

(1997) 04 MP CK 0001
In the Madhya Pradesh High Court
Case No : LPA No. 104 of 1996 (J)

Mahendra Kumar Jain

APPELLANT

Vs

Bank of Baroda and Others

RESPONDENT

Date of Decision : 27-04-1997

Acts Referred:

Citation : (1998) 2 MPJR 262

Hon'ble Judges : R.D. Shukla, J;J.G. Chitre, J

Bench : Division Bench

Advocate : B.C. Jain, for the Appellant; S.M. Dagaonkar, for the Respondent

Final Decision : Dismissed

Judgement

J.G. Chitre, J.

The appellant is hereby assailing the correctness, propriety and legality of the order which has been passed by the learned Single Judge in Misc. Petition No. 686 of 1988 whereby the said writ petition filed by the appellant was dismissed.

Few facts need to be stated for the purpose of unfolding the matter. It was alleged in a domestic enquiry held against appellant that in May, 1984, the complainant had paid a sum of Rs. 500/- to the appellant and further sum of Rs. 250/- was agreed to be paid to the appellant on 10.7.1984. The appellant was caught red-handed at his residence while demanding and accepting Rs. 250/- from the said complainant Sukhlal as bribe and powdered currency notes were recovered from the left side of upper pocket of the Bushshirt which the appellant was wearing at the relevant time. On the aforesaid charge an enquiry was held against the appellant and in the matter of that enquiry a charge-sheet was served on the appellant on 4.3.1985. During the course of said enquiry, the appellant prayed that he be permitted to take the assistance of a legal practitioner in the said enquiry by his letter dated 25.6.1986. Disciplinary Authority by order dated 11.7.1985 turned down his said request and informed the appellant that he was entitled to take assistance of another officer /

employee of the Bank and defend himself in departmental enquiry. The defence representative of the appellant also filed an application before the Disciplinary Authority through Enquiry Officer dated 6.8.1985 making a request that assistance of an advocate may be permitted to the appellant. That application was also rejected. The appellant did not challenge the said orders passed by the Disciplinary Authority by filing writ petition at that time. He participated in the said enquiry which was concluded. On 12.9.1986 the Enquiry Officer found that the allegation made against the appellant were proved. The Disciplinary Authority by order dated 2.3.1987 directed his dismissal from the service. The order dated 12.9.1986 passed by Disciplinary Authority (Annexure - K in the writ petition) and the order dated 2.3.1987 passed by the Appellant Authority (Annexure - M in the writ petition) were assailed by the appellant vide Misc. Petition No. 686/1988. The learned Single Judge dismissed the said writ petition.

Shri B. L. Jain, counsel for the appellant and Shri S. M. Dagaonkar for the Bank have been heard. None appeared for the other respondents.

Learned counsel Shri B. L. Jain appearing for the appellant in addition to the judgments dealt with by learned Single Judge in his order, placed reliance on the following judgments.

(i) Gadadhar Rambin Vs. Food Corporation of India & Ors. reported in 1989 (4) Service Law Report 724.

(ii) Janga Ravji Mali Vs. Smt. Nasrat Jahan Begam, 1982(1) SCC 270 and

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

In the matter of Gadadhar Rambin Vs. Food Corporation of India (supra) Division Bench of Calcutta High Court held that when the presenting officer was seasoned prosecutor, the charge against the appellant was quite serious entailing serious consequences which had in fact followed, the questions involved in the enquiry were complicated, the appellant should have been given assistance of a lawyer particularly in the context and the nature of charge and consequence thereof. Calcutta High Court disproved the short time which was granted to that appellant to prepare his defence. In the present matter, the presenting officer was not a lawyer and the record does not show that appellant was directed to prepare his defence within short span of time.

The judgment in the matter of Janga Ravi Mali Vs. Smt. Nasrat Jahanbegam & Others (supra) is irrelevant to the case before us. In the matter of J. K. Agrawal Vs. Haryana Seeds Development Corporation (supra) the Supreme Court held "that rule 7 (5) itself recognises, that where the charge are so serious as to entail a dismissal from service the inquiry-authority may permit the services of a lawyer to the delinquent employee. This rule vests of 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 or failure of justice and a denial of a real and reasonable opportunity for defence by reason of the

employee being petition against a presenting officer who is trained in law. Legal Adviser and a lawyer are 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 adviser." 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."

In the present matter, the order of the learned Single Judge does not show that the Enquiry Officer was assisted by a lawyer or the legal adviser who was specially trained. The appellant was permitted to have the assistance of an employee of his choice. He could have picked up an employee from others to defend him in the charge which was leveled against him. Thus, the ratio of the cases cited by the learned counsel for the appellant was not similar to one which was argued by the learned counsel for the appellant before the learned Single Judge. In the matter of C.L. Subramaniam Vs. Collector of Customs, Cochin, it was held by the Supreme Court that rule 15 was a mandatory rule and that regulated the guarantee given to the Government servants under Article 311 and the charge leveled against the said petitioner was serious. The Supreme Court considering the mandatoriness of the rule 15 held that rule 15 (5) has provided for representation of a Government Servant charged with dereliction of duty or with contravention" of rule by another Government Servant or in appropriate cases by legal practitioner. The counsel for the appellant wanted to canvass that the learned Single Judge did not consider the spirit of the said ratio and did not allow the writ petition holding that the appellant was entitled to be represented by legal practitioner and refusal of permission to do so resulted in injustice to him. He argued that in view of such injustice caused to him, the order of dismissal passed by the authority should be set aside by allowing the present appeal.

In the matter of Board of Trustees of the Port of Bombay Vs. Dilipkumar Raghavendranath Nadkarni and Others, the Supreme Court observed that "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." By placing reliance on the said observation, learned counsel for the appellant submitted that the learned Single Judge should have reached the conclusion that in the present case there was denial of justice by refusing the prayer of the appellant to be defended by legal practitioner. He argued that the learned single Judge should have set aside the said order of dismissal.

The learned Single Judge pointed out the observations of Supreme Court in the matter of Krishna Chandra Tandon Vs. The Union of India (UOI), for supporting his view that the appellant was not entitled under the rules to the assistance of an advocate during the course of enquiry, because all what the appellant had to

do in the course of enquiry was to defend himself from the charge of accepting the bribe from the said Sukhlal. The learned Single Judge quoted the said observations of Supreme Court in K. C. Tandon's case (supra) to justify his opinion that the said charge was not complex and the denial of representation by an advocate *epso facto* was not tantamounting to denial of reasonable opportunity to the appellant to defend himself.

In the matter of G. M. Subramaniam (supra) Rule 15 was held to be mandatory in nature and Rule 15 (5) regulating the said cause in the said case provided for representation of a Government servant by a legal practitioner. In the matter of Board of Trustees of the Port of Bombay (supra) delinquent officer was pitted against the legally trained mind and therefore, the refusal of his request to be defended through a legal practitioner was amounting to denial of reasonable opportunity to him was violation of the principles of natural justice.

The learned Single Judge has thus, considered all necessary facets of the matter which came before him for decision. The learned Single Judge held that the charge was not complex. From the order which is being assailed before us it appears that the charge leveled against the appellant was disclosing a case which was within the knowledge of the appellant. It shows that the charge was not aided by trained mind in legal profession.

After going through the record, it cannot be forgotten that the present appellant did not challenge the order passed by the Authority, rejecting his request for assistance by legal practitioner within time. He participated in the said enquiry till it was complete and the final report was ready. It indirectly means that appellant connived at so-called denial of right to be defended through legal practitioner. It can be also said that he waited for the favorable result of the said enquiry. Had the result of the said enquiry been favorable to him, the appellant would have kept mum. Only after the said report went against him, the appellant felt that his right to be defended by legal practitioner was denied and it resulted in denial of justice to him. Such attitude, conniving stance for waiting for favorable opportunity cannot be entertained when the person approaching the Court for relief is himself guilty of laches. His attitude of not putting challenge to said order of the authority within time has to be given proper weightage.

Besides that Letters Patent Appeal, is intra-court appeal. The appellant has to demonstrate that the order passed by learned Single Judge suffers from infirmity of impropriety, incorrectness and illegality and assumes the nature of perversity. The order under challenge is detailed one and all necessary aspects of the matter have been considered by learned Single Judge.

Thus, we come to the conclusion that the appeal deserves to be dismissed and is accordingly dismissed. No order as to costs.