Bureau of Investigation (CBI) laid a trap on 8.3.1978 on the basis  
of a complaint said to have been made by the said Jagannathan and  
the charge was a direct result thereof. An Inquiry Officer (IO)  
was appointed. The IO gave a finding that the charge against the



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applicant was proved by the evidence produced before him. Another charge was also framed against the applicant of having received illegal gratification totalling in all Rs.120/- from three persons, but the IO held that the said charge had not been proved. Agreeing with the findings of the IO, the Disciplinary Authority (DA) issued a show-cause notice to the applicant as to why the penalty of dismissal from service should not be imposed on him. The applicant submitted in reply that the inquiry was defective in that he had been denied the opportunity of inspection of documents which according to him were relevant for his defence and that moreover he had been refused permission to engage an Advocate. He also submitted that the punishment proposed was too severe. Since according to him he was not guilty of the charge he pleaded that he be exonerated fully. The DA, after considering the objections of the applicant upheld the findings of the IO and imposed the penalty of dismissal from service by his order dated 18/20.5.1982. The applicant filed an appeal against the said order in which he reiterated, inter alia, that he was denied access to relevant documents and was not allowed to engage a legal practitioner. The Appellate Authority (AA) rejected both these contentions, the first one on the ground that the proceedings of the inquiry showed that copies of all the documents listed in the annexure to the Memorandum of charge sheet were supplied to the applicant and that the request of the applicant for inspection of original documents had also been allowed and the second one on the ground that in a domestic departmental inquiry a legal practitioner could not be allowed to defend a delinquent employee and that the applicant himself had enough experience of office work and procedures to be able to defend himself. The AA further remarked that the applicant was permitted to engage Shri Mohd. Jaffer, Head Clerk, in the office of Provident Fund Commissioner, Bangalore, who was a law graduate, as his defence assistant. In respect of the complaint that documents sought for by the applicant had not been made available during the inquiry, the AA made a further observation that if the applicant thought he had a

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valid objection in this regard he should have raised it before the IO and not having done so, it was purely by way of afterthought that such an objection was raised in the appeal. Therefore, the AA rejected the applicant's appeal and confirmed the order of dismissal by his order dated 15.4.1986. The application is directed against the order of the DA dated 18/20.5.1982 (Annexure J) and the order of the AA dated 15.4.1986 (Annexure K).

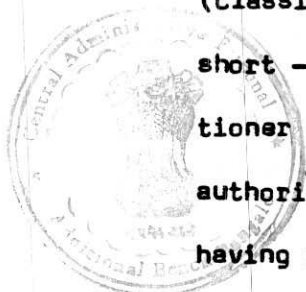
2. Dr. M.S.Nagaraja, learned counsel for the applicant raised the same two grounds of objection referred to above which had been putforward before the AA. So far as the documents are concerned, Dr. Nagaraja pinpointed seven documents which were relevant and necessary for the applicant's defence, whose production the applicant had asked for during the Inquiry. These were —

1. The signed complaint of Jagannathan said to have been made before the Police authorities which lead to the laying of the trap. Only copies were furnished to the applicant, but his request that he be allowed to inspect the original and compare it with the copies had not been allowed;
2. Jagannathan's application for settling his provident fund dues made in Form 19; there also only copies were given but verification with the original was not allowed;
3. Ledger card containing the account of Jagannathan;
4. Stamped receipt said to have been obtained from Jagannathan towards the dues payable to him;
5. Register of the Receptionist of the Office of the Regional Provident Fund Commissioner showing the names of visitors to the office and the names of persons whom they wanted to contact;
6. Copy of the circular relating to the maintenance of the registers mentioned above, at the counter of the receptionist; and
7. The despatch register containing the entry regarding the despatch of the cheque to Jagannathan towards his dues.



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Dr. Nagaraja elaborated that since the starting point of the inquiry was the complaint said to have been lodged by the said Jagannathan, the original complaint was a necessary document in the disciplinary proceedings. Another fact mentioned in the Inquiry report is that while Jagannathan had asked in his application that his dues be remitted to him by money order, the applicant had, with an ulterior motive, asked him to furnish a stamped receipt. In order to substantiate this charge the application in Form 19 made by Jagannathan should have been produced in original in the inquiry to verify the fact that he had claimed the payment by money order and for the same reason the stamped receipt said to have been obtained from him should have also been produced. The register of the Receptionist was required because the allegation against the applicant was that Jagannathan had come to see the applicant in the office when the applicant demanded illegal gratification. According to Dr. Nagaraja the register of the Receptionist and the circular instructions about its maintenance would show whether Jagannathan had actually visited the office and had met the applicant to ask for settlement of his dues when the applicant could have demanded money. The despatch register was required to prove the manner of payment made to Jagannathan. As regards the applicant's request for engaging a legal practitioner Dr. Nagaraja pointed out that though the PO was not himself a legal practitioner that did not ipso facto mean that the applicant could not be allowed the assistance of a legal practitioner. Rule 10(8) of the Employees Provident Fund Staff (Classification, Control and Appeal) Rules, 1971 - 'rules' for short - provided that an employee "may not engage a legal practitioner for the purpose unless the PO appointed by the disciplinary authority is a legal practitioner or the disciplinary authority, having regard to the circumstances of the case so permits".



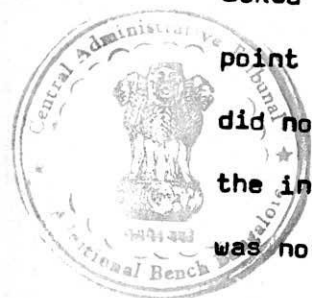
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Thus not only when the PO is a legal practitioner, but also where the DA deems it fit to permit the engagement of a legal practitioner having regard to the circumstances of the case, a delinquent employee could have the assistance of a legal practitioner. The DA in this case did not exercise the discretion conferred on him as he should have. The DA should have considered the circumstances of the case and should have recorded a reasoned order either permitting the engagement of a legal <sup>practitioner</sup> or rejecting it. But this he had not done and to that extent, the applicant had not been given sufficient opportunity to defend himself. Therefore, according to Dr. Nagaraja, the principles of natural justice were violated in this case by not producing the relevant documents required by the applicant for his defence and by not allowing him the services of a legal practitioner to defend himself.

3. Shri M.S.Padmarajaiah, learned counsel for the respondents, strongly opposed the contentions of Dr. Nagaraja. If the applicant wanted some original documents to be produced at the inquiry he should have made a request at <sup>the</sup> hearing before the IO. The records of the IO did not show any such request having been made or that the applicant had made an issue of the same. The applicant is relying on certain letters addressed by him to the IO seeking the production of certain documents but unless the request had been pressed at the inquiry itself when the applicant was present and unless the applicant had taken a stand before the IO that the inquiry would be vitiated if the documents were not produced, he cannot now be heard to complain that the documents asked for by him were not produced. The AA had also dealt with this point and rejected <sup>M.T</sup> it on the ground that the records of the inquiry did not show that the applicant took a stand on the matter during the inquiry proceedings. As for the applicant's complaint that he was not allowed to engage a legal practitioner, Shri Padmarajaiah

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contended that here also after the applicant's request in this regard was rejected by the DA, the applicant should have brought the matter up in the inquiry proceedings but apparently he had accepted the rejection and had proceeded to participate in the inquiry with the assistance of Shri Mohd. Jaffer. The PO was no doubt an Inspector of the CBI with a law qualification but he was not a prosecuting officer and could not be equated with a legal practitioner. Moreover the applicant himself was an experienced hand and Shri Mohd. Jaffer was also qualified in law. Therefore, the applicant was not denied an opportunity to defend himself adequately. The DA had rejected the applicant's request using his discretion in this regard and the AA had also pointedly referred to this claim and upheld the rejection on the ground of the applicant's own experience and the legal qualification of his defence assistant. The applicant cannot now be allowed to raise the same issue, not having agitated it in the manner in which he should have before the IO himself.

4. We have considered the rival contentions carefully. It must be remembered in this connection that two charges were levelled against the applicant of having accepted illegal gratification. The charge relating to acceptance of such illegal gratification from three persons totalling to Rs.120/- in all was held to be not proved by the IO. The only charge which was upheld by the IO was that the applicant accepted Rs.30/- by way of illegal gratification from Shri G.Jagannathan. G. Jagannathan had alleged in his statement before the IO that the applicant had received illegal gratification from three other persons also but this was not proved in the inquiry. The whole case in regard to the acceptance of illegal gratification from Jagannathan started



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from the complaint said to have been lodged by the said Jagannathan with the CBI authorities. We have perused the order sheet entries recorded by the IO, the statements of witnesses before him and the correspondence file of the office of the Regional Provident Fund Commissioner, Bangalore. Jagannathan deposed before the IO that the complaint was written by a friend of his whose name he could not remember. In these circumstances it was necessary for the complaint said to have been made by Jagannathan to be produced in original in the inquiry. It is admitted that the applicant addressed several letters to the IO during the pendency of the inquiry asking for the production of the original complaint. Again, the contention of the Department in the disciplinary proceedings was that Jagannathan had visited the office of the Regional Provident Fund Commissioner and had met the applicant for settlement of his dues and it was on that occasion that the applicant had demanded illegal gratification. If the applicant wanted to see the register of the Receptionist to show that Jagannathan had visited the office not to meet him (the applicant) but somebody else, the register was a necessary document to be produced at the inquiry. We are not impressed by the technical objection of Shri Padmarajaiah that the request for production of documents had not been raised during the course of the inquiry itself but only in letters addressed by the applicant to the IO. This objection is also not factually correct. The IO recorded in the order sheet on 4.10.1980 that the applicant had asked for seven original documents and that these would be made available for his inspection on 9.10.1980. Thereafter there is no record in the order sheet that these documents were produced for the applicant's inspection. On the other hand the correspondence file of the inquiry proceedings show that the applicant wrote repeated letters thereafter to the IO complaining that the original documents were not produced. The files of



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the Inquiry produced before us also did not contain the original documents. In fact the IO addressed a letter to the DA on 4.12.1980 referring to six documents whose production was required by the applicant but it is not known what happened thereafter. It is not necessary to refer to the other documents. Since this was a case in which the ultimate penalty of dismissal from service was imposed, all documents which bore any relevance to the charge against the applicant should have been produced in original in the inquiry, and since that was not done we have no alternative but to hold that the principles of natural justice were violated. We are, therefore, of the opinion that the inquiry and the orders of the DA and the AA suffer from a serious legal infirmity and have to be struck down as illegal.

5. So far as the applicant's request for the assistance of a legal practitioner is concerned, we find that after the request was rejected by the DA by letter dated 3.9.1979, the applicant sought permission by letter dated 10.9.1979 to engage either an advocate or a retired Government servant. The Regional Provident Fund Commissioner (RPFC) granted him permission to engage a retired Government servant by letter dated 5.3.1980. The applicant then wrote to the RPFC by letter dated 13.3.1980 to cancel the permission and instead to allow him to take the assistance of a certain V.R.Hegde PF Inspector and this was also allowed. It was the applicant who once again sought revocation of the order regarding Shri Hegde and asked to be permitted to engage Dr. M.S.Nagaraja, then Accounts Officer, in the Office of the Accountant General (AG) and to this also the RPFC agreed. When the AG declined to release Shri Nagaraja for this purpose, the applicant picked up Shri Mohd. Jaffer, Head Clerk, in the Office of the RPFC as his defence assistant with the approval of the RPFC. The sequence of events makes it clear that the applicant himself gave up his initial request for permission



P. S. Jaffer

to engage an advocate and the RPFC acceded to every request of the applicant thereafter. We, therefore, see no merit in this objection of Dr. Nagaraja.

6. In the result we quash the orders of the DA and the AA and direct the respondents to reinstate the applicant in service and give him all consequential benefits from the date from which he was dismissed from service. The Respondents will, however, have the liberty to initiate fresh proceedings in accordance with law if they deem it necessary.

7. In the result the application is allowed. Parties to bear their own costs.



Sd---

MEMBER (J) 30/11/87

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MEMBER (A) 30/11/87

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*R. Ching* 31/11/87  
SECTION OFFICER  
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