(2013) 08 DEL CK 0173

In the Delhi High Court

Case No : Writ Petition (C) 1980 of 1993

Gopal Vasudeva APPELLANT

Vs

The New Bank of India RESPONDENT

Date of Decision : 27-08-2013

Acts Referred:

Citation : (2013) 4 LLJ 196

Hon'ble Judges : P.K. Bhasin, J

Bench : Single Bench

Advocate : K.T. Anantharaman, for the Appellant; Vaibhav Kalra, for the Respondent

Judgement

P.K. Bhasin, J.—By way of this writ petition the petitioner-workman has challenged the award dated 20th, July, 1992 passed by the Central Government Industrial Tribunal (''CGIT'' for short) whereby the action of the respondent bank in dismissing him from service for some grave serious acts of misconduct was held to be legal and justified. Background in the light of which this petition came to be filed by the petitioner-workman is that he joined the services of the respondent bank in the year 1971 as a clerk at the Agra Branch wherefrom he was transferred to the Kanpur Branch and worked there from 1st May, 1971 till 17th June, 1972 after which he was transferred to Ghaziabad branch. The management of the respondent bank allegedly did not like the petitioner for his being active in trade union activities and so placed the petitioner under suspension with effect from 29th May, 1973 and slapped a first charge sheet dated 16th June, 1973 in which it was alleged against him as under:

In continuation of our Registered A.D. Letter No. Est./16274 dated 29th May, 1973 (copy also sent under certificate of posting), you are hereby charge sheeted as under:-

(A) BRIEF STATEMENT OF FACTS.

(i) That on your representation, as contained in your application dated the 24th

December, 1970, that you had a past experience of 6 years, having allegedly worked in the Union Bank of India, you were taken in the employment of the Bank on the terms and conditions contained in the Bank''s appointment letter no. EST/Apptt./591 dated the 5th January, 1971, which were duly accepted by you and you were posted at the Agra Branch, wherefrom you were transferred, at your requested dated 16th March, 1971 to the Kanpur Branch in April, 1971. Again at your request, you were transferred from the Kanpur office to the newly opened sub office, Ghaziabad in June, 1972.

ii) That it is significant to state that during your stay at Kanpur, you had been frequently absenting yourself despite the fact that no leave was due to you, thereby implying that you were not sincere to your job and allowed the Banks work to suffer by your such frequent leave of absence; which habit of yours continued at Ghaziabad as well.

iii) That despite the fact that you had a very short duration of employment with the Bank, the Bank accommodated you by acceding to your request by sanctioning a loan of Rs. 1,000/- deductible by monthly instalments of Rs. 75/- each.

iv) That it appears that you had misused and/or abused the leniency of the Bank, as is evident, from the following circumstances:

a) That you did not discharge your duties properly at Ghaziabad office as well; allowed the Banks work to suffer by your not performing your duties diligently and/or allowing the work of the Bank to go into arrears despite your lapses and discrepancies having been duly pointed out to you, from time to time, including by the Inspecting Officer during the course of inspecting resulting into the issuance of a show cause Memo No. 921 dated 22.2.1973, by the Manager, sub-office, Ghaziabad, pointing out the following salient aspect of lapses on your part:-

1) Your not attending to your duties properly resulting into loss of efficiency of the branch;

2) The non posting of Janta Deposits in subsidiary Leger which, on inspection by the Inspecting officer was found incomplete since December, 1972; and

3) Not doing of the summations in the General Ledger for a long time

b) That not only you had committed lapses in respect of performance of your duties, you were also indulging in unfair activities prejudicial to the interests of the Bank and subversive of discipline of the Bank.

c) That at 11.00 A.M. on 22nd February, 1973, on your being pointed out by the Manager, sub-office, Ghaziabad, about you acts of omissions and/or commissions, you, instead of improving yourself, became all the more insolent and picked up a quarrel with him in the office and went to the extent of insulting him, among others, in the presence of the valuable customers of the branch.

d) That notably you even refused to accept the above said show cause memo dated the 22nd February, 1973, and thereby further defied the lawful and reasonable order of the Management in this behalf, with the result that the said Memo. had to be sent to you by Registered A.D. post, on that very date.

e) That, however, on 2nd March, 1973, you realised you lapses and tendered unqualified apology and expressed regrets for the episode relating to the incident that had occurred on 22nd February, 1973, and with the intervention and the good offices of the Union, coupled with you promises and undertakings that you would be sincere in the discharge of your duties, the intended disciplinary action, as proposed in the Banks show cause notice dated 22nd February, 1973 was dropped.

v) That it has been found now that your work and conduct were not above board, while you were posted at Kanpur, branch, as well, is evident from the following disturbing factors, which have come to light only recently:-

a) That a debit entry pertaining to the Cheque No. 020237 dated the 29'' June, 1971 for Rs. 603.87 of Messrs Poonam Electricals was posted in the account of Messrs Hira Nand Choith Ram instead of the party concerned on 1.7.1971. Reference in this connection is invited to the Bank''s show cause notice No. EST/11035 dated the 4th May, 1973, inter alia, pointing out that as a consequence of the above said overt act, the Bank is likely to suffer a loss of Rs. 173.56. This Memo has been duly acknowledged by you vide your evasive reply dated the if May, 1973.

vi) That yet another disturbing and distressing factor is that during your posting at the Kanpur Branch, when you were entrusted with the Bills work relating to M/ s. Somani Steel Ltd., the said firm deposited a cheque No. 085200 for Rs. 500/- drawn on the State Bank of India, Ferozepur, for credit to their account on realization, which was accepted by you as a representative of the Bank and entered in the O.B.C. Register under No. 201 dated 18.3.1972. This cheque was realised according to the Books of the Bank under your hand on 29.3.1972, but you instead of giving the credit to the right party viz. Messrs Somani Steel Ltd., credited the proceeds thereof in the sum of Rs. 495/- (after deducting the Banks collection charges) to the saving Bank Account no. 589 pertaining to one Shri Baboo Sharif, a close friend of yours. In furtherance of your above said dishonest intentions, you manipulated and/or fabricated the pay-in-slip dishonest under dated 4.3.1972 purporting to have been received in the account of the above said Shri Baboo Sharif, which the Bank has reasons to believe, that this document has been fabricated by you, by your abuse of your office and status in the employment of the Bank at the above said branch and having been entrusted with the duties of Bills work. In furtherance of your ill-designed objects and to set wrongful gain by the above said dishonest and fraudulent intention, you also in the Bills Register, in token of realization of the bill, made this entry cleverly and rather in a clandestine manner, so as to escape the attention of the checking official, thereby making yourself successful in this attempt to perpetuate the fraud in the aforesaid manner.

It is significant to state that in furtherance of the above said dishonest and fraudulent intentions on your part, the amount of Rs. 495/- the net proceeds of the above said Bill in question (after deduction of the Bank''s charges) were withdrawn on the very next date i.e. on 30'' March, 1972, by means of a cheque No. 003543 under the name and style of Baboo Sharif, the wrongful gainee pursuant to your dishonest and fraudulent acts.

vii) That it was only recently that the actual true depositor Messrs Somani Steel Ltd. Lodged a complaint and claimed the proceeds of the said cheque vide their letter dated the 1st May, 1973 that the Bank, after a good deal of search of the records, detected the above said fraudulent act on your part, on 17th May, 1973; when Shri Baboo Sharif was immediately contacted and apprised of the serious consequences. The said Sharif volunteered to pay back the wrongful gain and pursuant thereto deposited Rs. 500/- with the Bank so as to enable the Bank to at least recover the sum of Rs. 495/- as a consequence of the wrongful loss caused by your action.

viii) That your above said acts being of very serious and/or grave nature, you were suspended by the Bank vide its Registered A.D. Communication No. EST/16274 dated the 29th May, 1973 and further directed not to leave the station without permission, but, the Bank has reasons to believe that you have also defied this very reasonable and lawful order of the Bank as well, in having left Ghaziabad and remaining at Delhi, which action of yours is equally subversive of discipline and among others, creates hindrance in proceedings with the matter.

ix) That it is significant to state that on being confronted the above said serious acts of misconduct involving moral turpitude and/or business of character which are, amongst others, nothing short of cheating by fraudulent means. You offered to tender your resignation for which you asked for time. But, your subsequent action belief this assurance, as a consequence of which the Bank had to suspend you vide Registered A.D. communication dated 29th May, 1973 at your Delhi address, as you had left Ghaziabad without any authorised permission.

x) The Bank, which is credit institution, because of your overt acts has suffered, among others, in respect of its reputation and/or service to its constituents, which as a credit institution it can ill afford.

(B) CHARGES

1. For cheating the Bank and/or causing wrongful loss to the Bank, by fabricating and/or tampering with the Bank''s record by virtue of your being employed in the Bank at its Kanpur office among others by destroying and/or falsifying the documents and accounts relating to OBC No. 201 dated 18.3.1972 for Rs. 500/- on the State Bank of India, Ferozepur, deposited by Messrs Somani Steel Ltd. and causing wrongful gain to Mr. Baboo Sharit by fraudulent means as detailed

above.

2. For committing gross negligence and/or negligence by wrongful debit of Rs. 603.67 in the account of Messrs Hira Nand Choith Ram Instead of M/s. Poonam Electricals on 1.7.1971 by means of a cheque no. 020237 dated 29.6.1971 (reference as detailed above and stated in the Banks communication No. EST/11035 dated the 4th May, 1973).

3. For wilful damage and/or attempt to cause damage to the property of the Bank and/or its constituents.

4. For acting prejudicially to the interests of the Bank involving the Bank into serious loss.

5. For commission of acts involving moral turpitude.

6. For loss of confidence.

7. For gross negligence and/or negligence involving and/or likely to involve the Bank into serious loss.

8. For disobeying lawful and/or reasonable orders of the Management and/or of the superiors.

9. For absence without leave and/or over staying the sanction leave without sufficient grounds.

10. For unseemly and/or insolent attitude towards the officers of the Bank.

11. For committing acts prejudicial to the interests of the Bank adversely affecting the reputation of the Bank.

2. Thereafter the petitioner-workman was given a memo which reads as under:-

Smt. Champa Wati, a saving bank depositors (SB A/C No. 487) has yesterday lodged the following complaints to the undersigned:-

I the depositor of S/B A/C No. 487 in your Bank came to your Bank on 16.5.1973 for withdrawal of Rs. 200/- from my account. The clerk on the counter told me that the form was not correct another may be filed. I asked him to file the form himself and I would sign it. So he has filed the said form and I signed it & I got Rs. 200/- on that date. But the previous form was not returned to me by the Clerk on counter and so it remained with him. Next time on 22.5.73 also I withdraw Rs. 100/-. But when I attend the Bank on 23.8.73 I was surprised to find that Rs. 200/- are shown as withdrawn in my account on 24.5.73, which I never withdrew. So the counter clerk appear to have committed mischief & I am made to loss Rs. 200/-, from my account which is not but fraud with me.

As per Bank''s record one Shri Anup, another saving Bank Depositor (SB A/C No. 430) has taken the payment of the said withdrawal on 24.5.73. On further scrutiny of the Bank''s records we observe that the said gentleman was introduced to the bank by you. As per statement of Mr. Anup you delivered the said withdrawal from of Rs. 200/- of Smt. Champa Wati to him at Delhi and obtained cash against it telling him that you were not going to attend office on 24.5.73.

It is also clear from the Bank''s record that the withdrawals for Rs. 200/- dated 16.5.73 was filled in and posted in the Ledger by you. It also appears that the date of the said withdrawal from has been tempered with & changed to 24.5.73.

You are hereby required to please show cause:-

1) Why the withdrawal form Rs. 200/- which was held by you as incorrectly filled in was not returned to the depositor on 16.5.73?

2) How & why was the date altered into 24.5.73?

3) How & shy was it later made fraudulent use of?

4) Why did you obtain Rs. 200/- in cash against the said withdrawals form from another depositor entreating him that you were not to attend office on 24.5.73 and that he should get it cashed? Your reply should reach this office within two days from the receipt of this letter, otherwise it will be presumed that you have no explanation to offer.

sd/

Manager

3. Though the petitioner had submitted his reply but the same was not found satisfactory and so he was served with a second (supplementary) charge sheet dated 4th October, 1973 and in that charge-sheet it was alleged as under:-

Further to the bank''s charge sheet No. EST/13695 dated 16.6.1973 sent through Registered A.D. Post, yet more starting facts about your conduct, character and/ or integrity have come to light resulting into issuance of a Memo No. 6105 dated 25.8.1973 to you by the Manager, Branch Office, Ghaziabad which has been duly acknowledged by you vide your letter dated 3.9.1973.

It is significant to state that although you are in full know of the facts in respect of defalcation committed by you against Smt. Champa Vati, a Savings Bank depositor of the Bank at Branch Office, Ghaziabad (S.B. A/C No. 487) in the sum of Rs. 200/- by using one Shri Anoop Vohra, another Savings Bank depositor of the Branch as an instrument for completing the said defalcation as detailed in our said Memo, yet you were allowed to have inspection of the record despite the fact that your request in the behalf was an afterthought. But you did not come forward to inspect the documents-so much so, you managed to get the Registered A.D. Communication dated 4.9.1973, returned though you cannot escape the responsibility as the Branch Office, Ghaziabad, by way of abundant caution, had sent a copy thereof to you by ordinary post simultaneously, which having not been received back, is presumed to have been received by you.

The facts stated in the above said Memo. dated 25.8.73 be read as part of the charge sheet dated 16.6.1973.

Still another disturbing aspect of your having abused your office of employment in the bank that has come to light is that on 29.3.1973 your purchased cloth worth Rs. 260.75 from M/s. Krishna Handloom Factory, Ghaziabad, on credit with the assurance that you would discharge your liability shortly, but until now you have not done so, which has resulted into a complaint from the said party. Your above act has undoubtedly lowered the prestige of the Bank.

In the circumstances you are hereby further charged in continuation of our previous charge sheet no. EST/13695 dated 16.6.1973 as follows:-

i) For committing defalcation in the sum of Rs. 200/- in the S.B. account no. 487 of Smt. Champa Wati by sheer misrepresentation and for that purpose using one Shri Anoop Vohra as an instrument in furtherance of your above said illegal acts;

ii) For misusing your office and status by virtue of your employment at Ghaziabad Branch of the Bank in furtherance of committing the abovesaid fraud of Rs. 200/-.

iii) For loss of confidence;

iv) For a baseness of character; and

v) For doing acts prejudicial to the interest of the bank. You are hereby called upon to submit your explanation, if any, to the above within seven days from the receipt hereof, failing which it shall be presumed that you have nothing to say in the matter, admit the same and in that eventuality the Bank may take such action against you as it may deem fit and proper in the circumstances of the case.

4. The petitioner refuted all the aforesaid allegations but the respondent did not find his replies to be satisfactory and so it ordered a formal enquiry and appointed an Enquiry Officer for holding enquiry into the aforesaid allegations of misconduct allegedly committed by the petitioner-workman.

5. While the enquiry into the two charge sheets was in progress, the respondent bank issued another charge sheet dated 24th April, 1974 charging the petitioner-workman of another act of abuse of his office as the bank employee for having taken a hand loan Rs. 300/- from his colleague and giving him two post dated withdrawal forms of Rs. 50/- and Rs. 100/- which on presentation by his colleague were dishonoured. So, that matter was also referred for enquiry to the same enquiry officer who was already holding enquiry against the petitioner in respect of other two charge sheets.

6. The Enquiry Officer who had commenced the enquiry on 14th February, 1974 concluded the same on 4th September, 1976 and finally gave his report on 07.04.1979 holding that all the charges levelled against the petitioner-workman (except charges 8-9 in the first charge sheet on which no findings were returned on the ground that far more serious charges stood proved) had been proved by

the management.

7. Feeling aggrieved the petitioner-workman availed of all his departmental remedies of appeals upto the highest level but could not get any relief. He was dismissed from service on 16.11.1979. Then he invoked his remedy under the Industrial Disputes Act by raising an industrial dispute which was referred for adjudication by the appropriate Government to the CGIT vide notification dated 1st August, 1991. The sole term of reference was as under:

Whether the action of the management of New Bank of India in relation to the Branch office at Ghaziabad in dismissing from service Shri Gopal Vasudeva, clerk with effect from 16.11.79 is justified? If not, to what relief is the workman concerned entitled?

8. There the petitioner-workman filed a statement of claim challenging the validity of the enquiry as also the enquiry officer''s report. The respondent-management filed its written statement refuting the claim of the petitioner workman. The CGIT framed the following issues:

1. What is the effect of the take over of the New Bank of India Limited by the Central Government under the Banking Companies (Acquisition of Transfer and undertaking Act?

2. Whether the enquiry conducted against the workman was fair and proper?

3. As in order of reference.

9. The first issue was framed since in the year 1980 New Bank of India, which was earlier thereto a private bank whose Chairman-cum-Managing Director was allegedly arrested also for indulging in fraud in relation to finances of the bank, was taken over by the Central Government. The CGIT after recording evidence also did not give any relief to the petitioner and upheld the enquiry proceedings as also the enquiry report and the decision of the management to dismiss him from service.

10. The present writ petition was then filed by the petitioner-workman challenging Award of the CGIT.

11. It is noticed by the learned presiding officer of CGIT in para no. 7 of his Award that "Significantly, the workman did not choose to come in the witness box in his defence and rested his claim only on the contention that he was not provided reasonable opportunity as he was denied his alleged right to be represented by a lawyer." Then in para no. 9 it was again observed that "The only exception taken by the workman is that he was not permitted to be represented by Advocate."

12. Then the discussion on this aspect and the conclusion of the CGIT on the said objection of the petitioner-workman, which was pressed before this Court also with lot of force, are to be found in para nos. 9 and 11 of the Award and the relevant portions therefrom are as under:

9. The parties in support of submissions also filled written arguments and the reply thereto. The only exception taken by the workman is that he was not provided to be represented by Advocate. The bank has refuted this contention equally with vehemence firstly on the ground that as per the Bipartite settlement dated 19.10.66 (as modified by Bank awards) which has acquired the statutory status, representation through an Advocate is not mandatory and that the nature of the charges leveled against the workman pertain to the area of Banking Practice & procedure, of which the workman must effectively chosen to cross examine the bank witness and led his evidence as well, as is evident from the record of proceedings/detailed findings of inquiry officer. The Bank has also submitted that even otherwise, the representation through Advocate does not from part of the natural justice as held by the Hon''ble Supreme Court in the case entitled Maharashtra State Board of Secondary and Higher Secondary Education Vs. K.S. Gandhi and Others, wherein it has been held that non-representation through Advocate of a delinquent person in the inquiry does not amount to denial of principles of natural justice.

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...

(iv) That the fraud as committed by the workman is duly proved in the departmental enquiry as well coupled with admission on his part. Thus, the action on the part of the bank is fully justified as per the verdict of the Hon''ble Supreme Court in Union of India (UOI) Vs. Parma Nanda, . Further I am of the view that the charge do not involve the assistance of a legal practitioner as they are based upon documentary evidence and these documents have been filed by the Bank which are on record of the Tribunal, besides other records, the copies were duly furnished to workman in the enquiry.

11. I have carefully perused the detailed pleadings of the parties, duly supported by record of enquiry and submissions as discussed above, and am of the view that the bank has conducted the enquiry fairly by providing all reasonable opportunity to the workman. The request of the workman for being represented by Advocate also looses its weight when undisputedly, the workman has himself cross examined the bank witness at his will and even the bank had recalled the witness that had been examined ex-parte, because of the non-appearance of workman, in order to provide reasonable opportunity in this behalf as well. The enquiry has been conducted by a very senior officer of the Bank. The Disciplinary Authority of the high rank of General Manager had agreed with the findings of the Enquiry Officer applying his independent mind in the facts and circumstances of the case and has inflicted the punishment of dismissal from employment with reference to the record inclusive of past record, as distinctly dealt with in the findings of the enquiry officer and, thereafter considered by the disciplinary authority. The appellate authority of the highest rank in the hierarchy of the Bank

management i.e. Chairman has considered the submissions of the workman and rejected after applying his mind. Thus, the workman has been provided all reasonable and fair opportunity in conformity with service conditions. The workman has not been able to satisfy as to how he has been prejudiced by non-representation through Advocate, in face of the admitted position that he had himself been representing his case as well. The workman has also not chosen to appear as witness in the proceedings before the Tribunal but for the mere contention in pleadings, which further strengthen the case of bank duly supported by documentary evidence as discussed herein above.

13. It was submitted by the learned counsel for the petitioner that he was merely a clerk of the bank but was pitted against a legally trained presenting officer appointed by the respondent bank who was practicing advocate also before joining services of the bank and despite that the petitioner''s request to bring an advocate in the enquiry to defend him was declined by the management as well as the enquiry officer. It was also submitted that considering the serious nature of allegations leveled against the petitioner the respondent had examined the presenting officer himself as its main witness also so that no loop hole is left in management''s evidence. That way there was a serious violation of the principles of natural justice during the enquiry. The learned counsel in support of his contentions placed reliance upon one decision of the Supreme Court in Board of Trustees of the Port of Bombay Vs. Dilipkumar Raghavendranath Nadkarni and Others, which decision, according to the counsel, was very conveniently ignored by the CGIT.

14. Learned counsel for the respondent, on the other hand, supported the impugned Award passed by CGIT and submitted that the allegations against the petitioner were quite serious and grave in nature and the charges of fraud, defalcation etc. were duly proved in the enquiry which was held strictly following the principles of natural justice, on the bank stood unquestionably proved against the petitioner justifying his dismissal. The contention on behalf of the behalf of the petitioner regarding his non-representation in the enquiry by an advocate was also repelled by the learned counsel for the respondent on the ground that as per the Bipartite Settlement with the workers'' union, the permission to any worker facing enquiry to be represented by an advocate was though one of the options which could be given by the bank but in the facts and circumstances of the present case refusal of the management to give that liberty did not amount to violation of the principles of natural justice for the reasons given by CGIT. In support of this the learned counsel relied two judgments of the Apex Court reported as Harinarayan Srivastav Vs. United Commercial Bank and another, and Maharashtra State Board of Secondary and Higher Secondary Education Vs. K.S. Gandhi and Others,

15. After giving my thoughtful consideration to the rival submissions on this aspect of the matter and going through the judgments of the Supreme Court cited from both sides I have come to the conclusion that the denial of permission

to the petitioner-workman to be permitted in the enquiry by an advocate was not justified and so there was a clear violation of the principles of natural justice which vitiates the entire enquiry conducted by the management and the judgment of the Supreme Court in the Bombay Port Trust case(supra) cited by the learned counsel for the petitioner supports this conclusion.

16. Relevant portions of the said judgment of the Supreme Court are reproduced below:

9. We concerned ourselves in this case with a narrow question whether where in such a disciplinary enquiry by a domestic tribunal, the employer appoints Presenting-cum-Prosecuting Officer to represent the employer by persons who are legally trained, the delinquent employee, if he seeks permission to appear and defend himself by a legal practitioner, a denial of such a request would vitiate the enquiry on the ground that the delinquent employee had not been afforded a reasonable opportunity to defend himself, thereby vitiating one of the essential principles of natural justice.

10. Even in a domestic enquiry there can be very serious charges and 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 payrolls 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 to 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 robe of a Judge. It is held in the establishment office or a 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 this 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 an 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 tribunal cannot view the matter with equanimity on inequality of representation. This Court in Madhav Hayawadanrao Hoskot Vs. 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...

12. Are we charting a new course ? The answer is obviously in the negative. In C.L. Subramaniam Vs. Collector of Customs, Cochin, a Government employee requested the Enquiry Officer to permit him to appear through a legal practitioner and even though a trained public prosecutor was appointed as Presenting Officer, this request was turned down. When the matter reached this Court, it was held that the enquiry was in breach of the principles of natural justice. The order of the domestic tribunal was sought to be sustained on the submission that Sub-rule 5 of Rule 15 of the Central Civil Services (Classification, Control and Appeal) Rules, 1957 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 as aforesaid is a legal practitioner or unless, the Disciplinary Authority, having regard to the circumstances of the case, so permits." The submission was that it is a matter within the discretion of the Enquiry Officer whether to grant permission and more so because the relevant rule fetters the claim to appear through a legal practitioner. Negativing this contention, this Court held that the fact that the case against the appellant was being handled by a trained prosecutor was by itself a good ground for allowing the appellant to engage a legal practitioner to defend him lest the scales should be weighted against him. This conclusion was recorded after reference to the earlier decisions in Brooke Bond India (Pvt) Ltd. v. Subba Ramman (S) and Anr. and Dunlop Rubber Co. v. Workmen. Reference was made to Pet''s case, referred to earlier, but it is observed that this case has not commended itself to this Court. The earlier cases of this Court were distinguished. In our view we have reached a stage in our onward march to fairplay in action that where in an enquiry before a domestic tribunal the delinquent officer is pitted against a legally 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. This view has been taken by a learned Single Judge and while dismissing the appeal in limine approved by the Division Bench of the High Court commends to us.

17. In the present case the respondent''s own case and as was observed by the

Enquiry Officer also in his report that the charges leveled against the petitioner were quite grave. And for that reason only the respondent appears to have not only appointed a person as the its presenting officer in the enquiry who admittedly had been a practicing advocate before getting employment with the respondent bank but he was examined as the management''s witness also. In these circumstances the denial of the petitioner''s request to engage an advocate for the enquiry was certainly not justified and for this reason alone the decision of the CGIT is liable to be set aside and it has to be held that the enquiry conducted by the respondent was not a valid enquiry and is vitiated. The judgments cited by the learned counsel for the respondent are distinguishable on facts inasmuch as in none of those the question whether an employee facing enquiry is entitled to be represented by an advocate when the management appoints a presenting officer to represent it has been an advocate before joining service. In the case of Harinarayan Srivastav (supra), which was decided by a short order, the charges were found by the Supreme Court to be simple and in the bipartite settlement with the workers also there was no stipulation that the delinquent employee could be permitted to represented by an advocate in domestic enquiry. Similarly in the other judgment relied upon by the learned counsel for the respondent the relevant Rules did not permit representation of the delinquents by an advocate in domestic enquiry and so it was observed that denial of representation by advocate to the delinquents did not amount to violation of the principles of justice. In the present case the petitioner had pleaded in the writ petition that the relevant bipartite settlement provided that the bank in its discretion could permit a workman to be represented in enquiry by an advocate. That claim of the petitioner was not denied by the respondent in its counter affidavit. In fact the respondent itself has placed on record alongwith its counter affidavit copy of the relevant term of bipartite settlement which shows that the management could permit representation of a delinquent employee by an advocate during the enquiry. So that was all the more a good reason for the respondent to have accepted the request of the petitioner. The contention raised on behalf of the management that since the petitioner had fully participated in the enquiry despite his having been denied the permission to bring an advocate he cannot have any grievance is not justified. It cannot be said that the petitioner should have simply walked out of the enquiry when his request was not accepted. If an employer decides to give appointment to advocates and then their services are availed of for representing it in domestic enquiries then it should permit the delinquent employee also to avail of the services of an advocate in the enquiry so that he is not put in a disadvantageous position. It is also significant to note that the petitioner had also made an alternative request to the enquiry officer that he should be permitted to be represented by an employee of the bank but that request was also turned down. In view of the aforesaid conclusion the decision of the CGIT that a proper enquiry was held against the petitioner-workman cannot be sustained and is liable to be set aside and accordingly is set aside. Since the respondent management had not asked for any permission to substantiate its charges before the CGIT itself in the event of enquiry being vitiated for any reason the dismissal of the petitioner-workman from service ordered by the respondent is also set aside. Same was the conclusion of the Bombay High Court which was affirmed by the Supreme Court also in Bombay Port Trust case (supra) but it would be open to the respondent bank to adopt the course of action which was permitted by the Supreme Court in the said case after setting aside the dismissal of the employee concerned or to take any other decision which it may consider appropriate and in accordance with law.

