

CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, CAMP AT NAGPUR.

O.A.544/2015

Date of decision : April 24, 2019

Coram: R. Vijaykumar, Member (Administrative)
R.N. Singh, Member (Judicial).

Shri Niles Ganeshrao Alone,
Sorting Assistant,
R/o. Near Electronic Market,
Telipura, Nagpur.
Off. Add.: - O/o Superintendent,
RMS 'F' Division, GPO Building,
Civil Lines, Nagpur - 440 001. .. Applicant.

(By Advocate Shri Y.D. Shukla).

Versus

1. Union of India,
Ministry of Communication and
Information Technology,
through its,
Secretary,
Dak Bhawan, Sansad Marg,
New Delhi - 110 001.
2. The Director Postal Services,
Nagpur Region,
Nagpur - 440 010.
3. The Superintendent,
Office of the Superintendent,
RMS "F" Division,
Nagpur GPO, Civil Lines,
Nagpur - 440 010.
4. Shri A.N. Dighore,
Inquiry Officer,
R/o. Plot No.69,
Sachchidanand Nagar,
Manewada Road,
Nagpur - 440 024. .. Respondents.

(By Advocate Shri R.A. Gupte).

Order (Oral)
Per: R.N. Singh, Member (J).

The applicant who is working with the respondents has initially filed the aforesaid OA on 21.09.2015 under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

"I. Respondents be directed not proceed with the departmental enquiry initiated against the applicant till the criminal cases pending against the applicant bearing Reg. Cri. Case no.3575/14 and Petition no.E-91/15 has been decided finally in the peculiar facts and circumstances of the case in the interest of justice.

II. Declare that the Respondent no.3 has not right to issue the memo of charge sheet dt. 05/12/13 to the Applicant and he has not right and power to appoint the Enquiry Officer and Presenting Officer for the Respondent against the Applicant-delinquent, according to expression provisions of Central Civil Service Rule in the interest of justice.

III. Quash and set aside the charge sheet dt. 05/12/13 declaring it as illegal and without any authority issued to the Applicant in the interest of justice.

IV. Direct the Respondents to allow the Applicant to engage the legal practitioner as his defense assistance in the departmental enquiry initiated against the applicant in the interest of justice.

V. Direct the Respondents to appoint any other Enquiry Officer by

changing the Enquiry Officer Shri A.N. Dighore in the interest of justice and equity.

VI. Grant any other relief as this Hon'ble Tribunal may deem fit or further relief including costs in the circumstances of the case and also in the interest of justice."

2. Subsequently, the applicant filed MA No. 44/2016 seeking permission to amend the OA and the same was disposed of by this Tribunal vide order dt. 07.12.2017 and the applicant was permitted to amend the OA so as to challenge the Enquiry Report dt. 23.11.2015 and show-cause notice dt. 15.12.2015. This Tribunal has earlier disposed of MP No. 1050/2015 and operative portion of such order reads as under:

"6. Having regard to the facts and circumstances of this O.A. and having heard the learned counsel for the applicant as well as Smt. Shah, learned counsel who was asked to appear, are inclined to pass the following order on the M.P.:-

"The respondents are directed not to give any effect or further effect to the enquiry report as well as to the letter dated 15.12.2015 whereby the applicant has been called for to submit his representation to the report of the Inquiry Officer within 15 days, till the next date of hearing".

3. In view of the permission granted to the applicant by this Tribunal vide order dt.

07.12.2017, the applicant has filed amended OA on 04.01.2018 and he has prayed for the following reliefs in such amended OA:

"A. Quash and set aside the Enquiry Report Dtd. 23.11.2015 and in consequent thereof show cause notice Dt. 15.12.2015, submitted by the Inquiry Officer to the Disciplinary Authority by declaring it as illegal and unlawful in the interest of justice.

I. Respondents be directed not proceed with the Departmental Inquiry initiated against the Applicant till the Criminal Cases pending against the Applicant bearing Reg. Cri. Case No.3575/14 and Petition No.E-91/15 has been decided finally in the peculiar facts and circumstances of the case in the interest of justice.

II. Declare that the Respondent no.3 has no right to issue the memo of charge sheet Dt. 05.12.2013 to the Applicant and he has no right and power to appoint the Enquiry Officer and presenting officer for the Respondent against the Applicant / delinquent, according to expression provision of central civil service rule in the interest of service.

III. Quash and set aside the charge sheet Dt. 05.12.2013 declaring it as illegal and without any authority issued to the Applicant in the interest of justice.

IV. Direct the Respondents to allow the Applicant to engage the legal practitioner as his defence assistant in the Departmental Inquiry initiated against the Applicant in the interest of justice.

V. Direct the Respondents to appoint any other Inquiry Officer by changing the Inquiry Officer Shri A.N. Dighore in

the interest of justice and equity.

VI. Grant any other relief as this Hon'ble Tribunal may deem fit of further relief including costs in the circumstances of the case and also in the interest of justice."

4. At the outset, Shri B. Lahari, learned counsel for the applicant submits that the applicant is not pressing the reliefs sought at I, II, III, noted hereinabove.

5. The learned counsel for the applicant submits that the Enquiry Officer is a practising advocate and well aware of the law position. He further submits that in the present enquiry, the subject matter of the present OA involves complicated question of law as well as facts and in the circumstances the applicant was entitled to have the benefit of assistance of a Defence Assistant having sufficient exposure and experience of law. However, inspite of the representation from the applicant for allowing him to appoint Defence Assistant having knowledge and experience of law has been refused by the Competent Authority under the respondents inasmuch as it has been refused by the Disciplinary Authority as well as by the Appellate Authority. Shri B. Lahiri, learned

counsel further argues that refusal by the Competent Authority to the applicant for availing the services of Defence Assistant having knowledge and experience of law has resulted into sufferings of the applicant in as much as the applicant has not been able to present his case before the Enquiry Officer effectively. He, therefore, argues that the impugned Enquiry Report dt. 23.11.2015 and subsequent show-cause notice dt. 15.12.2015 are bad in law and deserves to be quashed.

6. To substantiate his arguments, Shri B. Lahiri, learned counsel relied upon the judgment of the Hon'ble Apex Court in Ramesh Chandra Vs Delhi University and Others (2015) 5 SCC 549 and he draws our attention to Paras 67 to 71 thereof which read as under:

"67. The enquiry officer herein being a retired Judge of the High Court is a person of vast legal acumen and experience. The presenting officer also would be a person who had sufficient experience in presenting case before the enquiry officer. In this background, it is also required to consider whether an application of a delinquent employee seeking permission to be represented through a legally trained and qualified lawyer should be allowed or not.

68. In Port of Bombay v. Dilipkumar Raghavendranath Nadkarni, this Court

observed: (SCC pp. 129-30 & 132, paras 10 & 12)

"10. ... Now if the rules prescribed for such an enquiry did not place an embargo on the right of the delinquent employee to be represented by a legal practitioner, the matter would be in the discretion of the enquiry officer whether looking to the nature of charges, the type of evidence and complex or simple issues that may arise in the course of enquiry, the delinquent employee in order to afford a reasonable opportunity to defend himself should be permitted to appear through a legal practitioner.

* * *

12. ... In our view we have reached a stage in our onward march to fair play in action that where in an enquiry before a domestic tribunal the delinquent officer is pitted against a legally trained mind, if he seeks permission to appear through a legal practitioner the refusal to grant this request would amount to denial of a reasonable request to defend himself and the essential principles of natural justice would be violated."

69. In J.K. Aggarwal v. Haryana Seeds Development Corpn. Ltd., this Court held that the denial of the assistance of a legal practitioner in inquiry proceedings would be unfair. This Court held as follows: (SCC pp. 286-87, para 8)

"8. It would appear that in the inquiry, the respondent Corporation was represented by its Personnel and Administration Manager who is stated to be a man of law. The rule itself

recognises that where the charges are so serious as to entail a dismissal from service the inquiry authority may permit the services of a lawyer. This rule vests a discretion. In the matter of exercise of this discretion one of the relevant facts is whether there is likelihood of the combat being unequal entailing a miscarriage or failure of justice and a denial of a real and reasonable opportunity for defence by reasons of the appellant being pitted against a presenting officer who is trained in law. Legal Adviser and a lawyer are for this purpose somewhat liberally construed and must include 'whoever assists or advises on facts and in law must be deemed to be in the position of a legal adviser. In the last analysis, a decision has to be reached on a case-to-case basis on the situational particularities and the special requirements of justice of the case. It is unnecessary, therefore, to go into the larger question 'whether as a sequel to an adverse verdict in a domestic enquiry serious civil and pecuniary consequences are likely to ensue, in order to enable the person so likely to suffer such consequences with a view to giving him a reasonable opportunity to defend himself, on his request, should be permitted to appear through a legal practitioner' which was kept open in Port of Bombay v. Dilipkumar Raghavendranath Nadkarni. However, it was held in that case: (SCC p. 132, para 12)

"12. ... In our view we have reached a stage in our onward march to fair play in action that where in an enquiry before a domestic tribunal the delinquent officer is pitted against a legally trained mind, if he seeks permission to appear through a legal practitioner the refusal to grant this request would amount to denial of a

reasonable request to defend himself and the essential principles of natural justice would be violated."

70. In view of the law laid down by this Court, we are of the view that if any person who is or was a legal practitioner, including a retired Hon'ble Judge is appointed as an enquiry officer in an inquiry initiated against an employee, the denial of assistance of a legal practitioner to the charged employee would be unfair.

71. For the reasons aforesaid, we hold that all the departmental enquiries conducted against the appellant were in violation of rules of natural justice. This apart, as the third inquiry report is based on extraneous facts and first part of the charge held to be proved in memorandum dated 26.3.2010 not being the part of the charges shown in the (third) charge-sheet, the order of punishment, including Resolution by memorandum dated 26.3.2010 cannot be upheld."

7. In response to the notice issued by this Tribunal, the respondents have filed their reply. The respondents have disputed and denied all the grounds raised on behalf of the applicant. The learned counsel for the respondents argues that while exercising the power of judicial review, this Tribunal should not interfere into the matter of enquiry at interlocutory stage. He further argues that the Enquiry Report dt. 23.11.2015 as well as the impugned show-cause notice dt. 15.12.2015 does

not give any cause of action to the applicant in as much as they are not the final orders and the disciplianry proceedings is regulated by a complete code i.e. CCS(CCA) Rules, 1965 and various instructions made by the Government of India under such rules. The applicant will have adequate opportunity to make representation against this Enquiry Report as well as the impugned show-cause notice and the Disciplinary Authority shall consider all the contentions raised by the applicant. He has also pointed out that as per the statutory provision, there is Appellate Authority also and if at all the applicant shall be aggrieved of the decision of the Disciplinary Authority, he under the relevant rules, is having the remedies of appeal before the Appellate Authority and further also before the Revisionary Authority. The learned counsel for the respondents further argues that the judgment of the Hon'ble Apex Court in Ramesh Chandra (supra) is not of any help to the case of the applicant inasmuch as it is not the case of the applicant that the rules and instructions considered by the Hon'ble Apex Court in Ramesh Chandra (supra) or a similar rules which are

applicable in the case of applicant. It is also pointed out that it is evident from Para 67 of Ramesh Chandra (supra), the Hon'ble Apex Court has found that the Presenting Officer was a person who had sufficient experience in presenting case before the Enquiry Officer who was a retired Hon'ble Judge of High Court. However, this is not the fact in the present case.

8. In the said case, not only the fact that the Enquiry Officer was a retired Hon'ble High Court Judge but also the Presenting Officer was also legally qualified person as evident from Para 34 of the Judgment whereas that is not the fact in the present case.

9. The learned counsel for the respondents has referred and relief upon the instruction No. 17 (R-16) which reads as under:

"(17) Permission to engage a legal practitioner for the defence.- Rule 14(8)(a) of the CCS (CCA) Rules, 1965, provides, inter alia, that a delinquent Government servant against whom disciplinary proceedings have been instituted as for imposition of a major penalty may not engage a legal practitioner to present the case on his behalf before the Inquiring Authority, 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. It is clarified that, when on behalf of the Disciplinary Authority, the case is being presented by a Prosecuting Officer of the Central Bureau of Investigation or a Government Law Officer (such as Legal Adviser, Junior Legal Adviser), there are evidently good and sufficient circumstances for the Disciplinary Authority to exercise his discretion in favour of the delinquent officer and allow him to be represented by a legal practitioner. Any exercise of discretion to the contrary in such cases is likely to be held by the Court as arbitrary and prejudicial to the defence of the delinquent Government servant."

10. He further submits that the OA is without any cause of action and the same deserves to be dismissed. He further pray that the applicant should be directed to file his reply / representation in pursuance to the impugned Enquiry Report and impugned show cause notice so that the final decision in the matter can be taken by the competent Disciplinary Authority expeditiously.

11. We have perused the relevant pleadings. It is not in dispute that the applicant's representation before the Disciplinary Authority as well as the Appellate Authority for change of Enquiry Officer had been considered by the said authorities, however, the same have not been

acceded to and the fact that such rejection orders are not subject matters of challenge in the present OA. Once the appointment of the Enquiry Officer is not even a subject matter of challenge in the present OA and it is shown by the respondents that the appointment of the Enquiry Officer has been done in accordance with the rules and relevant instructions, more particularly, the instruction dt. 136, we find no reason to go into the correctness of the Enquiry Report at this stage when the applicant can raise all the issues before the Disciplinary Authority as well as the further remedies available to him in the form of Appellate Authority and Revision Authority.

12. We have also gone through the law decided by the Hon'ble Apex Court in Ramesh Chandra (supra). We respectfully find that the facts before the Hon'ble Apex Court in that case were entirely different than the case in hand inasmuch as in that case, the disciplinary enquiry had culminated into penatly order and right from chargememo to penalty order was under challenge therein. However, in the present case, the Disciplinary Authority, Appellate

Authority etc. are yet to examine the correctness of the Enquiry Report. Similarly, in the said case, the Enquiry Officer was a retired Hon'ble High Court Judge and the Presenting Officer was also experienced person in the field of law and disciplinary proceedings which is not the case of the applicant in the present OA.

13. Besides, it is not the case of the applicant that the case of Ramesh Chandra (supra), the enquiry against the appallent Ramesh Chandra was also regulated under the same rules or the rules similar to the provisions of CCS(CCA) Rules, 1965. We, therefore find that the judgment of the Hon'ble Apex Court in Ramesh Chandra is not of any help to the applicant. In view of the aforesaid facts and discussion, we do not find any merit in the OA. Accordingly, the OA fails and, therefore, is dismissed.

14. Interim orders stand vacated.

15. MA if any stands disposed of.

16. Before parting, we direct that the applicant shall cooperate in conclusion of the proceedings by filing his representation / reply in pursuance to the impugned Enquiry Report and

show-cause notice, if he so wishes and advised and on receipt of this, the respondents are directed to conclude the proceedings by passing final orders in the matter in accordance with the relevant rules, instructions and following principles of natural justice as expeditiously as possible.

No costs.

(R.N. Singh)
Member (J)

(R. Vijaykumar)
Member (A)

Ram.

