

(2002) 12 AHC CK 0106
In the Allahabad High Court
Case No : C.M.W.P. No. 48308 of 2002

Latoori Singh

APPELLANT

Vs

Chairman, Aligarh Gramin Bank

RESPONDENT

Date of Decision : 03-12-2002

Acts Referred:

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

Citation : (2003) 1 AWC 7

Hon'ble Judges : S.N. Srivastava, J

Bench : Single Bench

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

Final Decision : Allowed

Judgement

S.N. Srivastava, J.—Denial of assistance of a law assistant to represent and defend the petitioner in the departmental enquiry has been the causative factor for knocking the door of this Court by means of the present petition. The petition on hand has been instituted for the relief of certiorari quashing the whole enquiry proceedings including charge-sheet contained in Annexures-5, 7 and 10 to the writ petition and the second relief, ostensibly as an alternative, is for a writ of mandamus commanding the respondent to allow the petitioner to appoint an independent defence representative (Sri R. P. Singh a Special Officer of Central Bank of India). Besides the above reliefs, the petitioner has also prayed for other ancillary reliefs.

2. The petitioner claims to be a non-gazetted officer. The precise indictment against the petitioner as contained in the charge-sheet is that he remained posted as Manager at Ladpur Branch and also at Khair Branch of the Bank and while posted as Manager at the aforesaid branches, he leagued with certain borrowers and granted fictitious loan in breach of the norms/guidelines prescribed by the Bank and thereby worked against the interest of the Bank. So far as first relief is concerned, at the very threshold-it is worth observing that

since enquiry proceedings are afoot and petitioner, indisputably, has an alternative remedy to represent his case before the enquiry officer or the Disciplinary authority, as the case may be, who alone can entertain the prayer for appropriate reliefs and the prayer for quashing the disciplinary proceedings and the charge-sheet being supererogatory at this stage, cannot be entertained and the petition to this extent is liable to be dismissed.

3. Learned counsel for the petitioner abandoned his contention in relation to first prayer and switched over to second prayer stating that in the departmental enquiry, he made an application attended with the prayer to permit the assistance of a law assistant to represent him before the enquiry officer which was declined. The substance of argument advanced across the bar by the learned counsel for the petitioner is that the enquiry officer, however, accorded permission to engage some colleague employee of the self-same Bank to represent and defend the petitioner in the enquiry. According to the learned counsel, the petitioner cannot be defended properly with the assistance of a colleague employee of the self-same Bank inasmuch as the enquiry has commenced at Headquarter and in the presence of senior officers including Chairman of the Bank, it is unlikely that the petitioner may be represented and defended properly by an employee of the Bank. He suggested that the petitioner might be permitted to engage some independent person to defend and represent him in the enquiry and named one R. P. Singh of Central Bank of India. To enforce his aforesaid submissions, the learned counsel called in aid the decisions in Bhagat Ram Vs. State of Himachal Pradesh and Others, Board of Trustees of the Port of Bombay Vs. Dilipkumar Raghavendranath Nadkarni and Others, and J.K. Aggarwal Vs. Haryana Seeds Development Corporation Ltd. and others,

4. In opposition, Sri Yashwant Verma appearing for the opposite parties contended that the right to engage defending representative does not consist in reasonable opportunity to defend and such right is contingent upon the Rules and Regulations governing the disciplinary proceeding. He further contended that Aligarh Gramin Bank (Officers and Employees) Service Regulations, 2000 do not envisage any provision to engage any defending representative from other Bank and, therefore, proceeds the submission, the petitioner's claim to engage Sri R. P. Singh from Central Bank of India to defend and represent him in the enquiry has no cutting edge and does not lend itself for acceptance. In aid of his contentions, reliance has been placed by the learned counsel on decisions in Indian Overseas Bank Vs. Indian Overseas Bank Officers' Association and Another, and Bharat Petroleum Corporation Ltd. Vs. Maharashtra General Kamgar Union and Ors,

5. I have heard learned counsel for the parties and considered their respective arguments in all their ramifications. Before examining the contentions of the learned counsel, it is necessary to have an acquaintance with the Aligarh Gramin Bank (Officers and Employees) Service Regulations, 2000 (hereinafter to be

abbreviated as Regulations). Proviso to Regulation 38 Part I being germane to the controversy involved In this petition is excerpted below :

"Provided that where it is proposed to impose any of the minor penalties specified in Sub-causes (i) and (iii) of Clause I of this Regulation, the officer concerned shall be informed in writing of the imputations of lapses against him and given an opportunity to submit his written statement of defence within a specified period not exceeding 15 days or such extended period as may be granted by the Competent Authority and the defence statement, if any, submitted by the officer shall be taken into consideration by the competent authority before passing orders :

Provided further that no order imposing any of the major 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 officer and enquiry held so that he shall have reasonable opportunity to answer the charge or charges and defend himself."

6. Proviso to Regulation 38, as excerpted above, crystallises that no order imposing any of the major penalties specified above shall be made except by an order in writing signed by a competent authority and no such order shall be passed without charge or charges being formulated in writing and given an opportunity to the officer and enquiry held so that he shall have reasonable opportunity to answer the charge or charges and defend himself. Regulation 43 also makes it clear that for the purpose of enquiry, the officer or employees shall not engage a legal practitioner without prior permission of the Competent Authority. Upon a cumulative reading of both the regulations, the intendment shielding the intention of the framers of the regulations would appear to be that in appropriate cases, engagement of legal practitioners can also be made but it has been hedged in with the condition of prior approval of the competent authority. In the present case, the prayer to engage legal practitioner has been noddod in disapproval by the competent authority. However, the enquiry officer has accorded permission to the petitioner to take assistance of some one from the self-same Bank to defend and represent him in the enquiry. Learned counsel for the petitioner did not mince words and articulated apprehension that the petitioner could not be defended properly If he employs the services of someone from the self-same Bank and it would amount to negation of reasonable opportunity of hearing to defend himself if engagement of Sri R. P. Singh from Central Bank of India to represent and defend him is denied to him. He further submitted that denial of engagement of an officer from other Bank is not prohibited under the relevant Rules. The argument appears to have substance particularly with due regard to the fact that in case engagement of a legal practitioner is not prohibited, who can well be compared in parity with a person proposed to be engaged by the petitioner in the instant petition, engagement of an officer from other Bank can be implied as being implicit in the regulations.

7. In the light of the above arguments, I now propose to go into the substantiality and ratio decidendi of the decisions cited in connection with the propositions advanced across the bar. Board of Trustees of the Port of Bombay Vs. Dilipkumar Raghavendranath Nadkarni and Others, ; Bhagat Ram Vs. State of Himachal Pradesh and Others, and J.K. Aggarwal Vs. Haryana Seeds Development Corporation Ltd. and others, are the sheet-anchor of the submissions made by the learned counsel for the petitioner. From a close scrutiny of the decisions aforesaid, it is explicitly clear that an employee has no right to representation in the departmental proceedings by any other person or a lawyer unless service rules specifically envisage so. Similar view finds its echo in a decision of the Apex Court in Indian Overseas Bank Vs. Indian Overseas Bank Officers' Association and Another, . In this case, the question that begged consideration of the Apex Court was whether in a domestic enquiry, employee has a right of representation by somebody else? The Apex Court held it not to be an absolute right in the absence of provisions in the relevant Rules and Regulations or Standing Orders as stated supra.

8. As discussed above, from a perusal of Regulation 43 of the regulations, intendment is very clear that in appropriate cases, employee has a right to be defended through a lawyer and the only restriction operating in the way is prior approval of the competent authority. If the regulation envisages that an officer can be defended through a lawyer also, the view is irresistible that in case the petitioner makes a prayer to engage some officer from a Bank other than the respondent Bank, who 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. In holding that the petitioner has a right to defend himself through a person belonging to the Bank other than the self-same Bank, I am swayed and influenced by the consideration as made by the Apex Court in para 5 in the case of Bhagat Ram v. State of H. P. (supra) and feel called to observe that the person chosen by the petitioner to defend and represent him belonging to other Bank would be fully and equally equipped with the knowledge of Banking Regulations and would be an effective person to defend the petitioner in the disciplinary proceeding. The vignette of observations made by the Apex Court in Board of Trustees of the Port of Bombay v. Dilipkumar Raghavendra-nath Nadkarni (supra), may be excerpted below for edification on the point involved in this case :

"In our view, we have reached a stage in our onward march to fair play 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 to defend himself and the essential principles of natural Justice would be violated."

9. In the above conspectus, I veer round to the view that Aligarh Gramin Bank (Officers and Employees) Service Regulations, 2000 does not prescribe engagement of any person from a Bank other than the respondent Bank.

10. As a result of the foregoing discussions, I converge to the view that the petitioner has a right to engage Sri R. P. Singh or any officer from Central Bank of India, Aligarh or any other Branch to defend and represent him in the enquiry which is already afoot. The petition is allowed in part, in terms of the above with no order as to costs.