
(2003) 03 AHC CK 0199
In the Allahabad High Court
Case No : Special Appeal No. 49 of 2003

Chairman, Aligarh Gramin Bank

APPELLANT

Vs

Latoori Singh

RESPONDENT

Date of Decision : 10-03-2003

Acts Referred:

Aligarh Gramin Bank (Officers and Employees) Service Regulations, 2000 — Regulation 2, 2(1), 38, 43, 62

Citation : (2003) 5 AWC 3677 : (2003) 2 UPLBEC 1267

Hon'ble Judges : S.P. Srivastava, Acting C.J.; Ashok Bhushan, J

Bench : Division Bench

Advocate : S.N. Verma and Yashwant Verma, for the Appellant; I.M. Tripathi, for the Respondent

Judgement

Ashok Bhushan, J.—We have heard Sri S. N. Verma, Senior Advocate assisted by Sri Yashwant Verma for the appellant and Sri I.M. Tripathi. Advocate for the respondent.

2. This Special Appeal has been filed by the appellant against the judgment of the learned Single Judge dated 3.12.2002 passed in Writ Petition No. 48308 of 2002, Sri Latoori Singh v. Chairman, Aligarh Gramin Bank, allowing the writ petition in part.

3. Facts giving rise to this Special Appeal briefly stated are :-

The respondent Latoori Singh is working as Officer Scale II in Aligarh Gramin Bank. A disciplinary enquiry was initiated by the bank against the respondent by issuing charge sheets dated 31.7.2002 and 9.8.2002, the Enquiry Officer was appointed by the disciplinary authority on 4.9.2002 in accordance with the Aligarh Gramin Bank (Officers and Employees) Service Regulations, 2000 with respect to charge sheet dated 31.7.2002. Another Enquiry Officer was appointed by the order dated 11.9.2002 in respect to charge sheet dated 9.8.2002. Enquiry Proceedings were held on 19th October, 2002 in which presenting officer on

behalf of the Bank also appeared. The Enquiry Officer asked the respondent as to whether he wants to engage a defence representative which was replied in affirmative by the respondent. The respondent stated to the Enquiry Officer that he wants to engage a legal practitioner for his defence. The Enquiry Officer refused the prayer for engaging a legal practitioner and stated that the respondent can only bring any Officer or Employee of the Aligarh Gramin Bank as a defence representative. The aforesaid decision of the Enquiry Officer was objected by the petitioner but the Enquiry Officer reiterated his same decision on which the respondent stated that he wants to bring one Sri R.P. Singh of Central Bank of India as his defence representative. The Enquiry Officer stated that at his level only permission for engaging defence representative belonging to Aligarh Gramin Bank can be granted. The Enquiry Officer asked for fifteen days' time for searching an Employee or Officer of Aligarh Gramin Bank for being his defence representative. The enquiry was adjourned by the Enquiry Officer to 12th November, 2002.

4. After the above proceedings the writ petition was filed by the petitioner praying for quashing of the order dated 4.9.2002 and the order dated 11.9.2002 initiating the enquiry proceedings as well as the charge sheets dated 31.7.2002 and 9.8.2002. A writ of mandamus was also prayed for commanding the respondent to allow the petitioner (respondent. to this appeal) to appoint an independent defence representative as Sri R.P. Singh a Special Officer of Central Bank of India. Further prayer seeking a writ of mandamus commanding the respondent not to interfere in the peaceful functioning of the petitioner and further not to take any coercive action in respect to the order passed in enquiry proceedings. Counsel for the Bank was represented in the writ petition and the writ petition was heard the learned Single Judge without inviting counter-affidavit from the Bank. The learned Single Judge dismissed the writ petition in so far as the prayer for quashing the disciplinary proceedings in pursuance of the charge sheets was concerned. The writ petition was partly allowed holding that the petitioner has a right to engage Sri R.P. Singh or any Officer of the Central Bank of India or Aligarh Gramin Bank as representative to defend the writ petitioner in the enquiry. The judgment of the learned Single Judge in so far as it partly allowed the writ petition, has been appealed by the Aligarh Gramin Bank. Sri S.N. Verma, Senior Advocate, raised following submissions in support of the appeal :

1. The service conditions of the employee of the Bank are governed by Aligarh Gramin Bank (Officers and Employees) Service Regulations, 2000 which do not contain any provision enabling the writ petitioner to have a defence representative from any other Bank. The right of representation in the disciplinary enquiry is regulated by the statutory rules and unless the rules permit the employee has no right to claim engagement of defence representative from any out side organisation i.e., Central Bank of India.

2. The learned Single Judge did not correctly construe the provision of Regulation

43 of the Aligarh Gramin Bank (Officers and Employees) Service Regulations, 2000.

3. The judgment of the learned Single Judge is in teeth of the judgments of the Apex Court in Indian Overseas Bank Vs. Indian Overseas Bank Officers' Association and Another,

5. The Counsel for the appellant placed reliance on the decisions of the Apex Court in Bharat Petroleum Corporation Ltd. Vs. Maharashtra General. Kamgar Union and Ors, Indian Overseas Bank Vs. Indian Overseas Bank Officers' Association and Another, and a Division Bench Judgment of this Court in Ajai Kumar Mishra v. Assistant General Manager, Allahabad Bank, and Anr., reported in 2002 (1) AWC 70.

6. Sri I.M. Tripathi, learned Counsel appearing for the respondent writ petitioner supporting the judgment of the learned Single Judge submitted that the respondent has right to engage a defence representative of his choice which is in consonance of principles of natural justice. Sri Tripathi submits that there is no prohibition in Aligarh Gramin Bank (Officers and Employees) Service Regulations, 2000 in engaging a defence representative from outside the bank. Referring to Regulation 43, the learned Counsel submitted that since there is no restriction even in engaging legal practitioner hence it can safely be assumed that the representation by any other person is also permissible. Reference to Regulation 62 of the Aligarh Gramin Bank (Officers and Employees) Service Regulations, 2000 has also been made which provided that leave can be granted to an Officer or Employee for defending any Officer or Employee in an enquiry.

7. The Counsel for the respondent placed reliance on following judgments of the Apex Court:

(1) C.L. Subramaniam Vs. Collector of Customs, Cochin, ;

(2) Bhagat Ram Vs. State of Himachal Pradesh and Others, ;

(3) Board of Trustees of the Port of Bombay Vs. Dilipkumar Raghavendranath Nadkarni and Others, .

(4) J.K. Aggarwal Vs. Haryana Seeds Development Corporation Ltd. and others, .

8. Reliance has also been placed on the judgments of several High Courts namely :

(1) K.N. Gupta s/o Behari Lal v. Union of India through Secretary, Railway Board and Anr. AIR 1968 Delhi 85.

(2) Hans Raj Gupta v. State of Punjab 1992 (1) SLR 146 (Punjab and Haryana High Court).

(3) Kehar Din. Ex-Class IV Employee v. The Presiding Officer, Labour Court and Anr. 1992 (2) SLR 199(Punjab and Haryana High Court).

(4) Nripendra Nath Bagchi v. Chief Secretary, Government of West Bengal AIR 1961 (sic) (Calcutta High Court); and

(5) Hari Prasad Vs. High Court of Judicature,

9. We have considered the submissions made by the Counsel for both the parties and have also perused the record of the writ petition. As prayed by Counsel for the parties we are deciding this appeal finally.

10. The rival submissions made by Counsel for the parties veer round the controversy regarding extent of right of an employee to have his defence representative in disciplinary proceedings against him. The Regulations have been framed u/s 30 of the Regional Rural Banks Act, 1976 namely, Aligarh Gramin Bank (Officers and Employees) Service Regulations, 2000. The Regulation apart from giving other conditions of service, conduct, discipline and appeals. Regulation 38 enumerates the penalty which can be imposed on an Officer or Employee of the Bank. Second proviso of Regulation 38 which is relevant is extracted below :

"II. Employees :

(a) Penalties for minor misconduct:

(i) censure;

(ii) recording of adverse remarks against him.

(b) Penalties for major misconduct:

(i) fine;

(ii) withholding of increment for a period not exceeding 6 months;

(iii) withdrawal of special allowance;

(iv) reductions of pay to next lower stage upto a maximum period of 2 years in case the staff has reached the maximum in the scale of pay;

(v) removal from service which shall not be a disqualification for future employment;

(vi) dismissal.

Provided further that no order imposing any of the penalties specified above, shall be made except by an order in writing signed by the competent authority and no such order shall be passed without the charge or charges being formulated in writing and given to the employee in enquiry held so that he shall have reasonable opportunity to answer the charge or charges and defend himself."

11. Regulation 40 deals with delegation of the power to enquire which, is extracted below:

"40. Delegation of the power to enquire.-The enquiry under Regulation 38 and the procedure with the exception of final order, may be delegated by the competent authority to an officer who is senior to the officer against whom the proceedings are instituted and in the case of an employee to any officer :

Provided that the competent authority may, in his discretion, nominate any officer working in the Bank, including those deputed from other institutions, to conduct the enquiry."

12. Regulation 43 is regarding restriction on engagement of a legal practitioner which is extracted below :

"43. Restriction on engagement of a Legal Practitioner.-For the purpose of enquiry, the Officer or Employee shall not engage a legal practitioner without prior permission of the competent authority."

13. The words "competent authority" has been defined in Regulation 2 (i) which means the Chairman in the case of officers and the officer designated by the Chairman in the case of employees.

14. Regulation 62 which has been referred by the Counsel for the respondent may also be noted which deals with special casual leave. For ready reference Regulation 62 is extracted below :

"62. Special Casual Leave.-An Officer or Employee may be granted special casual leave and special leave for sports, donation of blood, family planning, defending another Officer or Employee in an enquiry, or for joining civil defence services or any other purpose as may be decided by the Board in accordance with the guidelines of the Central Government."

15. Aligarh Gramin Bank (Officers and Employees) Service Regulations, 2000 do not specifically contain any provision giving right to an Officer or Employee to represent himself in the disciplinary enquiry by any other representatives. However, Regulation 43 contains a restriction in engagement of a legal practitioner which provides that for the purpose of enquiry, the Officer or Employee shall not engage legal practitioner without prior permissions of the competent authority. This Regulation does contemplate engagement of legal practitioner by an Officer or Employee in a disciplinary enquiry with the permission of the competent authority. Regulation 43 thus clearly contemplate representation of an employee in an enquiry by a legal practitioner with the permission of the competent authority. The question which has arisen in this appeal is to the effect that when the Regulation do not specifically contemplate representation by an employee or officer by any other person apart from legal practitioner can an employee can insist for having his defence representative from another Bank or from any out side organisation. The Regulation also do not specifically contemplate representation by any other Officer or Employee of the same Bank but reference of such fact has been made in Regulation 62 provides that an Officer or Employee may be granted special casual leave for defending

another Officer or Employee is an enquiry. In incorporating the provision of grant of special casual leave to an Officer or Employee for purpose of defending an Officer or Employee in an enquiry the Regulation makers were aware of such event and contingencies in the Bank. The Aligarh Gramin Bank (Officers and Employees) Service Regulations, 2000 thus impliedly recognises and take care of fact and situation in which an Officer or Employee may be granted special casual leave for defending any Officer or Employee in an enquiry. Regulations 43 and 62 thus contemplate representation of an employee in disciplinary enquiry by a legal practitioner or by an Officer or Employee. It is relevant to note that the words "officer and employee" referred to in Regulation 62 obviously refers to officer and an employee as defined in Regulations 2(n) and 2(I) of the Aligarh Gramin Bank (Officers and Employee) Service Regulations, 2000. Thus an officer or an employee referred in Regulation 62 refers the officer and employee of the Aligarh Gramin Bank. The scheme of the Regulation thus makes it clear that the representation is permissible in disciplinary enquiry by a charge-sheeted employee either by legal practitioner or by any other Officer or Employee of the Bank.

16. The question to be considered in this appeal is as to whether the respondent has right to claim for a defence representative from an outside organisation i.e. Central Bank of India as a matter of right. Before proceeding to consider the aforesaid question any further it will be relevant to take into note certain decision of the Apex Court which considered different aspects of this fight.

17. The three Judges Bench of the Apex Court in *Kalindi and Others Vs. Tata Locomotive and Engineering Co. Ltd.*, had occasion to consider as to whether in an enquiry held by the. management against a workman, has the workman right to be represented by a representative of his Union. In the case before the Apex Court no provisions were made in the relevant rules permitting the person against whom enquiry was being held to be represented by any body else. After noticing the aforesaid fact it was held in Paragraph 5 by the Apex Court:

"5. Our conclusion, therefore, is that a workman against whom an enquiry is being held by the management has no right to be represented at such enquiry by a representative of his Union; though of course an employer in his discretion can and may allow his employee to avail himself of such assistance."

18. In *Crescent Dyes and Chemicals Ltd. Vs. Ram Naresh Tripathi*, the Apex Court had occasion to consider whether a delinquent is entitled to be represented by an office-bearer of another Trade Union, who is not a member of either a recognised Union or a non-recognised Union functioning within the undertaking in which the delinquent is employed. The Apex Court in the aforesaid judgment has considered several earlier judgments of the Apex Court and English cases. In Paragraph 17 the Apex Court laid down in following words :

"17. 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 in so far as the delinquent's right of hearing is concerned, cannot and does not extend to a right to be represented through Counsel or agent. In the instant case, the delinquent's right of representation was regulated by the Standing Orders which permitted a clerk or a workman working with him in the same department to represent him and this right stood expanded on Sections 21 and 22 (ii) permitting representation through an officer, staff-member or a member of the Union, albeit on being authorised by the State Government. The object and purpose of such provisions is to ensure that the domestic enquiry is completed with despatch and is not prolonged endlessly. Secondly, when the person defending the delinquent is from the department or establishment in which the delinquent is working he would be well conversant with the working of that department and the relevant rules and would, therefore, be able to render satisfactory service to the delinquent. Thirdly, not only would the entire proceedings be completed quickly but also inexpensively. It is, therefore, not correct to contend that the Standing Order or Section 22 (ii) of the Act conflicts with the principles of natural justice."

19. The Apex Court in *Bharat Petroleum Corporation Ltd. Vs. Maharashtra General. Kamgar Union and Ors*, had again occasion to consider Clause 29.4 of Draft Standing Orders provided for that workman is permitted to be defended by a fellow workman of his choice who must be an employee of the Corporation. The challenge to the above Standing Order was made before the Apex Court. The Apex Court after considering several cases has laid down that the basic principle is that an employee has no right of representation in the departmental proceedings by another person of a lawyer unless the service Rules specifically provide for the same. Following was held in paragraph 38 of the aforesaid judgment:

"38. The Model Standing Orders, no doubt, provided that a delinquent employee could be represented in the disciplinary proceedings through another employee who may not be the employee of the parent establishment to which the delinquent belongs and may be an employee elsewhere, though he may be a member of the Trade Union, but this rule of representation has not been disturbed by the Certified Standing Orders, in as much as it still provides that the delinquent employee can be represented in the disciplinary proceedings through an employee. The only embargo is that the representative should be an employee of the parent establishment, the choice of the delinquent in selecting his representative is affected only to the extent that the representative has to be a co-employee of the same establishment in which the delinquent is employed. There appears to be some logic behind this as a co-employee would be fully aware of the conditions prevailing in the parent establishment, its Service Rules, including the Standing Orders, and would be in a better position, than an outsider, to assist the delinquent in the domestic proceedings for a fair and early

disposal. The basic features of the Model Standing Orders are thus retained and the right of representation in the disciplinary proceedings through another employee is not altered, affected or taken away. The Standing Orders conform to all standards of reasonableness and fairness and, therefore, the appellate authority was fully justified in certifying the Draft Standing Orders as submitted by the appellant."

20. In the case of *Indian Overseas Bank v. Indian Overseas Bank Officers' Association and Anr.* (supra), the Apex Court had again occasion to consider the nature and extent of employees' right of representation in a departmental enquiry. The Apex Court again reiterated the principle in Paragraph 6 of the said case after taking into consideration the earlier pronouncements of the Apex Court. Paragraph 6 of the said judgment is extracted below :

"6. We have carefully considered the submissions made as above. The issue ought to have been considered on the basis of the nature and character of the extent of the rights, if any, of an officer-employee to have, in a domestic disciplinary" enquiry, the assistance of someone else to represent him for his defence in contesting the charges of misconduct. This aspect has been the subject matter of consideration by this Court on several occasions and it has been categorically held that 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 *Kalindi and Others Vs. Tata Locomotive and Engineering Co. Ltd., ; The Dunlop Rubber Co. Vs. Workmen, ; Crescent Dyes and Chemicals Ltd. Vs. Ram Naresh Tripathi, and Bharat Petroleum Corporation Ltd. Vs. Maharashtra General Kamgar Union and Ors*, Irrespective of the desirability or otherwise of giving the employee facing charges of misconduct in a disciplinary proceeding to ensure that his defence does not get deliberated due to experience or personal embarrassments, it cannot be claimed as a matter of right and that too as constituting an element of principle of natural justice to assert that a denial thereof would vitiate the enquiry itself."

21. The Division Bench judgment relied upon by the Counsel for the appellant in *Ajai Kumar Mishra Vs. Assistant General Manager, Allahabad Bank and Another*, to do support his contention. In the aforesaid case the writ petitioner was messenger in Allahabad Bank. The petitioner moved an application praying that he should be permitted to take one Sri Surendra Mishra, a Retired Officer of Central Excise Department to act as his defence representative. Another application was made that if Surendra Mishra is not agreeable then another employee Sri K.K. Dubey of Custom & Central Excise Department may be permitted. The said request was turned down by the Enquiry Officer referring to *Allahabad Bank Officer Employees' (Discipline and Appeal) Regulations, 1976*. The Enquiry Officer stated that above Regulation do not permit engagement of a

person other than Officer or Employee of the Bank to act as defence representative in the departmental proceedings. The aforesaid decision was challenged before this Court. The Division Bench after considering the several decisions of the Apex Court held in Paragraph 8 which is quoted below :

"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."

22. The aforesaid judgments clearly lay down that an employee facing the disciplinary enquiry can have assistance of defence representative only in accordance with rules governing his service condition. In the present case, Regulation 43 provides for representation by legal practitioner with the permission of the competent authority. However, in the present case, we are not called upon to examine the question as to whether the petitioner was entitled to have legal practitioner as his defence representative since we have not been shown any material on record to show that the petitioner ever made a demand of having a legal practitioner as his defence representative in accordance with the Regulation 43. Regulation 43 requires prior permission of the competent authority for engaging legal practitioner as defence representative. The above provision thus requires request by an employee. We have also looked into the prayer of the writ petitioner in writ petition. The petitioner has not made any prayer for direction to the respondent to permit him to have a legal practitioner as his defence representative presumably due to the reason that the writ petitioner himself has never approached the competent authority. The petitioner has made specific prayer in the writ petition seeking a writ of mandamus on the respondents to allow the petitioner to appoint Sri R.P. Singh a Special Officer of Central Bank of India as defence representative. Thus, we have not examined the question as to whether the petitioner is entitled for service of a legal practitioner as defence representative and we deem fit that this question be left open to the writ petitioner to raise before the appropriate competent authority, if so advised.

23. The Counsel for the respondent has laid much emphasis on the fact that the Aligarh Gramin Bank (Officers and Employees) Service Regulations, 2000 does not prohibit management of any person from a Bank other than Aligarh Gramin Bank as defence representative. He submitted that if the Regulation do not prohibit there was no restraint on the petitioner from seeking a defence representative from the Central Bank of India. Learned Single Judge for allowing the writ petition has also taken the view that since the said Regulations, 2000 does not prescribe engagement of any person from a Bank other than the

respondent-Bank hence the petitioner has right to engage Sri R.P. Singh or any Officer of the Central Bank or India or any person from any other Branch to defend and represent the writ petitioner in the enquiry.

24. After having taken into consideration the provisions of Regulations, 2000 specially Regulations 38, 43 and 62, we are of the view that the learned Single Judge has not correctly construed the Regulation 43 while laying down that if the Regulation envisage that an officer can be defended through a lawyer the view is irresistible that in case the petitioner makes a prayer to engage some officer from a Bank other than the respondent Bank, which would be an independent person unrestrained by any disciplinary control of the employer, the petitioner will be properly defended and the intention of the framers of the Regulations in this regard is too obvious and patent to be ignored that they intended a right to be defended through an independent representative either from the same Bank or from the other Bank by the expression that "he shall have reasonable opportunity to answer the charge or charges and defend himself."

25. Regulation 43 amply protect the right of an employee and officer of the Bank while permitting taking assistance of the legal practitioner. The prior permission is contemplated in Regulation 43 to keep a check on frivolous and unnecessary request made for legal practitioner if the facts and situation do not demand so. The principle underlined by the Apex Court in several cases, is clear that assistance by legal practitioner is to be given to an employee when the Enquiry Officer conducting the enquiry as a legal trained person. From the enquiry proceedings on the date 19.10.2002 which has been annexed as Annexure-3 to the writ petition, it is clear that the Enquiry Officer himself has permitted the writ petitioner to have defence representative from Aligarh Gramin Bank.

26. The right of representation by an employee in enquiry proceedings by legal practitioner or by any other person is in consonance with the principles of natural justice safe guarding his right to express himself to find a person who may ably protect his interest but as noticed above from the pronouncements made by the Apex Court as noted above, the basic principle is that an employee has no right to representation in the disciplinary proceedings by any other person or lawyer unless the Service Rules specifically provides for the same. The Aligarh Gramin Bank (Officers and Employees) Service Regulations, 2000 do provide representation by legal practitioner and also impliedly envisage a situation when an Officer has to be granted leave as special casual leave to represent an employee or officer in a departmental enquiry. Thus the said Regulation of 2000 fully protect the interest of a delinquent. The representation in disciplinary enquiry by an officer and employee of the same Bank has also statutory purpose and object. An officer or employee of the same Bank has special knowledge of the prevalent practices, facts and circumstances of the Bank rules and regulations including the orders of the higher authorities and he may be in a better situation to defend an Officer or Employee of the same Bank in the disciplinary enquiry. Further when defence representative is from the same Bank

he can also seek special casual leave for defending the employee. Defence representative from the same Bank will also facilitate expedition in conclusion of the disciplinary enquiry and the availability of the defence representative will be more easy as compared to any out side person. The fear which has been expressed by the Counsel for the respondents that the defence representative belonging to the same Bank will be under pressure from the employer, is over simplification of an issue. A person working in an organisation cannot be heard in saying that he has no trust in whole of the organisation. Every organisation consist of different persons. In several cases there arc registered Unions of the employees and officers of the organisation to espouse their cause and in case the enquiry is not fair the workman concerned can challenge its validity in appropriate proceedings. The cases of biased enquiry or cases of conduct of enquiry in an unfair manner, cannot be lead to presume that in all cases defence representative will not be independent and useful. Assuming for argument sake that officers or employees in a particular case may not be able to function independently, Regulation 43 amply protect the interest of the employee or the officer and the said employee or the officer can seek assistance of the legal practitioner in case where he is able to demonstrate that the defence representative from the same organisation will not be able to function independently or there are any other good reason for permitting a legal practitioner.

27. The contention of the respondent that since there is no prohibition in the Regulation from engaging a person from the out side it be held that he has right to do so is too far to be accepted. As noted above the Apex Court has clearly laid down that the extent of representation in an enquiry has to be in accordance with that extent which is specifically permitted under the rules. Extending the right of representation upto the extent which is not prohibited will run counter to the dictum laid down by the Apex Court in the above noted cases. In case such interpretation is given to the rules it will lead to unworkable and unreasonable result. A person may insist that he may be permitted to take a defence representative who has been a dismissed employee or officer of the same Bank or of any other Bank or a person of criminal background. If it is conceded that the employee has right to take any one which is not prohibited that will cause undue hindrance in holding of disciplinary enquiry and smooth conduct of the enquiry. We arc unable to subscribe ourselves to the view taken by the learned Single Judge that since engagement of any person from Bank other than Aligarh Gramin Bank is not prohibited the petitioner has right to engage Sri R.P. Singh of Central Bank of India Branch Aligarh.

28. The various decisions relied by the Counsel for the respondents are now to be considered. The Apex Court's judgment in C.L. Subramaniam Vs. Collector of Customs, Cochin, relied upon by the Counsel for the respondents considered the Rule 15 (5) of the Central Civil Services (Classification, Control and Appeal) Rules, 1967 which provided that 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 is a legal practitioner or unless disciplinary authority having regard to the circumstances of the case, so permits. The Apex Court in the aforesaid case considered the claim of the petitioner regarding refusal to engage a legal practitioner. In the present case, as observed above we have not examined the question of entitlement of the petitioner to have a legal practitioner hence this case has no application.

29. The case of Bhagat Ram v. State of Himachal Pradesh and Ors. (supra) was a case in which delinquent a Class IV employee was not asked as to whether he wanted also to be represented by a Government servant. The enquiry in that case was also to be governed by Rule 15 (2) of the Central Civil Services (Classification, Control and Appeal) Rules, 1967 and the Apex Court held the enquiry to be vitiated since the delinquent was not asked as to whether he wanted to be represented by a Government servant. The aforesaid case has also no application.

30. The next case relied by the Counsel for the respondents is Board of Trustees of the Port of Bombay Vs. Dilipkumar Raghavendranath Nadkarni and Others, In the aforesaid case the employer was represented by legal train officer in an enquiry. The request of the employee to be represented by the lawyer was refused. In that view of the matter the Apex Court held that there was denial of opportunity of hearing to employee. Following was observed by the Apex Court in Paragraph 13:

"However, when Regulation 12 (8) came into force, the situation merely altered and the large number of witnesses almost all concept one were examined after the Regulation came into force and which made it obligatory to grant the request of the first respondent because the regulation provided granting of permission to appear and defend by a legal practitioner once the department was represented by legally trained minds."

31. AIR 1991 SC 1221, J.K. Aggarwal v. Haryana Seeds Development Corporation Ltd. and Ors., was again a case which the presenting officer was not man of legal appointment and existence and refusal of service of lawyer to the delinquent was held to be violation of principles of natural justice. It was laid down in Paragraph 4 of the aforesaid judgment by the Apex Court :

"4. In the present case, the matter is guided by the Provisions of Rule 7 (5) of the Civil Service (Punishment and Appeal) Rules, 1952 which says :

"7. (5) Where the punishing authority itself enquires into any charge or charges or appoints an Enquiry Officer for holding enquiry against a person in the service of the Government, it may, by an order, appoint a Government servant or a legal practitioner to be known as a "Presiding Officer" to present on its behalf the case, in support of the charge or charges.

The person against whom a charge is being enquired into shall be allowed to

obtain the assistance of a Government Servant, if he so desires, in order to his defence before the Enquiry Officer. If the charge or charges are likely to result in the dismissal of the person from the service of the Government. Such person may, with the sanction of the Enquiry Officer, be represented by Counsel." (Italics supplied)

It would appear that in the inquiry, the Respondent-Corporation was represented by its Personal and Administrative 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 of justice and a denial of a real and reasonable opportunity for defence by reason of the appellant being pitted against a presenting officer who is trained in law. Legal Advisor and a lawyer arc 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 advisor." 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 Vs. Dilipkumar Raghavendranath Nadkarni and Others, . However, it was held in that case :

"..,.....In our view we have reached a stage in our onward march to fair play in action that where in an enquiry before the domestic tribunal the delinquent officer is pitted against a legal 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....."

32. The judgment of Delhi High Court in K.N. Gupta s/o Behari Lal v. Union of India through Secretary, Railway Board and Anr. AIR 1968 Delhi 85 was a case of refusal to adjourn enquiry to enable the petitioner to have assistance of another railway servant which was held to vitiate the enquiry. Rule noted by the Delhi High Court which permitted assistance of any other railway servant employed on the same railway. The said case has no application in the facts of the present case. The judgments relied by the respondents in Hans Raj Gupta v. State of Punjab (Pb. & Hry). 1992 (1) SLR 146 and Kehar Din v. The Presiding Officer. Labour Court and Anr. (Pb. & Hr) 1992 (2) SLR 199 , where the delinquent was not asked whether he wanted the assistance of any friend due to which the enquiry was held to be vitiated. The aforesaid cases are not applicable in the

present case. The judgment of Calcutta High Court in Nripendra Nath Bagchi Vs. Chief Secretary, Govt. of West Bengal, , relied upon by the Counsel for the respondents laid down that if on the particular facts and complexity of a case, assistance of a lawyer is regarded as a part of reasonable opportunity, then denial of such an opportunity is violation alike of the Constitution protection under Article 311(2) and the principles of natural justice. The aforesaid case is not attracted in the facts of the present case.

33. The last judgment relied upon by the Counsel for the respondents is Hari Prasad's case (supra) was again a case where permanent Class-IV employee made an application for permission to have a legal assistance on which no orders were passed. The aforesaid case has also no application in the present case. In view of the above, the cases relied upon by the Counsel for the respondents do not support the contention raised by him that he is entitled to have defence representative from Central Bank of India.

34. In view of foregoing discussions, we are of the view that the writ petitioner-respondent was not entitled to have defence representative from Central Bank of India and direction to that effect by the learned Single Judge cannot be sustained and is hereby set aside. However, it is observed that the respondent (writ petitioner) is entitled to have a defence representative from Aligarh Gramin Bank as permitted by the Enquiry Officer or he may pray for assistance by legal practitioner in accordance with Regulation 43 as observed above.

35. The special appeal is allowed subject to observations as made above. Parties to bear their own costs.