

(1992) 12 KAR CK 0014

In the Karnataka High Court

Case No : W.A. No. 1992 of 1992 and W.P. No. 22284 of 1992

G.V. Aswathanarayana

APPELLANT

Vs

Central Bank of India

RESPONDENT

Date of Decision : 04-12-1992

Acts Referred:

Central Bank of India Officer Employees (Discipline and Appeal) Regulations, 1976 — Regulation 6 (7)

Citation : (1993) ILR (Kar) 19

Hon'ble Judges : K.A. Swami, Acting C.J.; N.D.V. Bhat, J

Bench : Division Bench

Advocate : K. Subba Rao, for the Appellant; S.S. Ramadas, for S.G. Sundaraswamy for R-1 to R-3, for the Respondent

Judgement

K.A. Swami, Ag. C.J.

1. This Appeal is preferred against the Order dated 29th July 1992 passed in Writ Petition No. 22284 of 1991. The learned single Judge has refused to stay the further proceedings in the enquiry and has only observed that the enquiry contemplated may proceed but no action adverse to the interest of the petitioner-appellant shall be taken on the basis of the enquiry report without further orders from this Court. When this Appeal came up for admission, we found that the hearing of the Appeal would be hearing of the Writ Petition itself, therefore we directed by our Order dated 29th October 1992 that the Writ Petition No. 22284 of 1991 be posted along with this Writ Appeal for final disposal. Accordingly, the Writ Petition has now been posted along with this Appeal. We have heard both the sides.

2. In the Writ Petition, the petitioner has sought for the following reliefs:

"(a) ISSUE a writ of mandamus or any other appropriate writ, order or direction, declaring Regulation 6(7) of the Regulations, as arbitrary and violative of Articles 14, 16, 21 and 39-A of the Constitution of India:

(b) ISSUE a writ of certiorari or any other appropriate writ, order or direction quashing the Endorsement bearing reference No. PRS: 91-92: 2018 dated 1.10.1991 issued by the 2nd respondent marked at Annexure-R as the same is arbitrary and unsustainable;

(c) ISSUE a writ of prohibition or any other appropriate writ, order or direction, prohibiting the respondents from holding any enquiry in pursuance of the chargesheet

No. PO:PRS:91-92 dated 18th April 1991 (Annexure-B), as the respondents want to proceed with the enquiry, some of which the petitioner has already been exonerated and that no enquiry should be allowed to be held on account of the enormous delay:

(d) PASS in interim order staying the chargesheet No. PO: PRS:91-92 dated 18.4.1991 (Annexure-G) and prohibiting the respondents from holding the enquiry in pursuance of the chargesheet dated 18.4.1991 (Annexure "G") during the pendency of this Writ Petition; and

(e) DIRECT the contesting respondents to pay the petitioner the costs of this Writ Petition and grant such other relief or reliefs as this Hon'ble Court may be pleased to grant in the circumstances of the case to meet the ends of justice "

We are of the view that it is not necessary to consider all these prayers because the main grievance of the petitioner-appellant is that he has not been permitted to engage a legal practitioner to defend his case. If this relief the petitioner is entitled to secure, the validity of Regulation 6(7) of the Central Bank of India Officer Employee's (Discipline and Appeal) Regulations, 1976 [hereinafter referred to as the "Regulations"] need not be considered. Similarly, the prayer No. (c) also need not be considered because it is open to the petitioner to put forth his say in that regard before the inquiring authority as well as before the disciplinary authority. Hence, we confine our Decision to the relief sought for by the petitioner that he should be permitted to engage a legal practitioner for defending his case. The disciplinary authority has refused to grant the permission to engage a legal practitioner under Regulation 6(7) of the Regulations, on the ground that in the facts and circumstances of the case, no such permission need be granted because the Presenting Officer is also not legally trained and he is without any legal attainment.

3. Regulation 6(7) of the Regulations reads thus:

"6(7) "The Officer employee, may take the assistance of any other officer employee but may not engage a legal practitioner for the purpose, unless the Presenting Officer appointed by the Disciplinary Authority is a legal practitioner or the Disciplinary Authority having regard to the circumstances of the case so permits."

From the aforesaid Regulation, it is clear that a discretion is vested in the disciplinary authority to grant or not to grant the permission having regard to the

circumstances of the case. The disciplinary authority has as already pointed out held that this is case in which no such permission need be granted because of the fact that the Presenting Officer is not legally trained.

4. We shall now see whether the aforesaid reasoning of the disciplinary authority in the circumstances of the case is proper and whether it can be said that in the circumstances of the case the disciplinary authority has exercised its discretion properly. This is a case in which the charge memo itself runs into 25 pages. We are also informed that the case involves more than 300 documents. When the charges run into 25 pages and the documents to be considered in the case are more than 300, it is not possible to agree with the disciplinary authority that in the circumstances of the case there is no necessity to permit the petitioner to engage a legal practitioner. In fact, Rule 7(5) of the Civil Services (Punishment & Appeal) Rules, containing more or less similar words came to be considered by the Supreme Court in J.K. Aggarwal Vs. Haryana Seeds Development Corporation Ltd. and others, in which it is held:

"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 "presenting 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 produce his defence before the enquiring officer. If the charge or charges are likely to result in the dismissal of the person from the service of the Governments, such person may, with the sanction of the enquiry officer, be represented by counsel.

(Underlining supplied)

The Supreme Court has observed that 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.

5. Therefore, in a case like this, where charges run into 25 pages and several hundreds of documents are involved in the case, we are of the view that it is not possible for the delinquent official who is not trained in law, to put forth his defence effectively without the assistance of a lawyer. Even though, in the instant case, the Presenting Officer is not trained in law, in the facts and circumstances of the case, we are of the view that the petitioner-appellant is entitled to have the assistance of a legal practitioner. As such, the disciplinary authority has not exercised its discretion properly and judiciously. Hence the Writ Petition is entitled to succeed. It is accordingly allowed. The order dated 1.10.1991 bearing No. RO:PRS:91-92/2018 (Annexure "R") issued by the 2nd respondent, is hereby quashed. All other contentions are left open. The enquiry shall now proceed from the stage at which it has been interrupted by the interim order. We

are of the view that even though the fresh enquiry was commenced in the year 1991, but it relates to the old case which started in the year 1982; therefore, we fix a time for completing the enquiry. Accordingly, we direct that the enquiry shall be completed before the end of June 1993.

6. In view of the order passed in the Writ Petition allowing the same, the Writ Appeal does not survive. It is accordingly dismissed.