

(2002) 10 AHC CK 0155
In the Allahabad High Court
Case No : C.M.W.P. No. 37809 of 2001

Ajai Kumar Mishra

APPELLANT

Vs

Assistant General Manager, Allahabad Bank and Another

RESPONDENT

Date of Decision : 21-10-2002

Acts Referred:

Allahabad Bank Officer Employees (Discipline and Appeal) Regulations, 1976 — Regulation 6(7)

Citation : (2003) 1 AWC 70 : (2003) 96 FLR 1085 : (2003) 2 LLJ 64

Hon'ble Judges : K.N. Sinha, J;G.P. Mathur, J

Bench : Division Bench

Advocate : S.D. Dubey, for the Appellant; Himanshu Tiwari and S.B. Singh, for the Respondent

Final Decision : Dismissed

Judgement

G.P. Mathur and K.N. Sinha, JJ.—This writ petition under Article 226 of the Constitution has been filed for quashing the order dated 3.11.2001, passed by the Assistant General Manager of Allahabad Bank (Disciplinary Authority). A further prayer has been made that a writ of mandamus be issued commanding respondent No. 1 to allow the petitioner to nominate a defence representative.

2. The petitioner is a manager in Allahabad Bank. A show cause notice dated 24.3.2001 was issued to him to which he gave a reply. Thereafter, the bank decided to initiate disciplinary proceedings against him and a charge-sheet dated 23.8.2001, containing the articles of charges, list of witnesses and documents was served upon him. After the petitioner had submitted his explanation, he was informed that Sri R. K. Singh (respondent No. 2) had been appointed as enquiry officer for holding disciplinary proceedings against him. The petitioner then moved an application on 20.10.2001, that Sri Surendra Misra, a retired officer of Central Excise Department may be permitted to act as his defence representative. He moved another application on 27.10.2001, reiterating his earlier prayer and requested that Sri Surendra Misra be permitted to act as his

defence representative. In the same application, it was also Stated that in case there was any objection against Sri Surendra Misra, then Sri K. K. Dubey, who was also a retired officer of Customs and Excise Department may be permitted to act as his defence representative. These applications were rejected by the Disciplinary Authority by the Impugned order dated 3.11.2001 and the relevant part of the order reads as under :

"This has reference to your letters dated 20.10.2001 and 27.10.2001, on the captioned subject.

In this connection, the Allahabad Bank Officer Employees" (Discipline and Appeal) Regulations, 1976, do not permit engagement of a person other than an officer employee of the Bank to act as the Defence Assistant in the Departmental Enquiry Proceedings. You are, therefore, advised to be guided accordingly."

3. Sri S. D. Dubey, learned counsel for the petitioner has submitted that the petitioner has not been able to get the services of any serving bank officer to defend him in the enquiry and, therefore, the Disciplinary Authority has erred in rejecting his request to permit Sri Surendra Misra to act as his defence representative. Sri Himanshu Tewari, learned counsel for Allahabad Bank has submitted that the petitioner has no right to have the services of any person as his defence representative. Learned counsel has submitted that the petitioner is entitled to a reasonable opportunity to defend himself and the said right is circumscribed by the Allahabad Bank Officer Employees" (Discipline and Appeal) Regulations, 1976. Sri Tewari has further submitted that under the relevant Regulations, a retired officer of Central Excise Department cannot be permitted to, function as defence representative.

4. Clause (7) of Regulation 6 of Allahabad Bank Officer Employees" (Discipline and Appeal) Regulations, 1976, read as under :

"(7) The officer employee may take the assistance of any other officer employee but may not engage a legal practitioner for the purpose, 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.

Note.--The officer employee shall not take the assistance of any other officer employee who has two pending disciplinary case on hand in which he has to give assistance."

5. The Regulations clearly provide that the delinquent employee facing enquiry may take the assistance of any other officer employee. There is a clear bar against engagement of a legal practitioner unless the presenting officer is a legal practitioner or the Disciplinary Authority having regard to the circumstances of the case permits engagement of such a person. Learned counsel for the petitioner has placed strong reliance on C.L. Subramaniam Vs. Collector of Customs, Cochin, in support of his submission that the petitioner is entitled to have a defence representative of his choice. In our opinion, the authority cited is

clearly distinguishable on facts. In the said case, the presenting officer was a legally trained person and in such circumstances, it was held that denial of assistance by a legal practitioner to the delinquent employee was not proper.

6. Learned counsel for the bank has placed reliance on three decisions of the Supreme Court in support of his submission. In *Food Corporation of India Vs. Bant Singh and another*, the rule provided that the delinquent employee could take assistance of an employee of the Corporation or employee of Central Government or State Government but may not engage a legal practitioner. The direction issued by the High Court to permit the petitioner to take the assistance of a retired employee was held to be bad in law. In *Bharat Petroleum Corporation Ltd. Vs. Maharashtra General. Kamgar Union and Ors*, it was held as under :

"Under the Draft Standing Orders of an industrial establishment the right of representation of workman was restricted by fellow workman of his choice from amongst the employee of the establishment under which he is serving. The standing orders being reasonable, fair and in consonance with the Model standing orders could be certified.

The basic principle is that an employee has no right to representation in the departmental proceedings by another person or a lawyer unless the Service Rules specifically provide for the same. The right to representation is available only to the extent specifically provided for in the Rule."

7. In *Indian Overseas Bank Vs. Indian Overseas Bank Officers' Association and Another*, it was held as under :

The law in this country does not concede an absolute right of representation to an employee in domestic enquiries as part of his right to be heard and that there is no right to representation by somebody else unless the rules or regulation and standing orders, if any, regulating the conduct of disciplinary proceedings specifically recognise such a right and provide for such representation."

8. The law, therefore, is well settled that an employee facing disciplinary proceedings can have the assistance of the defence representative only in accordance with the rules governing his condition of service and is not entitled to claim that he may be allowed to be represented by a legal practitioner or someone else who does not fall within the purview of the rule. It is not the case of the petitioner that the presenting officer is a legal practitioner or is a legally trained person. In these circumstances, we do not find any infirmity in the order dated 3.11.2001 passed by the Disciplinary Authority.

9. For the reasons discussed above, the writ petition lacks merit and is hereby dismissed. Interim order is vacated.