

(2000) 09 PAT CK 0017
In the Patna High Court
Case No : LPA No. 416 of 2000

Arvind Kumar

APPELLANT

Vs

The Nalanda Gramin Bank and Others

RESPONDENT

Date of Decision : 14-09-2000

Acts Referred:

Citation : (2000) 4 PLJR 837

Hon'ble Judges : Nagendra Rai, J;I.P. Singh, J

Bench : Division Bench

Advocate : Sanjay Kumar, for the Appellant;

Final Decision : Dismissed

Judgement

1. This appeal is directed against the order dated 17.2.2000 passed in CWJC No. 1487 of 1999 by a learned Single Judge of this Court by which he has dismissed the writ application against the order dated 4.12.1997 passed by the disciplinary authority, i.e. Chairman, Nalanda Gramin Bank, Bihar Shariff, respondent no. 2, which has been annexed as Annexure-1 to the writ application, awarding punishment of reduction of time scale at three stages and the order dated 9.10.1998 passed by the appellate authority, dismissing the appeal against the disciplinary authority, which has been annexed as Annexure-2 to the writ application. The appellant is an employee of the respondent Bank since 1987 and at the relevant time he was posted as Junior Management Scale I. A departmental proceeding was initiated against the appellant and a charge sheet dated 8.12.1995 was served upon him. The allegations against the appellant in the charge sheet was of indiscipline, disobedience, unauthorised absence from duty, adoption of unfair means at an examination of C.A.I.B Part-2 conducted by the Indian Bankers' Association and flouting of lawful orders of superiors, details of the same were given in the chargesheet. Sri Ram Nandan Prasad Singh, Senior Manager of Bank was appointed as Enquiry Officer and Sri Suresh Prasad, a law graduate having no legal training and specialised knowledge was appointed as the Presenting Officer on behalf of the Bank. At the commencement of the

inquiry, the appellant was asked to give the name of an employee or the Officer of the Bank to act as his representative for defending him in the proceeding. The appellant on 12.2.1996 filed an application and requested to allow him to engage a lawyer Sri D.K. Jha as his defence assistance. The said prayer of the appellant was rejected by the inquiring officer on 13.2.1996 which has been annexed as Annexure-7 to the writ application, and the appellant was directed to appear and participate in the proceeding. The appellant again filed an application on 10.4.1996 before the Chairman of the Bank to allow him to engage a lawyer for his defence which was again rejected by the Chairman on 16.4.1996, which has been annexed as Annexure-9 to the writ application, on the ground that the rules of the Bank do not permit and the appellant was free to select employee or himself conduct the proceeding. The said decision was reiterated by the Enquiry Officer again on 19.4.1996, which has been annexed as Annexure-10 to the writ application. During the inquiry, the appellant did not appear on several dates and whenever he appeared he filed an application for engagement of the advocate as stated above. The Enquiry Officer having no option but to proceed ex parte and concluded the disciplinary proceeding and sent minutes of the ex parte proceeding by a registered post to the appellant to file his written defence by 17.8.1996. The appellant filed a written defence. Thereafter the Enquiry Officer submitted a report to the disciplinary authority holding that out of five charges, four were proved. Thereafter, a second show cause notice along with inquiry report was sent to the appellant vide letter dated 1.7.1997 and the appellant filed a show cause. There-after the disciplinary authority considered entire materials and agreeing with the report of the Enquiry Officer awarded the punishment as stated above. The appellant preferred an appeal which was dismissed by the appellate authority on 9.10.1998. The learned Single Judge has upheld both the orders.

2. The learned counsel for the appellant raised two points in this case. Firstly, he submitted that as the Presenting Officer of the Bank was a legally trained officer, rejection of the prayer of the appellant to engage a lawyer to represent his case amounts to denial of an opportunity of hearing in departmental proceeding. In support of his submission, he relied upon the judgment of Supreme Court in case of Board of Trustees of the Port of Bombay Vs. Dilipkumar Raghavendranath Nadkarni and Others, and a Division Bench Judgment of this Court in the case of Spl. Tehsildar, Land Acqn., Vishakapatnam Vs. Smt. A. Mangala Gowri, . Secondly the learned counsel for the appellant submitted that the appellate order is vague.

3. The first question that falls for consideration is as to whether the refusal of the prayer of appellant by the Inquiring Officer and the disciplinary authority to engage a lawyer to defend him in the departmental proceeding has resulted in denial of a reasonable opportunity of hearing which has vitiated the same.

4. The requirement of rule of natural justice is that when an allegation has been made against a person which is to be inquired into, he should be given a reasonable opportunity of hearing and should not be condemned unheard. So far

the public servants are concerned, they are governed by rules and regulations with regard to conduct of their departmental proceeding and the rules and regulations are framed in such manner they fulfil the requirement of principles of natural justice. However, the departmental proceeding is neither a criminal case nor it is a civil suit. The departmental proceeding should be conducted in a fair and just manner after giving a reasonable opportunity of hearing. to the employee concerned consisted with the requirement of principles of natural justice. In a particular case whether the principle of natural justice has been followed or not, has to be judged in the light of the facts and circumstances of the case and relevant rules governing the concerned employer. No employee facing a departmental proceeding can claim as a matter of right to be represented by a counsel or agent. In other words, it is not a substantive right but a procedural right and it is governed, restricted or controlled by statute, rules, regulations or standing orders. If the rule does not provide an employee to engage a trained legal practitioner in a departmental proceeding, the employee cannot claim the same. However, as the justness and fairness is the hallmark of the departmental proceeding if the presenting officer in the departmental proceeding is a legal practitioner or a trained prosecutor, then it would be unjust or unfair to deny the same facility to the delinquent employee by allowing him to engage a lawyer. The denial of such opportunity in such a case will amount to the denial of opportunity of hearing to a delinquent employee in a departmental proceeding. Even if the concerned employee does not permit the engagement of the counsel in a departmental proceeding the intricate or complicated legal questions are involved and the employee is not in a position to defend himself in a departmental proceeding, then the disciplinary authority may, taking into consideration the said facts, allow a counsel or trained legal practitioner to represent the delinquent employee in a departmental proceeding. This question is no longer *res integra* and settled in a catena of decisions of the Apex Court.

5. In the case of *C.L. Subramaniam Vs. Collector of Customs, Cochin*, the appellant before the Apex Court was an Officer governed by Central Civil Services (Classification, Control and Appeal) Rules (1967) and after departmental inquiry he was dismissed from service. He challenged the order of dismissal in the High Court. The dismissal order was upheld by the High Court. The matter went to the Supreme Court. One of the points raised by the appellant was that he was not afforded a reasonable opportunity to represent his case as he was denied the opportunity to engage the legal practitioner in the departmental proceeding. Rule 15 of the said Rules provided that during disciplinary proceeding, the government servant may present his case with the assistance of any Government Servant approved by the Disciplinary Authority, but may not engage a legal practitioner for the purpose unless the person nominated by the Disciplinary Authority as aforesaid is a legal practitioner or unless the Disciplinary Authority, having regard to the circumstances of the case, so permits. In the said case, the departmental proceeding was conducted by a trained prosecutor and the Apex Court held that as the departmental proceeding was handled by a trained prosecutor, the

appellant should have been allowed to engage a legal practitioner to defend him least the scales should be weighed against him. It was further held that refusal to permit the delinquent employee to engage a legal practitioner has vitiated the inquiry.

6. In the case of Krishna Chandra Tandon Vs. The Union of India (UOI), , a departmental proceeding was initiated against an employee with regard to certain assessment orders passed by him. One of the points for consideration was as to whether refusal to give assistance of an advocate has vitiated the inquiry. It was held by the Apex Court as follows.

The appellant was not entitled under the Rules to the assistance of an advocate during the course of the enquiry. The learned Judges were right in pointing out that all that the appellant had to do in the course of the enquiry was to defend the correctness of his assessment orders. Clear indications had been given in the charges with regard to the unusual conduct he displayed in disposing of the assessment cases and the various flaws and defaults which were apparent on the face of the assessment records themselves. The appellant was the best person to give proper explanations. The circumstances in the evidence against him were clearly put to him and he had to give his explanation. An advocate could have hardly helped him in this. It was not a case where oral evidence was recorded with reference to accounts and the petitioner required the services of a trained lawyer for cross-examining the witnesses. There was no legal complexity in the case. We do not, therefore, accede to the contention that the absence of a lawyer deprived the appellant of a reasonable opportunity to defend himself.

7. Similarly in the case of H.C. Sarin Vs. Union of India (UOI) and Others, , according to the Railway Establishment Code delinquent was not entitled the services of professional lawyer and it was held that principles of natural justice will not be violated when the services of professional lawyer were not available.

8. In the case of Crescent Dyes and Chemicals Ltd. Vs. Ram Naresh Tripathi, , the Apex Court reiterated the same view and held in paragraph 12 and 17 as follows :

From the above decisions of the English Courts it seems clear to us that the right to be represented by a counsel or agent of one's 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.

It is, therefore, clear from the above case-law that the right to be represented through counsel or agent can be restricted, controlled or regulated by statute, rules, regulations or Standing Orders. A delinquent has no right to be represented through counsel or agent unless the law specifically confers such a right. The requirement of the rule of natural justice insofar as the delinquent's right of hearing is concerned, cannot and does not extend to a right to be represented through counsel for agent.

9. In the case of U.P. State Cooperative Land Development Bank Ltd. Vs. Chandra Bhan Dubey and Others, , the Apex Court having taken note of its earlier decisions held that the employee has no right to claim representation through a counsel or legal practitioner unless the service rule specifically provides for the same.

10. At this stage, I would like to refer the aforesaid two cases relied upon by the appellant in support of his submission. So far the decision in the case of Board of Trustees of the Port of Bombay (supra) is concerned, in that case legally trained officers were appointed as presenting officers for the employer whereas the prayer of the employee to be represented through a lawyer was refused. During pendency of the departmental proceeding even rule was amended which provided that the delinquent employee is not permitted to engage a legal practitioner 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. Dealing with the said situation, the Apex Court held that where in an enquiry before a domestic tribunal the delinquency officer is pitted against a legally trainee mind, if he seeks permission to appeal through a legal practitioner the refusal grant this request would amount to defiance of a reasonable request to defend himself and the essential principles of natural justice would be violated.

11. Thus this case is not an authority that when a request is made by the delinquent employee to engage a legal practitioner, the same should be allowed even if the service rule does not provide so

12. So far as the judgment in the case of Guru Mukh Singh v. Shivanath Singh (supra) is concerned, that case Rule 7 of the Discipline and Appeal Regulations of the Punjab National Bank was under consideration which provided inter alia that delinquency employee may take the assistance of any other employee but may not engage legal practitioner unless the Presenting Officer appointed by the Disciplinary Authority legal practitioner or the Disciplinary Authority, having regard to the circumstances of the case so permits. Admittedly, in that case the Presenter Officer was not a legal practitioner. Even then their lordships taking into consideration the facts and circumstances of the case held that nonetheless, it is in the discretion of the disciplinary authority permit the petitioner to be represented by a legal practitioner having regard to the circumstances of the case. Lest the rule of fair play may not fall in doubt on account of what the petitioner has apprehended and lest the petitioner may have the satisfaction to have fully represented in the enquiry, it shall be in the fitness of the circumstances of the case that the disciplinary authority exercised his discretion in his favour to permit to engage a legal practitioner.

13. The said case does not support the submission advanced on behalf of the appellant and the observations were made taking into consideration the facts of the said case. The said observation is not an authority on the point that even if the rule does not provide for engagement of a legal practitioner during the

departmental proceeding, the disciplinary authority should permit the delinquent employee to be represented by a counsel. The said decision is also not an authority on the point that even if the Presenting Officer is not a trained practitioner and intricate questions of law are not involved, the delinquent should be allowed to be represented by a counsel.

14. Thus it is held that the delinquent employee has no right to be represented by counsel or agent in the departmental proceeding unless the rules governing the service provide so. However, if the allegations are intricate and complicated or if the Presenting Officer is a legally trained prosecutor then the Disciplinary authority should permit the delinquent employee to engage a counsel or agent in the departmental proceeding. Failure to provide such opportunity would be violative of principles of natural justice.

15. So far as the present case is concerned, it is admitted position that the disciplinary proceedings are governed by the "guidelines for the procedure to be adopted for disciplinary action in the Regional Rural Bank approved by the NABARD". Paragraph No. 1 (iii) of the said guidelines is as follows.

The enquiry under this regulation and the procedure with the exception of the final order may be delegated, in case the person against whom proceeding are taken is an officer, to any officer who is senior to such officer and in the case of an employee to any officer. For purpose of the enquiry, the Officer or employer may not engage a legal practitioner.

16. According to the Rule, as narrated above, the service of the legal practitioner is not available to the delinquent employee. Thus the employee cannot claim to be represented through a legal practitioner in terms of the service rule.

17. The question as to whether the Presenting Officer in this case was legally trained prosecutor or legal practitioner. The materials on the record show that the Presenting Officer Suresh Prasad was only a law graduate having no legal training and specialised knowledge in conducting the departmental proceeding. The charges framed against the appellant are neither intricate nor complicated. The appellant's prayer to be represented through a counsel was rightly rejected by the disciplinary authority as Presenting Officer was not the legal practitioner and the complicated legal questions were not involved in this case. Thus the first submission raised by the appellant is hereby rejected.

18. So far as the second submission of the appellant is concerned, that is equally without any substance. The order of the appellate authority as contained in Annexure-2 to the applications shows that it has considered at the materials and has agreed with the conclusion arrived at by the disciplinary authority in awarding the punishment. It cannot be said that the order was a non-speaking order. A similar order passed by the appellate authority was upheld by the Apex Court in the case of State Bank of India v. S. S. Koshal and it was held that "in view of the fact that it was an order of affirmance, we are of the opinion that it was not obligatory on the part of the appellate authority to say more than this as

the order as it is, shows application of mind. The order cannot be characterised as a non-speaking order. Thus there is no merit in this appeal and the same is dismissed.

I.P. Singh, J.

I agree.