
(1996) 07 RAJ CK 0016
In the Rajasthan High Court
Case No : Civil Writ Petition No. 4480 of 1995

M.L. Paladia

APPELLANT

Vs

Kendriya Vidyalaya Sangthan and Another

RESPONDENT

Date of Decision : 01-07-1996

Acts Referred:

Trade Unions Act, 1926 — Section 2

Citation : (1996) 3 RLW 562 : (1997) 2 WLC 644 : (1996) 2 WLN 178

Hon'ble Judges : V.K. Singhal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

V.K. Singhal, J.—The petitioner is working as Principal in Kendriya Vidyalaya Sangthan and is facing Department Enquiry on the basis of alleged misconduct of demanding Rs. 500/- as bribe from Sergeant Narendra Verma on 13.5.1991. In the present writ petition the grievance has been raised that the Disciplinary Authority has not permitted the petitioner to have the defence nominee of his choice. It is submitted that the Disciplinary Authority has permitted the employee of CBI as Presenting Officer. The prayer of the petitioner is that the respondents be directed to permit the petitioner to appoint a retired employee of the Government as his defence assistant or in the alternative it has been prayed that Suresh Kumar could not be allowed to be the Presenting Officer or the petitioner be permitted to engage a legally trained person or an advocate.

2. The respondent is a registered society and in accordance with the decision taken by it the Central Civil Services (Classification, Control & Appeal) Rules, 1965 have been adopted and it was provided that all the employees of Kendriya Vidyalayas, Regional Offices and the Headquarters of the Sangathan are subject to the disciplinary control of the Sangathan. It has been decided that the Central Civil Services (Classification, Control and Appeal) Rules, 1965 as amended from time to time will apply mutatis mutandis to all members of the staff of the Sangathan except when otherwise decided, and that the appointing, disciplinary

and appellate authority for the various posts will be as in the Appendix XIX. In the above Rules for the words "Government Servant whenever they occur, the words "member of staff of Kendriya Vidyalaya, Kendriya Vidyalaya Sangathan" were to be substituted. Initially Shri R.C. Sinha was appointed as Inquiry Officer. Thereafter, Shri J.C. Kardam was appointed as Inquiry Officer and then Shri J.C. Wadhawa, Superintendent (Adm.) KVS (RO) Jaipur was appointed as presenting officer on 25.5.1992 and on 28.3.1995 Suresh Kumar Sub Inspector, SPE/CBI Jodhpur was appointed as the Presenting Officer. The petitioner requested that Amar Singh, a retired Additional Superintendent of Police, be permitted to act as defence counsel in the inquiry. The petitioner was informed vide letter dated 9.8.95 that Shri Amar Singh cannot be permitted to be his defence counsel. A representation was again submitted on 14.8.95 that a legally trained person may be allowed to be appointed as his defence counsel which was also rejected on 12.9.95 Shri R.K. Jain Asstt. Commissioner, an employee of the Kendriya Vidyalaya Sangathan is the disciplinary authority and Suresh Kumar is presenting Officer who is an employee of SPE/CBI. It is submitted that the respondents have appointed legally trained persons and therefore, he should be entitled to be represented by an advocate. The action of the respondents that only a retired employee of the Central Government can be permitted to assist the petitioner is also challenged and it is also stated that the presenting officer is an employee of CBI and this act amounts to harrasment of the petitioner in the inquiry. It was also informed to the petitioner that the defence nominee should be a Kendriya Vidyalaya Sangathan employee, retired or in-service.

3. As per letter dated 5.12.1985 Kendriya Vidyalaya Sangathan has informed to all the Asstt. Commissioners that CCS (CCA) Rules, 1965 have been extended to all the employees of the Kendriya Vidyalaya Sangathan mutatis mutandis and wherever, the words "Government Servant" occure in these Rules, these may be interpreted to mean" an employee of the Kendriya Vidyalaya Sangathan", so the assistance of an employee belonging to the Kendriya Vidyalaya Sangathan only can be taken. Vide letter dated 13.2.1991 certain conditions have been imposed for appearance as defence assistants.

4. Reliance has been placed on the decision of the Apex Court in the case of C.L. Subramaniam v. The Collector of Customs, Cochin 1973(2) SLR 415, wherein it was observed by the Apex Court that if the disciplinary authority has appointed a legally trained person, though not a legal practitioner to present the case, the delinquent officer should not be refused to engage a legally trained person as it amounts to denial of reasonable opportunity. The provisions of Rule 15(5) of the CCA (CCA) Rules, 1961 were taken into consideration which provide that:

The Disciplinary Authority may nominate any person to present the case in support of the charges before the authority inquiring into the charges (hereinafter referred to as the Inquiring Authority). The Government servant may present his case with the assistance of any other 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 having is a legal practitioner or unless the Disciplinary Authority having regard to the circumstances of the case, so permits.

It was found that the appellant was pitted against a trained prosecutor. The grievance was not properly considered. In these circumstances, it was observed that when a man is charged with the breach of a rule entailing serious consequences, he is not likely to be in a position to present his case as best as it should be. The acquisition against the appellant threatened his very livelihood. Any adverse verdict against him was bound to be disastrous to him as it has proved to be. In such a situation he cannot be expected to act calmly and with delineration, and that is why Rule 15(5) has provided for representation of a Government Servant charged with dereliction of duty or with contravention of the rule by another Government servant or in appropriate cases by a legal practitioner.

5. Reliance has also been placed on the decision in the case of Board of Trustees of the Port of Bombay v. Dilip kumar Raghvendranath Nadkarni and Ors. 1983(2) SLR 464 where in an enquiry before a domestic tribunal the delinquent officer was pitted against a legally trained mind. It was observed by the Apex Court that if he seeks permission to appear through 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. Regulation 12(8) which was the subject-matter of interpretation in that case read as under:

12(8). The employee may take the assistant of any other employee, or, if the employee is a class III or a class IV employee, or an "Officer Bearer" as defined in clause" (d) of Section 2 of the Trade Unions Act, 1926 (16 of 1926) of the union to which he belongs to present the case on his behalf, but may not engage a legal practitioner for the purpose unless the said 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.

Then it was held by the Apex Court that reasonable opportunity to appear through legal practitioner should have been given and failure on their part to do has vitiated the inquiry.

6. The respondents have stated that as the initiation of the disciplinary action against the petitioner was the result of investigation made by the Special Police Establishment, Jodhpur, in terms of para 24.3 of Chapter X of the Vigilance Manual, Vol I (5th Edition), the disciplinary authority was required to request the SPE for a Presenting Officer and the formal appointment was to be made by the disciplinary authority after the SPE nominated an officer. Para 24.3 of chapter X of the Vigilance Manual reads as under:

24.3 In cases in which the initiation of disciplinary action is the result of investigation made by the Special Police Establishment, the disciplinary authority will request the SPE for a Presenting Officer. The formal appointment will be

made by the disciplinary authority after the SPE nominates an officer.

It is submitted that Shri Suresh Kumar Sub Inspector CBI was appointed as Presenting Officer in view of the above provision of the manual and he cannot be considered to be a legally trained person. Under Rule 14(8) it is provided that:

(8)(a) The Government Servant may take the assistance of any other Government Servant posted in any office either at his headquarters or at the place where the inquiry is held to present the case on his behalf, 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:

Provided that the Government servant may take the assistance of any other Government servant posted at any other station, if the inquiring authority having regard to the circumstances of the case, and for reasons to be recorded in writing so permits.

Note--: The Government servant shall not take the assistance of any other Government servant who has two pending disciplinary cases on hand in which he has to give assistance.

(b) The Government servant may also take the assistance of a retired Government servant to present the case on his behalf, subject to such conditions as may be specified by the President from time to time by general or special order in this behalf.

Under Rule 14(8) (a) Suresh Kumar cannot be considered to be a legal practitioner. In the case of C.L. Subramaniam (supra) a trained prosecutor was the presenting officer, while in the case of Dilip Kumar (supra) junior assistance legal adviser was the presenting officer. In both these cases these persons were dealing with legal work and an Inspector of the SPE/CBI cannot be considered to be at par with them. Besides this, the validity of Rule 14(8) is not under challenge before me and that rule permits only an employee of the Kendriya Vidyalaya Sangathan or a retired employee. In these circumstances, I do not feel that any illegality has been committed by the respondents in rejecting the request of the petitioner.

7. Consequently, the writ petition, has no force. It is hereby dismissed. It may however be observed that sufficient time has already lapsed, therefore, it is in the interest of justice that the disciplinary authority should decide the matter expeditiously preferably within a period of four months from today.