

M. Babu Vs. the Joint Zonal Manager -cum- Disciplinary Authority Southern Zone, Bank of India, Zonal Office Southern Zone, Chennai-86

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Court : Chennai

Decided On : Jul-20-1999

Reported in : 1999(3)CTC285; (1999)IILLJ1045Mad

Judge : E. Padmanabhan, J.

Acts : C.C.A. Rules -- Rule 15(5)

Appeal No. : W.P. No. 9675 of 1999

Appellant : M. Babu

Respondent : The Joint Zonal Manager -cum- Disciplinary Authority Southern Zone, Bank of India, Zonal Office So

Advocate for Def. : Mr. Sanjay Mohan, Adv.

Advocate for Pet/Ap. : Mr. S. Venkataraman, Adv.

Judgement :

ORDER

1. In this writ petition, the petitioner an employee of the respondent bank prays for the issue of writ of certiorarified mandamus calling for the records relating to the Order No. ZO:IR:AS:114 dated 17.5.1999 and quash the same and consequently

forbear the respondent from engaging any outsider as Presenting Officer in the departmental proceedings to be held into the charge memorandum dated 23.4.1996.

2. This court ordered notice of motion on 10.6.1999. The respondent has been served. With the consent of either party the writ petition itself was taken up for final disposal. Mr. S. Venkataraman, learned counsel for the petitioner submitted detailed arguments. At the first instance none appeared for the respondent. Thereafter Mr. Sanjay Mohan submitted that he had entered appearance, but his name had not shown in the cause list and therefore the matter be re-posted for further arguments. Accordingly, the writ petition was listed once again and further arguments were heard.

3. The petitioner presently working as Clerk-cum-Typist in the respondent bank at its Zonal Office filed the present writ petition for the relief prayed for. According to the petitioner charges have been framed against him and while framing the charges without calling for explanation, the respondent simultaneously issued orders appointing the enquiry officer and one Mr.C.G. Prem Anand, Inspector of Police CBI as Presenting Officer.

4. Being aggrieved by the appointment of the Inspector of Police, CBI as Presenting Officer, certain preliminary objections were raised and it was also farther objected that an Inspector of Police, CBI shall not be appointed as Presenting Officer which is contrary to the Bipartite settlement. The objection was overruled. Further the request to engage a defence counsel was also rejected. Challenging the same the petitioner filed in W.P.No. 7834 of 1997 and this court by order dated 13.2.1998 quashed the impugned memo dated 27.12.1996 as well as memo dated 27.1.1997 passed by the second respondent. This Court also held that refusal to permit the writ petitioner to have assistance of a legal practitioner is unreasonable on the facts and circumstances of the case.

5. Though initially Inspector of Police was appointed as the Presenting Officer by the Bank to present the case before the Enquiry Officer, subsequently the second respondent modified the earlier order and appointed one Mr.L. Venkatachalam, Office Manager, Purasawalkam Branch as the Enquiry Officer in the place of One

Mr. S, Ram Kumar, Enquiry Officer and simultaneously appointed Mr. S. Devendran, Assistant Public Prosecutor, A.C.B. C.B.I, Chennai as the Presenting Officer to present the case.

6. The present writ petition has been filed challenging the appointment of Presenting Officer Mr.S. Venkataraman, learned counsel for the petitioner contends that the respondent Bank cannot appoint Mr.S. Devendran, Assistant Public Prosecutor ACB CBI, Chennai as the Presenting Officer as it is contrary to Bipartite Settlement. It is fairly submitted that Mr. Devendran is a member of the Bar and he is being engaged by the CBI in various cases apart from his accepting other cases. In other words Mr.S. Devendran being a Member of the Bar. When admittedly the petitioner had been permitted to have the assistance of a legal practitioner, there is no justification for the petitioner to contend that the Bank cannot have the assistance of another legal practitioner to present its case as has been contended by Mr. Sanjay Mohan.

7. According to Mr.S. Venkataraman, the learned counsel for the petitioner, in the Bipartite Settlement there is no provision permitting the Bank to engage any outsider like a legal practitioner as presenting officer in the departmental enquiry. It is further contended by Mr.S. Venkataraman having withdrawn the earlier order of appointment of Inspector of Police as Presenting Officer, there is no reason nor justification for the respondent to appoint Mr. S. Devendran, a member of the Bar to be the Presenting Officer.

8. All that Mr.S. Venkataraman, learned counsel for the petitioner points out being that there, is no enabling provision in the Bipartite Settlement and therefore the appointment of Mr. S. Devendran has to be quashed.

9. Per contra, Mr.S. Sanjay Mohan contends that when the writ petitioner had been permitted to have the assistance of a Legal Practitioner to defend himself in the domestic enquiry, there is nothing illegal, nor there is any prohibition in the Bipartite settlement for the respondent Bank also having the assistance of a legal practitioner.

10. Mr.S. Venkataraman further elaborated his contention contending that there is no service regulation, nor there is any provision in the Bipartite Settlement to appoint an outsider as the Presenting Officer and therefore the impugned order has to be quashed. Clause 12 of the Bipartite Settlement which is relevant reads thus:

'12. The procedure in such cases shall be as follows:

(a) 'An employee against whom disciplinary action is proposed or likely to be taken shall be given a charge-sheet clearly setting forth the circumstances appearing against him and a date shall be fixed for enquiry, sufficient time being given to him to enable him to prepare and give his explanation so also to produce any evidence that he may wish to tender in his defence. He shall be permitted to appear before the Officer conducting the enquiry to cross examine witnesses and produce other evidence in his defence. He shall also be permitted to be defended---

(i) (x) by a representative of a registered trade union of Bank employees of which he is a member on the date first notified for the commencement of the enquiry;

(y) where the employee is not a member of any trade union of bank employees on the aforesaid date, by a representative of a registered trade union of employees of bank in which he is employed;

OR

(ii) at the request of the said union by a representative of the State Federation or Ail India Organisation to which such union is affiliated;

(iii) with the Bank's permission; by a lawyer.

He shall also be given a hearing as regards the nature of the proposed punishment in case any charge is established against him.'

11. Compliance with the procedure prescribed in the said clause is a substantial compliance with the principles of natural justice. The purpose of charge sheet is to afford the charged employee an opportunity to know the allegations for which he is being proceeded against. The employee is entitled to be defended by a co-

employee or a representative of the Union and when the employer permits he may also engage the legal practitioner. A reading of clause 12 would disclose that in no way the powers of the employer or Disciplinary Authority is curtailed and when it is warranted it is permissible for the employer to have the assistance of a legal practitioner to be the Presenting Officer.

12. What is contended by Mr.S. Venkataraman is that there is no enabling provision and therefore it has to be deemed or taken that the employer has no authority to appoint a legal practitioner as the Presenting Officer.

13. Per contra, Mr.S. Sanjay Mohan, learned counsel appearing for the respondent contends that there is no bar much less by implication that the employer cannot appoint a legal practitioner as its Presenting Officer. The Presenting Officer for the present case is a legal practitioner which is being impugned, Concedingly, the writ petitioner had already been permitted to defend himself by a legal practitioner. This is not disputed. There is also no basis or reason for the learned counsel for the petitioner to contend that no legal practitioner could be appointed as the Presenting Officer by the employer in the domestic enquiry.

14. The learned counsel for the petitioner fairly states that he is unable to lay his hands on any pronouncement or binding authority in this respect. Hence this matter requires to be decided on the first principles relating to a fair procedure to be followed in the domestic enquiry proceedings.

15. In Board of Trustees, Port of Bombay v. D.R. Nadkarni, : (1983)ILLJ1SC , Their Lordships of the Apex Court had occasion to examine a case where in a disciplinary enquiry of a domestic tribunal, the employer appoints Presenting Officer- cum-Prosecuting officer who is legally trained to represent the employer, denial of a request of the delinquent employee, seeking permission to appear and defend himself through a legal practitioner, and held that the denial would vitiate the enquiry on the ground that the delinquent employee had not been afforded a reasonable opportunity to defend himself, thereby violating one of the essential principles of natural justice.

16. In the said case, the employer had appointed a legal practitioner as the Presenting-cum-Prosecuting Officer in the domestic enquiry and the demand of the workman to have the assistance of a legal practitioner was denied. The said denial was challenged and the Apex Court in that context upheld the claim of the worker to have the assistance of a legal practitioner as the employer has appointed Lawyers as Presenting -cum-Prosecuting Officer and the delinquent employee was pitted against legally trained personnel. In that context while holding that the employer had acted unfairly and decision being unjust ordered that the workman shall have the assistance of a legal practitioner. It that context, it has been held thus:

'10. Even in domestic enquiry there can be very serious charges, and an adverse verdict may completely destroy the future of the delinquent employee. The adverse verdict may so stigmatize him that his future would be bleak and his reputation and livelihood would be at stake. Such an enquiry is generally treated as a managerial function and the Enquiry Officer is more often a man of the establishment. Ordinarily he combines the role of a Presenting-cum-Prosecuting Officer and an Enquiry Officer a Judge and a Prosecutor rolled into one. In the past it could be said that there was an informal atmosphere before such a domestic tribunal and that strict rules of evidence and pitfalls of procedural law did not hamstring the enquiry by such a domestic tribunal. We have moved far away from this stage. The situation is where the employer has on his pay-rolls labour officers, legal advisers-lawyers in the garb of employees - and they are appointed Presenting-cum-Prosecuting Officers and the delinquent employee pitted against such legally trained personnel has to defend himself. 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. Why do we say so? Let us recall the nature of enquiry, who held it, where it is held and what is the atmosphere? Domestic enquiry is claimed to be a managerial function. A man of the establishment dons the role of a Judge. It is held in the establishment office or

part of it. Can it even be compared to the adjudication by an impartial arbitrator or a court presided over by an unbiased judge? The Enquiry Officer combines the judge and prosecutor rolled into one. Witnesses are generally employees of the employer who directs an enquiry into misconduct. This is sufficient to raise serious apprehensions. Add to these uneven scales, the weight of legally trained minds on behalf of employer simultaneously denying that opportunity to delinquent employee. The weighted scales and tilted balance can only be partly restored if the delinquent is given the same legal assistance as the employer enjoys. Justice must not only be done, but must seem to be done is not a euphemism for courts alone, it applies with equal vigour and rigour to all those who must be responsible for fair play in action. And a quasi judicial cannot view the matter with equanimity on inequality of representation. This court in *M.H. Hoskot v. State of Maharashtra* clearly ruled that in criminal trial where prosecution is in the hands of public prosecutor, accused, for adequate representation, must have legal aid at State cost. This will apply *mutatis mutandis* to the present situation.'

17. It was further held that when the rules are silent, there cannot be any bar for granting permission to engage legal practitioner to defend the delinquent. In that respect, the Apex Court further held thus:

'More so in absence of rules, the Chairman of the appellant was not precluded from granting a request because the rules did not enact an inhibition. Therefore, apart from general propositions, in the facts of this case, this enquiry would be a one-sided enquiry weighted against the delinquent officer and would result in denial of reasonable opportunity to defend himself.' (Italics supplied)

18. In *J.K. Aggarwal v. Haryana Seeds Development Corporation*, : (1991) IILLJ412SC , after analysing the case law the Apex Court held thus:

'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 factors 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 Board of Trustees of the port of Bombay v. Dillipkumar.'

19. In Laxmy Shankar Pandey v. Union of India, : [1991]1SCR894a , it was emphasised by the Apex Court that in all such cases domestic enquiries must be conducted in accordance with the principles of natural justice and that a reasonable opportunity to deny the guilt and to cross examine the witness produced and examined should be given. Their Lordships of the Apex Court held thus:

'Therefore, according to the learned counsel for the petitioner, the impugned order of dismissal should be quashed as there is a clear violation of his fundamental rights guaranteed under Article 14 and 16 of the Constitution of India. In this context he relied on decisions of this court in Tata oil Mills Co., Ltd., v. Workmen. State of UP v. Om Prakash Gupta. State Bank of India v. R.K. Jain and State of A.P. v. Chitra Venkata Rao. In all these cases it is laid down that such enquiries must be conducted in accordance with the principles of natural justice and that a reasonable opportunity to deny the guilt and to cross examine the witnesses produced and examined, should be given and that the enquiry should be consistent with the rules of natural justice and in conformity with the statutory rules prescribing the mode of enquiry.'

20. In *Crescent Cycles and Chemicals Ltd., v. Ram Naresh Tripathi*, : (1993)ILLJ907SC A.M. Ahmadi, J., as he then was, speaking for the Bench held thus:

'12. From the above decisions at the English Courts it seems clear to us that the right to be represented by a counsel or agent of one's own choice is not an absolute right and can be controlled, restricted or regulated by law, rules or regulations. However, if the charge is of a serious and complex nature, the delinquent's request to be represented through a counsel or agent could be conceded.

13. The law in India also does not concede an absolute right of representation as an aspect of the right to be heard, one of the elements of principle of natural justice. It has been ruled by this court in (i) *Kalindi (N) v. Tata Locomotive & Engineering Co., Ltd., Jamshedpur*, : (1960)ILLJ228SC (ii) *Broke Bond India (P) Ltd., v. Subba Roman (S)* and (iii) *Dunlop Rubber Co v. Workmen*, : (1965)ILLJ426SC that there is no right to representation as such unless the company by its Standing Orders recognise such a right.'

21. In a catena of decisions the Apex Court had laid down that legal assistance by the defence is a sine qua non denial if any would amount to denial of reasonable opportunity in a case where the employer is represented by a legally trained officer or a legally trained mind or a legal practitioner.

22. In *Board of Trustees, Port of Bombay v. N.D. Nadkarni*, : (1983)ILLJ1SC , *Dunlop Workers' Union v. Workmen*, : (1965)ILLJ426SC , *Kalindi v. Tata Locomotive & Engineering Co Ltd., Jamshedpur*, : (1960)ILLJ228SC , *Board of Trustees of the Port of Bombay v. Dilipkumar*, : (1983)ILLJ1SC , *C.L. Subramaniam v. Collector of Customs Cochin*, : (1972)ILLJ465SC . *H.C. Sarin v. Union of India*, : AIR 1976 SC1686 , the emphasis that when a Presenting Officer or the Prosecuting Agency is a legally trained Personnel, there is every justification to permit the delinquent employee to have the assistance of legal practitioner. In all these cases so far referred and other cases, the Apex Court and the other Courts have proceeded on the premises that there is no impropriety or illegality in the employer appointing a legally trained person as the Presenting Officer before

the Domestic Enquiry Officer.

23. It is to be pointed out that in a catena of decisions referred above, it is evident the Supreme Court held that though ordinarily the courts should discourage the involvement of a legal practitioner in domestic enquiries in order to avoid delay and complexities, nonetheless, the court cannot ignore that in exceptional cases a representation by a lawyer is necessary as in some cases there may be failure of the enquiry itself and denial of a proper and effective defence.

24. In the present case the charges levelled against the petitioner are serious in nature and if charges are ultimately proved would visit the petitioner with evil consequences, both civil and pecuniary as his reputation would be affected and most probably also his means of livelihood. In the circumstances, the respondents had rightly granted permission to the writ petitioner to have the assistance of a legal practitioner. When the writ petitioner had been permitted to have the assistance of a legal practitioner, on the facts of the present case there is no illegality in the respondent-employer availing the services of a legally trained person, namely a legal practitioner, to be the Presenting Officer as such a course will enable the employer to effectively and properly place the facts and conduct the proceedings.

25. Merely because a legal practitioner is appointed as the Presenting Officer by the employer, it would not ipso facto violate principles of natural justice, nor it would cause any prejudice as the writ petitioner had already been permitted to avail the services of a legal practitioner. There is no bar, nor there is even an indication that the employer shall not appoint a legal practitioner as the Presenting Officer in the Bipartite settlement. It is too much on the part of the petitioner to contend that the employer shall not have the assistance of a legal practitioner when he had already been allowed to have the assistance of legal practitioner.

26. In *Central Bank of India v. C. Bernard*, : (1991)1SCC319 , their Lordships of the Apex Court had occasion to consider the question whether the departmental enquiry entrusted to and conducted by a Bank official stands vitiated if the said official proceeds with the enquiry and adjudicate the same after his superannuation during the pendency of the enquiry? The Apex Court held that a

third party official can validly be appointed as the enquiry officer, but the third party cannot validly be constituted as the disciplinary authority. In other words what has been held is that an enquiry officer need not be an officer of the Bank namely the employer and even a third party can be appointed as the enquiry officer to enquire into the conduct of an employee, but a non official cannot act as a disciplinary authority and pass the order of punishment against the delinquent employee.

27. In Allahabad Bank v. Prem Narain Pande and others, : (1996)ILLJ271SC , before the Supreme Court a contention was raised as to whether the authority who had framed the charges and initiated proceedings could pass penalty order even after his being transferred from the said post to some other post which has no authority which ceased to be the disciplinary authority on the date of imposing penalty and it was further held that the successor to the disciplinary authority is competent to impose punishment. In these two cases also such a question which is being raised in this writ petition has not arisen for consideration.

28. On a consideration of the above catena of decisions and the clause referred to supra of the Bipartite Settlement, it cannot be held that the appointment of a legal practitioner as the Presenting Officer is either illegal or arbitrary or it in any manner vitiates the enquiry proceedings or prejudices the delinquent employee. When serious question of facts or complicated questions of law arise in a domestic enquiry, as already pointed out, the delinquent could seek, the assistance of a lawyer. When that be so, there is no bar for the disciplinary authority namely employer also availing the services of legal practitioner. When the legal questions or complications or seriousness of the imputation or niceties of the questions that could be raised are common, there is nothing illegal to the disciplinary authority or the employer appointing a legal practitioner to be the Presenting Officer.

29. In Bhagat Ram v. State of Himachal Pradesh, : (1983)ILLJ1SC , it has been emphasised that where the department is represented by a Presenting Officer it is incumbent on the part of the Disciplinary authority to appraise the delinquent of his right to have the assistance of a Government Servant. In that context it has been held thus:

'Where the department is represented by a Presenting Officer, it would be the duty of the department to see that the delinquent employee, more particularly where he is a Class IV government servant whose educational equipment is such as would lead to an inference that he may not be aware of technical rules prescribed for holding enquiry, is entitled to be defended by another government servant of his choice. If the government servant declined to avail of the opportunity, the enquiry would proceed. But if the delinquent officer is not informed of his right and an overall view of the enquiry shows that the delinquent government servant was at a comparative disadvantage compared to the Disciplinary Authority represented by the Presenting Officer and as in the present case a superior officer, co-delinquent is also represented by an officer of his choice to defend him, the absence of anyone to assist such a government servant belonging to the lower echelons of service would, unless it is shown that he had not suffered any prejudice, vitiate the enquiry. This is the principle deducible from Rule 15(5) of the C.C.A. Rules.'

30. In the light of the said pronouncements this court holds that there is no illegality and converse position of law sought to be agitated cannot be countenanced. Further, by merely appointing a legal practitioner as a Presenting Officer, it cannot be said that the writ petitioner will suffer any prejudice on such appointment as the petitioner has already been permitted to engage a legal practitioner who is equal in all respects and competent to defend the petitioner. Hence the contention raised by the petitioner deserves to be rejected.

31. In the circumstances, the contention raised by Mr.S. Venkataraman, learned counsel for the petitioner cannot be countenanced and the writ petition fails. The writ petition is dismissed but without costs. Consequently, W.M.P.No. 13771 of 1999 is also dismissed.