

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH**

O.A./100/3268/2015

New Delhi, this the 2nd day of May, 2019

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman  
Hon'ble Ms. Aradhana Johri, Member (A)**

Dinesh Nautiyal  
S/o Ram Nath  
R/o Flat No.40/T-2,  
Dilshad Garden,  
New Delhi

... Applicant

(Through Shri H.D. Sharma, Advocate)

Versus

1. Central Provident Fund Commissioner,  
Bhavishya Nidhi Bhawan,  
EPF Organization  
Ministry of Labour & Employment  
14, Bhikaji Cama Place,  
New Delhi-110066
2. Chief Vigilance Officer  
Vigilance Wing, EPF Organization  
Ministry of Labour & Employment  
15, Bhikaji Cama Place,  
New Delhi-110066
3. Shri S.C. Sharma  
Permanent Inquiry Officer (NZ)  
Bhavishya Nidhi Bhawan,  
EPF Organization  
14, Bhikaji Cama Place,  
New Delhi-110066

... Respondents

(Through Shri Puneet Garg, Advocate)

ORDER (ORAL)

Justice L. Narasimha Reddy, Chairman

The applicant is an employee of Employees Provident Fund Organization (EPFO). He was issued a charge memorandum dated 19.02.2014. He submitted his explanation, denying the charges. Not satisfied with that, the Disciplinary Authority (DA) appointed an Inquiry Officer (IO) as well as the Presenting Officer (PO). The applicant submitted a representation dated 23.12.2014 to the IO – 3<sup>rd</sup> respondent herein with a prayer to permit him to avail the services of Shri S.A.A. Abbasi as defence assistant. Through letter dated 12.03.2015, third respondent informed the applicant that he cannot engage Shri S.A.A. Abbasi as defence assistant in view of the fact that he is a legally qualified person whereas the PO is not so qualified. This OA is filed challenging the said letter dated 12.03.2015 and with a prayer to direct the respondents to allow him to engage the services of Shri S.A.A. Abbasi as provided in Rule 10 (8B) of the EPF Staff (CCA) Rules, 1971.

2. The applicant contends that it is the prerogative of the IO, whether or not to allow defence assistant to a delinquent employee and any act of consultation with the

DA in this behalf, amounts to surrender of power. He further submits that the rule permits an employee facing charges, to avail the services of a defence assistant, and that it is only when the proposed defence assistant is a legal practitioner, that the occasion to verify as to whether the PO is also a legal practitioner, would arise. According to the applicant, though Shri Abbasi was a practicing Advocate before he entered the service of EPFO, he suspended the practice and even after his retirement, the suspension continues. Two more grounds, one of discrimination and the other that Shri Abbasi had four more cases on hand, are not pressed.

3. The respondents filed a detailed counter affidavit, opposing the OA. It is stated that the decision in the context of permitting the applicant to avail the services of defence assistant, was taken by the 3<sup>rd</sup> respondent but since certain facts were required to be verified, consultation was done with the DA and that no illegality in this behalf has taken place. It is further stated that the PO was neither a legal practitioner nor he held the degree in Law, whereas the proposed defence assistant was a practicing Advocate. Reference is also made to note dated 6.05.2014 written by the Regional Provident Fund Commissioner, wherein it was mentioned that Shri

Abbasi was a legal practitioner and having five cases in hand. Various other pleas raised by the applicant were denied.

4. We heard Shri H.D. Sharma, for the applicant and Shri Puneet Garg, for the respondents.

5. The request made by the applicant to avail the services of Shri Abbasi as defence assistant was not acceded to, by the respondents. Two contentions are raised in this behalf. First is that the decision in this regard was taken by the DA and the second is that the rules prohibit the engagement of a person as defence assistant, only if he is a legal practitioner.

6. As regards the first contention, it is not in doubt that the decision was communicated to the applicant through an order passed by the 3<sup>rd</sup> respondent himself. It reads as under:

“The matter has been considered by the Competent Authority (i.e. CPFC) who has decided not to allow a legally qualified person as Defence Assistant in four cases namely Sh. Dinesh Nautiyal, EO, Sh. V.K. Gupta, APFC (Retd.), Sh. K.L. Parihar, APFC and Smt. Raj Rani, EO (Retd.) as the Presenting Officer is not legally qualified.”

The applicant contends that before the order was passed, the 3<sup>rd</sup> respondent sought the opinion and views of the

Ist respondent and thereby the entire exercise becomes vitiated.

7. It is true that the 3<sup>rd</sup> respondent sought the opinion of the Ist respondent. However, on that account, the exercise doesn't get vitiated. One has to keep in mind that the DA can himself act as an IO and depending upon the findings in the inquiry, he can impose the punishment. It is in his discretion, to appoint a different person as IO. Even after such appointment, the DA does not totally lose control on the inquiry. In a given case, he can replace the IO or even call for another report. The fact that the rules confer power upon the DA to differ with the findings of the IO, connotes the amount of control he has upon the inquiry process. Therefore, it cannot be said that the impugned order is vitiated on account of the fact that the 3<sup>rd</sup> respondent consulted the 1<sup>st</sup> respondent before taking a decision. Another aspect is that the entire matter pertains to disciplinary proceedings in the realm of DA, and the IO has limited role to play.

8. Coming to the second aspect, the rules contain certain provisions in this behalf. Sub-rule 8A of Rule 10

of the EPF Staff (CCA) Rules reads as under:

“(8A) The employee may take the assistance of any other employee or Government Servant posted in any office either at his Hqrs. or at the place where the enquiry is held to present the case on his behalf, but may not engage a Legal Practitioner for the purpose, unless the presenting Officer appointed by disciplinary authority is a Legal Practitioner or the disciplinary authority having regard to the circumstances of the case so permits.”

9. A perusal of the same discloses that the rule making authority wanted to ensure level play in the context of appointing the PO, on the one hand and defence assistant, on the other hand. The proceedings before the IO are not akin to those in a Court of Law. With a view to ensure that various technicalities which are specific to legal profession, do not hamper the progress of inquiry, the participation of legal practitioners is not permitted in the disciplinary proceedings. It is only when the PO, as chosen by the DA, is a legal practitioner, that permission is accorded for engaging the legal practitioner as a defence assistant. By the same analogy, if the PO holds a degree in law, person with similar status can be permitted to be appointed as defence assistant.

10. Reliance is placed on the judgment of the Madras High Court in W.P. No.2659/2014, **S. Jayavelu Vs. The**

**Central Administrative Tribunal, Madras Bench and others.** In that case, the PO was just an official of the department but not a legal practitioner. By taking into account, the fact that in his capacity, as an officer of the department, he had occasion to act as a quasi-judicial authority, permission was accorded to the delinquent employee to avail the services of a legal practitioner.

11. We are of the view that the rule that is framed by the EPFO, does not permit of such a facility to the applicant. The applicant wanted to avail the services of a retired employee, no doubt, but he was a practising Advocate and was conversant for practice in Court. The respondents, therefore, did not accede to the request of the applicant and rejected the same by passing the impugned order.

12. The issue of discrimination and certain orders passed vis-à-vis Shri Abbasi, though raised in the OA, was not argued during the course of the hearing.

13. We do not find any basis to interfere with the impugned order. The OA is, therefore, dismissed. There shall be no order as to costs.

(Aradhana Johri)  
Member (A)

(Justice L. Narasimha Reddy)  
Chairman