

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No: 1043/92

Transfer Application No: ---

DATE OF DECISION 16-8-1993

Narullah H.

Petitioner

Mr. G. S. Walia

Advocate for the Petitioners

Versus

Union of India & Ors.

Respondent

Mr. M. S. Ramamurthy


Advocate for the Respondent(s)

CORAM:

The Hon'ble Shri Justice M. S. Deshpande, Vice-Chairman

The Hon'ble ~~Shri~~ Ms. Usha Savara, 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 ?

  
(M. S. DESHPANDE)  
VC

M

NS/

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

O.A.1043/92

Narullah H.  
Retd. Deputy Controller,  
Bombay Division,  
Bombay Central,  
Western Railway,  
Bombay - 400 008.

.. Applicant

-versus-

1. Union of India  
through  
General Manager,  
Western Railway,  
Churchgate,  
Bombay - 400020.
  2. Divisional Railway Manager,  
Bombay Division, Western  
Railway, Bombay Central,  
Bombay - 400 008.
  3. Senior Divisional  
Operating Superintendent,  
Bombay Division,  
Bombay Central,  
Western Railway,  
Bombay - 400 008.
  4. R.C.Dohare/or his  
successor in office,  
Enquiry Officer,  
Headquarter Office,  
Churchgate, Western Railway,  
Bombay - 400 020.
- .. Respondents

Coram: Hon'ble Shri Justice M.S.Deshpande,  
Vice-Chairman.

Hon'ble Ms.Usha Savara, Member(A)

Appearances:

1. Mr.G.S.Walia  
Advocate for the  
Applicant.
2. Mr.M.S.Ramamurthy  
Advocate for the  
Respondents.

ORAL JUDGMENT:  
(Per M.S.Deshpande, Vice-Chairman)

Date: 16-8-1993

The only question which arises  
for consideration is whether we should substitute  
our own order directing the Disciplinary Authority  
to permit the applicant to engage a legal practitioner  
because a CBI Inspector Mr.Nair has been placed  
incharge to present the case of the prosecution

in the departmental enquiry before him.

2. The charge against the applicant was that he had described the contents of certain wagons which contained scrap, as kachara and directed them to BAMY Yard and falsified the records and put the Railway administration to heavy loss. The applicant had engaged one A.B.Desai for defending him but Desai was not available as he had retired and the applicant himself has retired, the trade unions was not willing to assist him at the enquiry. He therefore applied to the disciplinary authority stating that he was not in a position to defend himself personally and that an advocate friend who was a railway employee and understood the railway working was willing to assist him. His request to permit him to engage an advocate was rejected and the applicant has approached this Tribunal for a direction to the respondents to permit him to engage a legal practitioner.

3. Shri Walia, learned counsel for the applicant has pointed out that one Shri S.K.Nair of the CBI was appointed as Presenting Officer. He had experience of conducting several departmental enquiries and was conversant with legal proceedings and the method of adducing evidence, <sup>was</sup> trained legal mind and equivalent of legal practitioner and therefore under the Rules the applicant should also be allowed to avail the service of a legal practitioner. The respondents in a brief statement, opposing admission, contended that Shri S.K.Nair, P.I. CBI is not a law graduate and <sup>an</sup> he is only investigating officer of the CBI and he is not competent to conduct prosecution. In his rejoinder the applicant pointed out that the

Presenting Officer of the CBI has sufficient legal attainments to examine and cross examine witnesses while the applicant is a simple railway employee. Reliance was also placed on the rule position at Exh. 'H' to the rejoinder in which after referring to the provisions of sub-rule 13(a) of Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968 it was said "It has now been decided that in rare cases, where on behalf of the disciplinary authority, the case is presented by a Prosecution Officer of the CBI or a Government Law Officer such as Legal Adviser/Jr. Legal Adviser, the disciplinary authority may allow the delinquent railway servant also to be correspondingly represented by a legal practitioner. Necessary amendment to the Railway Servants (Discipline & Appeal) Rules, 1968 in this regard will follow in due course. "

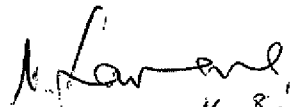
It is therefore apparent that the rule itself permits the appointment of legal practitioner under certain circumstances for defending the delinquent official and the question is whether the present case was one such. Evidently it is for the disciplinary authority itself to find out whether the situation is such as to justify this request for availing the service of legal practitioner. The legal position in this respect is well settled by the decision in J.K. Aggarwal vs. Haryana Seeds Development Corporation Ltd. and others, (1991) 2 SCC 283, where it observed that "the refusal to sanction the service of a lawyer in the inquiry was not a proper exercise of the discretion under the rule resulting in a failure of natural justice; particularly, in view of the fact that the Presenting Officer was a person with legal attainments and experience, being the Personnel and Administration Manager who is stated to be a man of law. It may be that the appellant

was no less adept having been in the position of a Senior Executive and could have defended, and did defend, himself competently; but in defending himself one may tend to become "nervous" or "tongue-tied". Moreover, appellant, it is claimed, has had no legal background." It is not necessary to multiply authorities but we may also refer to C.L.Subramaniam v. Collector of Customs, (1972) 3 SCR 485 where it was observed that One trained police prosecutor was appointed as the officer to present the case before the Enquiry Officer but the delinquent was denied the assistance of a Government servant. It was held that as the case against the appellant was being handled by a trained prosecutor it was a good ground for allowing the appellant to engage a legal practitioner to defend him lest the scales should be weighted against him and since the disciplinary authority ignored that circumstance it had failed to exercise the power conferred on it under the rule.

4. The Principal Bench of this Tribunal has also referred to the relevant consideration in Krishan Lal vs. Union of India & Ors. ATR 1993(1) CAT 170, enumerating the considerations which would be material in deciding the application. It is ultimately for the Disciplinary Authority to consider whether the Presenting Officer was a legally trained mind and if so permit the delinquent in fairness to be represented by a legal practitioner. We do not have the exact qualifications of Mr.Nair here and the extent of his experience for ascertaining whether he could be described as trained legal mind.

5. We therefore, while setting aside the impugned order passed by the disciplinary authority, direct the disciplinary authority to find out what are the qualifications and experience of Shri Nair and then decide by reasoned order whether the applicant should or should not be represented by a legal practitioner. The disciplinary authority shall give a hearing to the applicant in this respect and decide this question within 6 months from today. In view of the above direction the interim stay is vacated.

6. The application is disposed of with these directions.

  
(USHA SAVARA) 16. 8. '93  
M(A)

  
(M.S. DESHPANDE)  
VC

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