

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.200/01085/2018

Jabalpur, this Tuesday, the 11th day of December, 2018

HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER

Vijay Keshavrao Patmase,
Aged about 50 years
S/o Shri Keshavrao Patmase
Ticket No.7017, Technician-II
Fitting & Welding Shop
B.S.N.L. Telecom Factory
Wright Town, Jabalpur
R/o H.No.1867/A, Near Prem
Nagar Post Office Prem Nagar
Jabalpur 482002

-Applicant

(By Advocate –**Shri Shailesh Kumar Mishra**)

V e r s u s

1. Union of India,
Through its Secretary
Ministry of Telecommunication
New Delhi 110011

2. Assistant General Manager
(Production) & Disciplinary
Authority Telecom Factory
B.S.N.L. Wright Town
Jabalpur (MP) 482002

3. Sub-Divisional Engineer (Estate)
& Enquiry Officer, Telecom Factory
B.S.N.L. Wright Town,
Jabalpur (M.P.) 482002

- Respondents

(By Advocate –**Shri Gautam Prasad**)

O R D E R

By Ramesh Singh Thakur, JM:-

This Original Application has been filed by the applicant against the impugned order dated 31.10.2018 (Annexure A/1) whereby the request of applicant to engage the legal practitioner has been turned down by the respondents.

2. The applicant in this Original Application has sought for the following reliefs:-

8.I The Hon'ble Tribunal may kindly be pleased to direct the respondents to permit the applicant to engage legal practitioner in the enquiry to defendant interest properly.

II. The Hon'ble Tribunal may also kindly be pleased to quash the impugned order dated 31.10.2018 on the basis of the grounds mentioned above.

III. Any other relief which this Hon'ble Tribunal may deem fit and proper may also be given.”

3. Precisely the case of the applicant is that the applicant has been issued charge sheet dated 31.05.2018 (Annexure A/2) alleging that he has committed misconduct as per Section 31(a) of the Certified Standing Orders. The only charge has been framed against the applicant is that he made correspondence directly to the higher authority which is not permissible.

3.1 The applicant submitted his reply dated 25.07.2018 (Annexure A/3) to the said charge sheet specifically denying the

charges and gave out the circumstances under which he made correspondence to the higher authority.

3.2 The respondent No.2 without considering the said reply of the applicant, ordered for an enquiry and appointed one Shri K.S. Bansal, S.D.E. (Estate) as Enquiry Officer.

3.3 The applicant vide application dated 27.10.2018 (Annexure A/4) requested the respondents to permit him to engage a legal practitioner for defending his case. He also submits that he has no objection if the respondents engaged legal practitioner as enquiry officer and the presenting officer.

3.4 The respondents vide letter dated 31.10.2018 (Annexure A/1) along with communication letter dated 05.11.2018 informed the applicant that he may not engage the legal practitioner as per Rule 14(8) of the Central Civil Service (Classification, Control and Appeal) Rules, 1965.

4. The respondents have submitted their short reply. It has been submitted by the replying respondents that the applicant is working as Technician, Grade-II, Industrial Worker, in the Fitting and Welding Shop of Telecom Factory, Wright Town, Jabalpur. He has been issued a Memorandum dated 31.05.2018 (Annexure A/2) for committing misconduct as per Standing Order 31(a) of the Certified Standing Orders for Telecom Factories. The applicant has

also submitted a detailed reply dated 25.07.2018 (Annexure A/3).

On not being satisfied with the reply of the applicant, the disciplinary authority appointed Inquiry Officer and Presenting Officer to conduct the enquiry to the charges leveled against the applicant. However, when the Inquiry Officer vide his letter dated 23.10.2018 directed the applicant to appear in the enquiry, the applicant vide his letter dated 27.10.2018 (Annexure A/4) sought permission from the disciplinary authority to engage a legal practitioner for defending his case in the enquiry as his Defence Assistant. The disciplinary authority however decline the said prayer of the applicant vide letter dated 31.10.2018 and the inquiry officer vide his letter dated 05.11.2018 direct the applicant to appear in the enquiry proceedings which is to commence on 09.11.2018.

4.1 The replying respondents have specifically stated that Standing Order 33 of the Certified Standing Orders for Telecom Factories provides for “Procedure for imposition of penalties”. The relevant extract of the Standing Order 33 (Annexure R/1) is reproduced below:-

“The workman may present his case with the assistance of any other workman or a regular Government Servant but may not engage a legal practitioner for the purpose, unless the person nominate by the punishing authority to present the case is a legal practitioner.”

So, it has been specifically mentioned by the replying respondents that in view of the Standing Order which permits any other workman or a regular Government Servant working with him to represent him and this right stands restricted permitting representation through a legal practitioner, unless the person nominated by the punishing authority to present the case i.e. Presenting Officer is also a legal practitioner.

5. We have heard the learned counsel for both the parties and also gone through the documents attached with the pleadings.

6. In the instant case, the only question for determination is that whether the applicant has a right as per rule/instruction to engage legal practitioner as the defence assistance to defend his case in the inquiry. It is clear from the pleading that the applicant vide Annexure A/4 has sought permission from the disciplinary authority to engage the legal practitioner for defending his case in the inquiry as his defence assistance.

7. In the said annexure, the applicant has made averments to the fact that the legal practitioner is required to defend his case as a Defence Assistance if the inquiry officer or presenting officer is from the legal practitioner and for that the applicant has no objection. The replying respondents have quoted the Standing Orders 33 of Telecom Factories (Annexure R/4). This Certified

Standing Orders for the P & T Workshops has been issued as per provisions of Section 7 of Industrial Employment (Standing Orders) Act, 1946. From the careful reading of this Annexure R/1 the workman may present his case with the assistance of any other workman or a regular Government Servant but may not engage a legal practitioner for the purpose, unless the person nominated by the punishing authority to present the case is a legal practitioner.

8. During the course of the arguments, the learned counsel for the respondents has specifically submitted that neither the inquiry officer nor the presenting officer is a legal practitioner and in view of the Standing Order Annexure R/1, the impugned order dated 31.10.2018 (Annexure A/1) has been issued validly.

9. In the instant case, it is crystal clear that neither the inquiry officer nor the presenting officer is a legal practitioner and Standing Orders (Annexure R/1) only permits to the charged officer for defending his case unless the person nominated by the Punishing Authority is a legal practitioner. So, the action of the replying respondents is well within the ambit of Annexure R/1.

10. The replying respondents have also relied upon the judgment passed by Hon'ble Apex Court in the matter of ***Crescent Dyes and Chemicals Ltd. vs. Ram Naresh Tripathi*** 1993 AIR SCW 1106 and also the judgment of Hon'ble Supreme Court in the matters of

Kalindi vs. Tata Locomotive & Engg. Co. Ltd. reported in AIR 196 SC 914 and ***Indian Overseas Bank vs. Officers' Association*** 2001(2) SCC 540.

11. The contention of the counsel for the applicant is that the principal of natural justice is to be followed. Needless to say that the principal of natural justice comes into picture only then there is no such standing order by the respondent department. In the instant case the certified standing order for Telecom Factories (Annexure R/1) has been framed under Section 7 of the Industrial Employment (Standing Orders) Act 1946.

12. In view of the above, we are of the view that there is no scope for interference in the impugned order dated 31.10.2018 (Annexure A/1). Hence this Original Application is dismissed. No order as to costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

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