
(2025) 01 GAU CK 1563
In the Gauhati High Court
Case No : WP(C) Of 351 Of 2025

Prof. Guru Prasad Khataniar

APPELLANT

Vs

Gauhati Univdersity And 4 Ors

RESPONDENT

Date of Decision : 27-01-2025

Acts Referred:

Prevention of Corruption Act, 1988 — Section 7(a)
Assam Services (Discipline and Appeal) Rules, 1964 — Rule 9(5)

Citation : (2025) 01 GAU CK 1563

Hon'ble Judges : Michael Zothankhuma, J

Bench : Single Bench

Advocate : M K Choudhury, Anasuya C, M Sarma, P Bhardwaj

Final Decision : Dismissed

Judgement

Michael Zothankhuma, J

1. Heard Mr.M.K.Choudhury, learned Senior Counsel assisted by Mr. M.Sharma, learned counsel for the petitioner and Mr. P.J.Phukan, learned Standing Counsel, Gauhati University.

2. The petitioner's prayer in this writ petition is to direct the respondent No.2 to allow the petitioner to engage a Legal practitioner as a Defence Assistant in the departmental proceeding which has been initiated against him, vide Memorandum of Charge dated 23.10.2024.

3. The petitioner's counsel submits that the Inquiry Officer appointed by the Disciplinary authority, which is the Executive Council of the Gauhati University headed by the Vice-Chancellor, is a Retd. Indian Police Service (IPS) Officer, having a law degree and as such, it was imperative that the petitioner should be allowed to engage a legal practitioner as a Defence Assistant, to have a level playing field.

4. The petitioner's counsel has relied upon the judgment of the Supreme Court in

the case of Ramesh Chandra vs- Delhi University, reported in (2015) 5 SCC 549 and the case of J.K.Agrarwal –vs Haryana Seeds Development Corporation Ltd. & Ors reported in (1991) 2 SCC 283, in support of his submission that there is likelihood of the combat being unequal in the departmental proceeding, entailing in a miscarriage or failure of justice, besides denying a real and reasonable opportunity of defence to the petitioner. Accordingly, the petitioner/delinquent officer should be allowed to engage a legal practitioner as his Defence Assistant.

5. The petitioner's counsel submits that the petitioner had submitted a letter dated 16.01.2025 to the Inquiry Officer on the first day of the proceedings of the departmental proceedings i.e. on 16.01.2025. By the said letter, the petitioner informed the Inquiry Officer that he had engaged a legal practitioner as his Defence Assistant. However, the Inquiry Officer did not allow the petitioner to avail the assistance of Defence Assistant and instead the Inquiry Officer started examining three witnesses on the said day. The petitioner, however, did not cross-examine any witness on the said day. The petitioner's counsel submits that the next date of appearance of the petitioner before the Inquiry Officer in the Departmental Proceedings is fixed for 27.01.2025. He submits that unless the petitioner is allowed to avail the assistance of a legal practitioner as his Defence Assistant and allowed to cross-examine the witnesses, there is a likelihood of failure of justice.

6. Mr. P.J.Phukan, learned Standing Counsel for the Gauhati University, on the other hand, submits that the departmental proceeding has been initiated against the petitioner under the Assam Services (Discipline and Appeal) Rules, 1964 (hereinafter referred to as 'the 1964 Rules'). He submits that the right of the petitioner to avail the service of a Legal practitioner as his Defence Assistant would arise, only when the Presenting Officer appointed by the Disciplinary authority is a legal practitioner. He submits that no right accrues to the petitioner to avail the service of a legal practitioner when the Inquiry Officer is only having a law degree. In the present case, the Inquiry Officer is not a legal practitioner and only has a law degree. He also submits that Presenting Officer in the present case does not have a law degree and as such, no right accrues to the petitioner for availing the service of a legal practitioner as a Defence Assistant, in terms of Rule 9(5) of the 1964 Rules. In support of his submission, the learned counsel for the respondent University has relied upon the judgments of the Supreme Court in the case of J.K.Agrarwal (supra) and in the case of Cipla Ltd. & Ors –vs- Ripu Daman Bhanot & anr. reported in (1999) 4 SCC 188.

7. I have heard the learned counsels for the parties.

8. What is not denied by either of the parties is that a disciplinary proceeding has been initiated against the petitioner under the 1964 Rules, on the charge that the petitioner had accepted bribe money, in connection with ACB Case No.24/2022 under Section 7 (a) of the Prevention of Corruption Act, 1988.

9. What is also admitted by both the parties is the fact that the Inquiry Officer is

not a legal practitioner, but is a retired IPS Officer having a law degree. It is also admitted by both the parties that the Presenting Officer and the petitioner do not have a law degree.

10. In the case of J.K.Agarwal (supra) , the Supreme Court had considered the Haryana Civil Services (Punishment and Appeal) Rules, 1952, with regard to whether a delinquent officer could avail the services of a lawyer during the departmental proceeding. The Supreme Court, in paragraph 8, held that the Rule itself recognised that where the charges are so serious so as to entail a dismissal from service, the inquiry authority may permit the services of a lawyer.

It also held that the rule vests a discretion on the authority. Paragraph-8 of the above judgment is quoted herein below as follows:

"8. It would appear that in the inquiry, the respondent-Corporation was represented by its Personnel and Administration Manager who is stated to be a man of law. The rule itself recognises that where the charges are so serious as to entail a dismissal from service the inquiry authority may permit the services of a lawyer. This rule vests 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 reasons of the appellant being pitted 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. It is unnecessary, therefore, to go into the larger question "whether as a sequel to an adverse verdict in a domestic enquiry serious civil and pecuniary consequences are likely to ensue, in order to enable the person so likely to suffer such consequences with a view to giving him a reasonable opportunity to defend himself, on his request, should be permitted to appear through a legal practitioner" which was kept open in Board of Trustees of the Port of Bombay v. Dilipkumar [(1983) 1 SCR 828]. However, it was held in that 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 would amount to denial of a reasonable request to defend himself and the essential principles of natural justice would be violated...."

11. In the case of Cipla Ltd.& Ors. (supra), the Supreme Court referred to various Supreme Court decisions, wherein it was held that an employee had no right to be represented in the disciplinary proceedings by another person, unless the Service Rules specifically provided for the same. It was also held that the right to be represented by an advocate in the departmental proceedings can be

restricted and regulated by statutes or by the Service Rules including standing orders applicable to the employee concerned. Paragraph -13 of the judgment in Cipla Ltd. & Ors. (supra) is reproduced herein below as follows:

" 13. In N. Kalindi v. Tata Locomotive & Engg. Co. Ltd., it was held that a workman against whom a departmental Inquiry is held by the management has no right to be represented at such enquiry by an outsider, not even by a representative of his Union though the Management may in its discretion allow the employee to avail of such assistance. So also in Dunlop Rubber Co. (India) Ltd. v. Workmen, it was laid down that an employee has no right to be represented in the disciplinary proceedings by another person unless the Service Rules specifically provided for the same. A Three-Judge Bench of this Court in Crescent Dyes and Chemicals Ltd. vs. Ram Naresh Tripathi, laid down that the right to be represented in the departmental proceedings initiated against a delinquent employee can be regulated or restricted by the management or by the Service Rules. It was held that the right to be represented by an advocate in the departmental proceedings can be restricted and regulated by statutes or by the Service Rules including the Standing Orders, applicable to the employee concerned. The whole case-law was reviewed by this Court Bharat Petroleum Corpn. Ltd. v. Maharashtra General Kamgar Union and it was held that a delinquent employee has no right to be represented by an advocate in the departmental proceedings and that if a right to be represented by a co-workman is given to him, the departmental proceedings would not be bad only for the reason that the assistance of an advocate was not provided to him."

12. In the case of Ramesh Chandra (supra), the Supreme Court referred to various judgments including the judgment in the case of J.K. Agarwal (supra) and held in paragraph -70 that if any person who is or was a Legal practitioner, including a retired Hon'ble Judge appointed as an Inquiry officer in an inquiry, initiated against an employee, the denial of assistance of a legal practitioner to the charged employee would be unfair.

13. In the judgment of the two Judges Bench in the case of Ramesh Chandra (supra), the relevant Disciplinary/Service Rules has not been mentioned, so as to clarify who can or cannot be appointed as a Defence Assistant. It only states that if a legal practitioner or a retired Judge is appointed as an Inquiry officer, then the delinquent officer can also appoint a legal practitioner as his Defence Assistant.

14. In the case of Crescent Dyes and Chemical Ltd vs- Ram Naresh Tripathi, reported in (1993) 2 SCC 115, which has been delivered by a three judges bench, it has been laid down that the right to be represented in a departmental proceeding initiated against a delinquent officer, can be regulated or restricted by the management or by the Service Rules. It also categorically held that the right to be represented by an advocate in a departmental proceeding can be restricted and regulated by Statutes or the Service Rules, including standing orders applicable to the employee concerned.

The extract of paragraph-17 of the above judgment in Crescent Dyes and Chemical Ltd (supra) is reproduced below as follows:

"17. It is, therefore, clear from the above case law that the right to be represented through counsel or agent can be restricted, controlled or regulated by statute, rules, regulations or Standing Orders. A delinquent has no right to be represented through counsel or agent unless the law specifically confers such a right. The requirement of the rule of natural justice insofar as the delinquent's right of hearing is concerned, cannot and does not extend to a right to be represented through counsel or agent."

15. In the present case, it is the stand of both the parties that Rule 9(5) of the 1964 rules is applicable to the petitioner. Rule 9 (5) of the 1964 Rules states as follows:

"9(5) 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 as aforesaid is a legal practitioner or unless the Disciplinary Authority, having regard to the circumstances of the case so permits."

16. As can be seen from the provisions of Rule 9(5) of the 1964 Rules, the disciplinary authority may nominate any person to be the Presenting Officer, to present the case of the Disciplinary Authority before the Inquiry officer. The second part of Rule 9(5) of the 1964 Rules provides that the charged 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 that purpose, unless the Presenting Officer is a legal practitioner or unless the Disciplinary Authority, having regard to the circumstances of the case so permits. The second part of Rule 9(5) of the 1964 Rules clearly shows that a delinquent officer can avail the service of a Legal practitioner as a Defence Assistant, only if the Presenting Officer is a legal practitioner.

17. There is however a sub-text (third part) to the second part of Rule 9(5) of the 1964 Rules, which is to the following effect :

"or unless the disciplinary authority, having regard to the circumstances to the case so permits".

On a careful reading of the sub-text, this Court is of the view that the same cannot be read out of context vis-a-vis the other parts of Rule 9(5). The sub-text has to be read narrowly and within the context of Rule 9(5). Issues not related to the other parts of Rule 9(5) cannot be read into the sub-text and as such, the

sub-text would have to read in conjunction with the other qualification/profession of a Presenting Officer and not otherwise. This would give a proper meaning to the sub-text by way of harmonious construction of the different parts of Rule 9(5). Thus the sub-text would have to be analogous to the other parts of Rule 9(5) of the 1964 Rules, i.e. it would have to be read in relation to a Presenting Officer and not the Inquiry officer.

18. The only ground taken by the petitioner to have a legal practitioner as his Defence Assistant, is that the Inquiry Officer nominated by the Disciplinary

Authority, is an ex-IPS Officer having a law degree.

19. This court is of the view that a legal practitioner is different from a person having a law degree. All legal practitioners i.e. lawyers are required to have a law degree. However, all law degree holders need not be legal practitioners/ lawyers. A person having law degree may be a practising doctor or a civil servant. He can also be a businessman or have any other profession, which is not associated with legal practice.

20. As stated earlier, Rule 9 (5) of the 1964 Rules allows a charged officer to avail the assistance of a Legal practitioner as a Defence Assistant, only in the event the Presenting Officer is a legal practitioner. Rule 9 (5) does not contemplate or allow for a legal practitioner to be a Defence Assistant when the Inquiry Officer is a legal practitioner or a law degree holder. The sub-text (third part) of Rule 9(5) would also have to read in relation to a Presenting Officer and not an Inquiry Officer. Thus, the prayer of the petitioner for availing the assistance of a legal practitioner as a Defence Assistant, only because the Inquiry Officer is an ex-IPS officer having a law degree, is barred by Rule 9 (5) of the 1964 Rules. It is also noticed that the judgment of the three Judges bench in *Crescent Dyes and Chemical Ltd (supra)* was not taken into consideration by the two judges bench in the case of *Ramesh Chandra (supra)*, wherein it held that when an Inquiry Officer was a Legal practitioner or a retired Judge, the denial of assistance of a legal practitioner to the charged officer would be unfair. The decision in *Ramesh Chandra (supra)* can thus be considered to be per incuriam . In any event, the decision of the three judges bench in *Crescent Dyes and Chemical Ltd (supra)* would have to take precedence over the judgment of the two judges' bench. As there is no challenge made to Rule 9 (5) of the 1964 Rules and as the petitioner's right to be represented in a departmental proceeding has been regulated and restricted by the 1964 Rules, the petitioner does not have any right to claim the assistance of a legal practitioner as Defence Assistant, only because the Inquiry Officer is having a law degree. The above being said, in the event the petitioner has not been able to cross-examine the three witnesses on 16.01.2025, the I.O. should consider giving an opportunity to the petitioner to cross-examine the witnesses in the departmental proceeding.

21. In view of the reasons cited above, this court does not find any ground to allow the writ petition. The writ petition is accordingly dismissed.