

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 756/94.

Transfer Application No:

DATE OF DECISION: AUGUST 16, 1994.

Shri Nurullah H. Petitioner

Shri G. S. Walia. Advocate for the Petitioners

Versus

Union Of India & Others Respondent

Shri M. S. Ramamurthy. Advocate for the Respondent(s)

CORAM :

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

The Hon'ble Shri M. R. Kolhatkar, Member (A).

1. To be referred to the Reporter or not ? *M*
2. Whether it needs to be circulated to other Benches of the Tribunal ? *M*


(M. S. DESHPANDE)
VICE-CHAIRMAN.

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BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A. NO.: 756/94.

Shri Nurullah H.,
Retd. Deputy Controller,
Bombay Division,
Bombay Central,
Western Railway,
BOMBAY - 400 008.

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Applicant

Versus

Union Of India & Others

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Respondents.

CORAM

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

Hon'ble Shri M. R. Kolhatkar, Member (A).

APPEARANCES :

1. Shri G. S. Walia,
Advocate for the applicant.
2. Shri M. S. Ramamurthy,
Advocate for the Respondents.

ORAL JUDGEMENT

DATED : 16.08.1994.

¶ Per. M. S. Deshpande, Vice-Chairman ¶.

1. We have heard the Learned Counsels. The only question which arises in the present case is whether in the given circumstances an opportunity should be given to the Applicant, who is a pensioner, to be represented at the departmental enquiry by an advocate.

2. Shri Walia for the applicant states that though he has prayed for several reliefs, he would press the present application/^{only}in respect of the services of an advocate being made available to the applicant ~~at~~ the departmental enquiry. After hearing the Learned

Counsel, an order was passed in the earlier application which the applicant had made ~~in~~ O.A. No. 1043/92 decided on 16.08.1993, that the disciplinary authority should find out what are the qualifications and experience of Shri Nair and then decide by ^a reasoned order whether the applicant should or should not be represented by a legal practitioner. This was to be done after giving a hearing to the applicant within a period of six months from the date of that order. The applicant accordingly made an application on 31.03.1994 setting out the reasons why he was asking for the service of an Advocate or a Police Official. The ground given was that the Presenting Officer is a Police Officer and a non-railway employee. The person who was a C.B.I. Inspector was conducting the enquiry on behalf of the department while himself was unacquainted with the procedure of the departmental enquiry. He also stated that he had no trust in Trade-Union Officials, who had earlier refused to defend his case as he had retired and could not afford to pay their fees. The advocate whom he wanted to engage, would not charge any fees from the Railway Administration and that he would not ask for any adjustment if the advocate engaged by him does not attend the proceedings.

3. The respondents passed an order vide dated 05.08.1994 stating that Shri Nair, who was a C.B.I. Officer, was not a prosecutor in the C.B.I. and was only a Commerce graduate. There is no

answer to the applicant's contention that Shri Nair had the experience of conducting several departmental proceedings. It is therefore clear that Shri Nair was an officer trained in conducting departmental enquiries. In these circumstances, only because he did not happen to be a Prosecutor of the C.B.I., there will not be much difference in the position which he occupies. We have already adverted to the legal position on the subject in our Order dated 16.08.1993. The rule which governs the present case is that the Disciplinary Authority may allow the delinquent railway servant also to be represented by a legal practitioner if the case is presented by a Prosecution Officer of the C.B.I. or a Government Law Officer (such as Legal Adviser/Jr. Legal Adviser. Though this was to be followed in rare cases, in the present case when the applicant happens to be a retired railway employee, he would stand to lose his entire pension if the charge against him is proved. This is an appropriate case for allowing him to be represented by an advocate of his choice.

4. We had given an opportunity to the respondents to reconsider the request by the earlier order and we are not satisfied with the reasons given in the order dated 05.08.1994, because it does not take into account the experience of Shri Nair in conducting the departmental enquiries. In the result, the limited prayer which is made by the applicant is allowed. The respondents shall allow the applicant to be represented in the departmental enquiry by an advocate of his choice, as the applicant undertakes not to ask for any accommodation in the event of his advocate not appearing at the departmental enquiry.

5. With these directions, the application is disposed of.

M R Kolhatkar

(M. R. KOLHATKAR)
MEMBER (A).

M S Deshpande

(M. S. DESHPANDE)
VICE-CHAIRMAN.

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