
(2014) 08 MAD CK 0150

In the Madras High Court

Case No : Writ Petition No. 2659 of 2014

S. Jayavelu

APPELLANT

Vs

Central Administrative Tribunal

RESPONDENT

Date of Decision : 25-08-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 21, 22, 22(3)(b), 22(4)(b)

Citation : (2014) 7 MLJ 287

Hon'ble Judges : V. Dhanapalan, J;G. Chockalingam, J

Bench : Division Bench

Judgement

V. Dhanapalan, J.—Heard Mr. Balan Haridas, learned counsel for the petitioner and Mr. V. Vijayashankar, learned counsel appearing for respondents 2 and 3. Seeking to quash the order of the 1st respondent - Central Administrative Tribunal (CAT), dated 22.01.2014 in O.A. No. 1695 of 2013 and for a consequential direction to the 2nd and 3rd respondents to conduct enquiry in respect of the charge memo dated 30.10.2012 bearing No. TB/PDY/ADM/VIG/S.J.VELU/2012 after permitting him to engage a legal practitioner to assist him in the enquiry, the petitioner has come up with this Writ Petition.

2. Facts leading to the filing of this case are as follows:

2.1. The petitioner joined the services of the 2nd respondent - Employees Provident Fund (EPF) Organization on 19.01.1978 as a Lower Division Clerk (LDC). In the course of time, he gained promotion to the post of Upper Division Clerk (UDC), Senior Assistant and Section Supervisor. During the year 2010, he was working in the office of the Regional Provident Fund Commissioner, Royapettah, Chennai, as Section Supervisor.

2.2. On 10.05.2010, based on a false complaint, the Central Bureau of Investigation (CBI) implicated the petitioner in a false case as if the petitioner demanded and accepted bribe of Rs. 5,000/-, pursuant to which, the petitioner was placed under suspension on 11.05.2010. Thereafter, the order of suspension

was revoked and he was reinstated on 01.11.2010 and posted as Section Supervisor in the Sub-Regional Office, Puducherry. The CBI initiated criminal proceedings against the petitioner and the same was taken on file as C.C. No. 25 of 2010 by the XIV Additional City Civil Court, Chennai (CBI Court), in which, by a judgment dated 10.10.2013, punishment of one year Rigorous Imprisonment was imposed. Challenging the said judgment, the petitioner preferred an appeal before this Court in Criminal Appeal No. 721 of 2013, whereby, the punishment imposed on the petitioner was suspended.

2.3. While so, the 2nd respondent issued a Charge Memo dated 30.10.2012. The allegation in the charge memo as also the criminal proceedings rest on the same set of facts. The documents and witnesses are also same. On receiving the charge memo, the petitioner gave an explanation dated 22.01.2013 denying the charges levelled against him. He also made a representation dated 20.06.2013 to drop the charges. However, the 2nd respondent decided to proceed with the enquiry in respect of the charge memo dated 30.10.2012 and nominated the 3rd respondent as the Inquiry Officer.

2.4. In the criminal proceedings, the petitioner had the assistance of a legal practitioner, through whom he was able to cross-examine the witnesses and demonstrate as to how the allegations levelled against him are not correct. The witnesses who have been examined in the criminal proceedings are cited as witnesses in the departmental enquiry proceedings. The witnesses so relied upon by the Department are three Inspectors of Police - CBI; Sub-Inspector of Police - CBI; two Police Constables-CBI; Office Superintendent - CPWD; Travelling Ticket Examiner - Southern Railways; Accountant of one S.S. Annamalai Enterprises, etc. Therefore, to cross-examine those witnesses in reference to the documents relied upon by the Department, the petitioner requires the assistance of a legal practitioner to effectively defend him. In such circumstances, the petitioner made representations dated 14.11.2013 and 21.11.2013 to the 2nd respondent seeking permission to avail the assistance of a legal practitioner. Unfortunately, the 2nd respondent by an order dated 27.11.2013 rejected the petitioner's request on the ground that the Presenting Officer is not a legal practitioner and that the Departmental Enquiry is not court proceedings requiring legal expertise. The said order was received by the petitioner on 30.11.2013.

2.5. In the meanwhile, the 3rd respondent commenced the enquiry by examining one Mr. N. Annavu (P.W. 1) and the petitioner was compelled to cross-examine the said witness. Thereafter, one Mr. N. Shantharam was examined-in-chief and the enquiry was adjourned to 29.11.2013 for continuation of chief-examination and for cross-examination. On 29.11.2013, the petitioner was again compelled to cross-examine P.W. 2. The petitioner made it clear that he is participating in the enquiry under protest and doing cross-examination, as he was not extended the assistance of a legal practitioner. The Inquiry Officer and the 2nd respondent have also not stated that the petitioner can have defence assistance of his choice viz. having the assistance of a co-employee or retired employee of the

Department. The enquiry, as such, was being conducted in a hasty manner. Only in such circumstances, the petitioner could not cross-examine P.Ws. 1 and 2 effectively and as such, he does not have any expertise in conducting domestic enquiry proceedings.

2.6. In such circumstances, the petitioner approached the 1st respondent Tribunal challenging the order of the 2nd respondent dated 27.11.2013 by filing O.A. No. 1695 of 2013. During the pendency of the Original Application, it was orally assured that the enquiry will not go on till the Original Application is finally decided. On that basis, the enquiry was not conducted. Now, that the 1st respondent Tribunal has passed the order dated 22.01.2014 dismissing the said Original Application, having no other efficacious alternative remedy, the petitioner is before this Court.

3. Respondents 2 and 3 have filed counter affidavit contending that the petitioner is neither entitled to the main relief nor the interim relief sought for. They would submit that by an order dated 11.05.2010, the petitioner was placed under suspension pursuant to the arrest and criminal case registered by the CBI. The Trial Court, by its judgment dated 10.10.2013 convicted the petitioner herein to undergo Rigorous Imprisonment for a period of one year also to pay a fine of Rs. 5,000/-, against, which he preferred a Criminal Appeal before this Court in Criminal Appeal No. 721 of 2013. At this juncture, respondents would mention that the order of conviction has not been stayed by this Court. On 30.10.2012, the 2nd respondent herein issued a charge memo containing the Article of charge for violation of the Conduct Rule. On denial of charge by the petitioner, the Inquiry Officer and the Presenting Officer were appointed to go into the charges. Though the petitioner wanted to engage a lawyer to assist him in the enquiry, the said request was rejected by the disciplinary authority and the same was conveyed to the petitioner. Pursuant to the decision of the disciplinary authority disallowing the petitioner's request, the petitioner had participated in the enquiry and further cross-examined two departmental witnesses. When the enquiry was subsequently adjourned for the examination of other witnesses, the petitioner approached the 1st respondent Tribunal in O.A. No. 1695 of 2013, which was dismissed by an order dated 22.01.2014, against which the present Petition is filed.

3.1. It is further stated in the counter that the petitioner, who was working as Section Supervisor was caught red-handed on 10.05.2010 while demanding and accepting an illegal gratification of Rs. 5,000/- from the complainant. Pursuant to the trap laid by the CBI, the petitioner was arrested and a criminal case was filed against him by the CBI. The XIV Additional Special Judge for CBI cases, by his judgment dated 10.10.2013 in C.C. No. 25/2010, found the petitioner guilty of charges and imposed a punishment of Rigorous Imprisonment for a period of one year together with a fine of Rs. 5,000/-, Admittedly, even according to the petitioner, in the appeal preferred by him in Criminal Appeal No. 721/2013, only the punishment has been suspended and the conviction has not been stayed.

3.2. Referring to Rule 19 of the CCS (CCA) Rules, respondents would submit that the said Rules are applicable to the PF Organization read with EPF Staff (CCA) Rules, 1971 and EPF (Staff & Conditions of Service) Regulations provides that in the case of an employee who has been convicted by the criminal court, the disciplinary authority has got powers to impose penalty after giving an opportunity to the convicted person to make representation on the penalty proposed to be imposed. Further, Rule 10(8A) of EPF Staff (CCA) Rules, 1971 enables the employee to take the assistance of any other employee or government servant posted in any office either at his Headquarters or at the place where the enquiry is held to present the case on his behalf. But the same Rule prohibits engagement of a legal practitioner for the said purpose unless the Presenting Officer appointed by the disciplinary authority is a legal practitioner. Hence, according to the respondents, the petitioner as a matter of right cannot insist for engaging an Advocate to assist him in the enquiry, as law is well settled in this aspect and the request of the petitioner is nothing but to drag on the enquiry.

3.3. Further it is stated that the charges levelled against the petitioner is for violation of Conduct Rule and incidentally the witnesses happens to be the same witnesses, who were examined in the criminal case. The Supreme Court has categorically held in various cases that denial of request for engaging a legal practitioner will not amount to violation of principles of natural justice when the Rule provisions are very clear. Moreover, the Presenting Officer is not a legal practitioner or a person having legal background. As such, denial of legal assistance to the petitioner is as per the service rules and no violation as alleged by him had taken place.

3.4. Pursuant to the rejection of petitioner's request to engage a legal practitioner, the petitioner attended the enquiry on 28.11.2013. On the said date, P.W. 1 was examined and also cross-examined by the petitioner. Due to paucity of time, the evidence of P.W. 2 was adjourned to 29.11.2013. On the said date, P.W. 2 was also cross-examined by the petitioner in a detailed manner. As Rule 10(8A) permits the petitioner to take assistance of any other employee or Government Servant as his defence assistant, the same was informed to the petitioner by the 3rd respondent vide his letter dated 27.05.2013, which was delivered to him vide postal acknowledgement dated 05.06.2013. However, knowing the rule position pretty well, the petitioner has been insisting for an Advocate to be his defence assistant.

3.5. Rule 10(8A) of EPF Staff (CCA) Rules prohibits the equivalent from engaging a legal practitioner unless the Presenting Officer is an Advocate or a Legal Practitioner. In view of the categorical rule position and the well settled legal position, the petitioner is not entitled to the assistance of an Advocate. The respondents would contend that the intention of the petitioner is to drag on the enquiry to the maximum level in spite of conviction passed by the Trial Court. Further, the respondents would submit that the judgments relied on by the

Tribunal are to the point and placing reliance on the same, the Tribunal had correctly dismissed the Original Application. In fact, a perusal of the cross-examination done by the petitioner in the present case would go to show that he is capable of managing his case without any assistance.

On the above grounds, respondents seek dismissal of the Writ Petition.

4. Mr. Balan Haridas, learned counsel for the petitioner, taking aid of the proviso to Rule 10(8A) of the EPF Staff (CCA) Rule, 1971, would strenuously contend that the 1st respondent Tribunal ought to have held that the petitioner is entitled for a legal practitioner as defence assistance in the departmental proceedings. When the Rule permits the Department to avail the assistance of a legal practitioner to act as a Presenting Officer, the 2nd respondent cannot object the petitioner to avail such assistance. He would further add that when the charges levelled against the petitioner are resting on complicated facts, which require the petitioner to avail the assistance of a legal practitioner to defend the same effectively, the 1st respondent Tribunal has erroneously dismissed the Original Application. It is also the contention of the learned counsel that the 2nd respondent had proceeded with the enquiry in a hasty manner.

5. In support of his case, learned counsel for the petitioner has relied on the following decisions:

(i) C.L. Subramaniam Vs. Collector of Customs, Cochin,

"4. The appellant personally argued his appeal. He challenged the validity of the order removing him from service on various grounds. As we are of the opinion that the appellant had not been afforded reasonable opportunity to present his case and consequently the impugned order has to be struck down, we do not think it necessary to examine other contentions advanced by the appellant.

6. Removal from service is a major penalty. Procedure for imposing major penalties is prescribed in Rule 15 of the Central Civil Services (Classification, Control and Appeal) Rules, 1957, a rule framed under Article 309 of the Constitution. Sub-rule (5) of that rule provides:

"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 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."

14. The grievance of the appellant was that he was pitted against a trained prosecutor and not that Sivaraman was a legal practitioner. The Disciplinary Authority did not consider that grievance. It brushed aside the request of the appellant on the ground that Sivaraman was not a legal practitioner, a

consideration which was not relied on by the appellant. The grounds urged by the appellant in support of his request for permission to engage a legal practitioner were by no means irrelevant. The fact that the case against the appellant was being handled by a trained prosecutor was a good ground for allowing the appellant to engage a legal practitioner to defend him lest the scales should be weighed against him. The Disciplinary Authority completely ignored that circumstance. Therefore, that authority clearly failed to exercise the power conferred on it under the rule. It is not unlikely that the Disciplinary Authority's refusal to permit the appellant to engage a legal practitioner in the circumstances mentioned earlier had caused serious prejudice to the appellant and had amounted to a denial of reasonable opportunity to defend himself."

(ii) Board of Trustees of the Port of Bombay Vs. Dilipkumar Raghavendranath Nadkarni and Others,

"7. The narrow question which we propose to examine in this appeal is whether where in a disciplinary enquiry by a domestic tribunal, the employer complaining misconduct appoints legally trained person as Presenting-cum-Prosecuting Officer the denial or refusal of a request by the delinquent employee seeking permission to engage a legal practitioner to defend him at the enquiry, would constitute such denial of reasonable opportunity to defend one self and thus violate one of the essential principles of natural justice which would vitiate the enquiry?

9. We concern ourselves in this case with a narrow question whether where in such a disciplinary enquiry by a domestic tribunal, the employer appoints Presenting-cum-Prosecuting Officer to represent the employer by persons who are legally trained, the delinquent employee, if he seeks permission to appear and defend himself by a legal practitioner, a denial of such a request would vitiate the enquiry on the ground that the delinquent employee had not been afforded a reasonable opportunity to defend himself, thereby vitiating one of the essential principles of natural justice.

11. Are we charting a new course? The answer is obviously in the negative. In C.L. Subramanian v. Collector of Customs, Cochin 1912-I-LLJ-465 a Government employee requested the Enquiry Officer to permit him to appear through a legal practitioner and even though a trained public prosecutor was appointed as Presenting Officer, this request was turned down. When the matter reached this Court, it was held that the enquiry was in breach of the principles of natural justice. The order of the domestic tribunal was sought to be sustained on the submission that sub-rule 5 of rule 15 of the Central Civil Services (Classification, Control and Appeal) Rules, 1957 that".

The Government Servant may present his case with the assistance of any 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.

The submission was that it is a matter within the discretion of the Enquiry Officer whether to grant permission and more so because the relevant rule fetters the claim to appear through a legal practitioner. Negating this contention, this Court held that the fact that the case against the appellant was being handled by a trained prosecutor was by itself a good ground for allowing the appellant to engage a legal practitioner to defend him lest the scales should be weighted against him. This conclusion was recorded after reference to the earlier decisions in *Brooke Bond India (Pvt.) Ltd. v. Subba Ramman (S) and Another and Dunlop Rubber Co. v. Workmen*. Reference was made to *Pet's* case, referred to earlier, but it is observed that this case has not commended itself to this Court. The earlier cases of this Court were distinguished. 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. This view has been taken by a learned Single Judge and while dismissing the appeal in limine approved by the Division Bench of the High Court commends to us. Therefore, this appeal is liable to be dismissed."

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

"7. In the present case, the matter is guided by the Provisions of Rule 7(5) of the Haryana Civil Services (Punishment and Appeal) Rules, 1952 which says:

"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 government. Such person may, with the sanction of the enquiry officer, be represented by counsel."

(emphasis supplied)

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 recognizes 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 a 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. However, it was held in that case (SCC p. 132, para. 12)

"... 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...."

10. The question remains as to the manner of remedying the situation. Some circumstances require to be noticed in this behalf. The inquiry was proceeded with and as many as 13 witnesses have been examined. The examination-in-chief as well as such cross-examination as the appellant himself attempted are on record. They shall remain part of the record. The examination-in-chief of these witnesses is not vitiated by reason alone of the circumstance that the appellant did not then have the assistance of a lawyer to cross-examine them. The situation could be remedied now by tendering the witnesses for further cross-examination by a lawyer to be engaged by the appellant. In order that further protraction of the inquiry proceedings is avoided we required the appellant to state the names of the witnesses he wants to be so tendered for further cross-examination. Appellant has filed a list of eight such witnesses, viz. J.L. Sah Thulgharia, Production Manager; Joginder Singh, Senior Scale Stenographer; D.M. Tyagi, Executive Engineer; Vakil Singh, Ex-Driver; B.P. Bansal, Chief Accounts Officer; Randhir Singh, Manager (Personnel) and R.S. Malik, Ex-Managing Director. The further proceedings of the inquiry shall be commenced on October 20 and continued from day to day."

(iv) Indian Airlines Corporation and Another Vs. N. Sundaram,

"7. It is true that the principles of natural justice may come into play when the statute or statutory rules are silent as to the procedure; and no statutory provision or statutory rule can be struck down where it makes a provision excluding application of principles of natural justice. But this principle cannot be viewed in the abstract and the endeavour must be to find out as to how far and in what manner the statutory provision or statutory rule could be stated to have excluded the application of the principles of natural justice. Despite the absence

of any standing order enabling the corporation to avail of the services of a presenting officer and that too a legally qualified and trained one, the corporation did not avail of such services. In that context, there cannot be a denial of a facility on par with the facility availed of by the corporation, to the employee. How even a constitutional inhibition with regard to availing of the services of a legal practitioner in the case of a person arrested and detained under any law providing for preventive detention as per Article 22(3)(b) could not be put forth to abrogate the principles of natural justice; when the detaining authority is trying to gain an advantage over the detenu, while justifying the detention orders before the Advisory Board by engaging a legal practitioner and the same facility is being denied to the detenu, has been succinctly dealt with in the pronouncement of A.K. Roy and Others Vs. Union of India (UOI) and Others, . The relevant passage in para. 94 of the pronouncement runs thus:

"We must therefore, held, regretfully though, that the detenu has no right to appear through a legal practitioner in the proceedings before the Advisory Board. It is, however, necessary to add an important caveat. The reason behind the provisions contained in Article 22(4)(b) of the Constitution state is that a legal practitioner should not be permitted so appear before the Advisory Board for any party. The Constitution does not contemplate that the detaining authority or the Government should have the facility of appearing before the Advisory Board with the aid of a legal practitioner but that the said facility should be denied to the detenu. In any case, that is not what the Constitution says and it would be wholly inappropriate to read any such meaning into the provisions of Article 22. Permitting the detaining authority or the Government to appear before the Advisory Board with the aid of a legal practitioner or a legal adviser would be in breach of Article 14, if a similar facility is denied to the detenu. We must therefore make it clear that if the detaining authority or the Government takes the aid of a legal practitioner or a legal adviser before the Advisory Board, the detenu must be allowed the facility of appearing before the Board through a legal practitioner."

8. The anxiety and vigil of the Court must be to keep the balance and not to countenance the bringing in and perpetuation of an imbalance in the conduct of disciplinary proceedings. By any act of the employer, the employee should not be put to disadvantage in the conduct of the disciplinary proceedings. That is the cardinal rule that must prevail and guide and there cannot be prosecution of disciplinary proceedings in derogation thereof."

(v) Chairman and Managing Director, Hindustan Teleprinters Limited v. M. Rajan Issac, CDJ 2005 MHC 691 : LNIND 2004 MAD 1785.

"10. The question still remains is as to whether in the absence of any rule the workman or officer, as the case may be, would be entitled to the assistance of a lawyer when such workman or officer is pitted against a legally trained person. This issue came up for consideration in "C.L. Subramaniam v. Collector of Customs, Cochin (supra)". While considering the grievance of the appellant

therein that his request for assistance of a lawyer was rejected even when he was pitted against a legally trained prosecutor, the Supreme Court has observed as follows:

"The grounds urged by the appellant in support of his request for permission to engage a legal practitioner were by no means irrelevant. The fact that the case against the appellant was being handled by a trained prosecutor was a good ground for allowing the appellant to engage a legal practitioner to defend him lest the scales should be weighed against him. The Disciplinary Authority completely ignored that circumstance. Therefore, that authority clearly failed to exercise the power conferred on it under the rule. It is not unlikely that the Disciplinary Authority's refusal to permit the appellant to engage a legal practitioner in the circumstances mentioned earlier had caused serious prejudice to the appellant and had amounted to a denial of reasonable opportunity to defend himself."

The said observation was made by the Supreme Court taking into consideration the fact as to whether the officer was given a reasonable opportunity to defend himself in accordance with sub-rule (5) of Rule 15 of the Central Civil Services (Classification, Control and Appeal) Rules, 1957 which provided that the government servant may not engage a legal practitioner for the purpose mentioned in that clause unless the disciplinary authority having regard to the circumstances of the case so permits. The Supreme Court while distinguishing the law laid down in *Kalindis case*, *Brooke Bond India (Private) Ltd. case* and in *Dunlop Rubber Co. Ltd. case* has held in paragraph 17 as follows:

"The learned counsel for the State relied on the decisions mentioned above in support of his contention that the appellant was not entitled to have the assistance of a legal practitioner. This contention is without force. In those cases this Court considered whether a person proceeded against in an enquiry before a domestic tribunal had a right to be represented by someone else on the basis of the principles of natural justice. Therein this Court was not called upon to consider either the limits of the reasonable opportunity to defend oneself, guaranteed under Article 311 or the scope of a statutory rule. The question that falls for decision in this case did not arise for decision in those cases."

(vi) *M. Shahul Hameed Vs. The Managing Director and The Chairman, Board of Directors, The Tamil Nadu Industrial Investment Corporation Ltd.*

"11(c). The question still remains is as to whether in the absence of any rule the workman or officer, as the case may be, would be entitled to the assistance of a lawyer when such workman or officer is pitted against a legally trained person. The Supreme Court observed that the grounds urged by the appellant in support of his request for permission to engage a legal practitioner were by no means irrelevant. The fact that the case against the appellant was being handled by a trained prosecutor was a good ground for allowing the appellant to engage a legal practitioner to defend him lest the scales should be weighed against him.

The Disciplinary Authority completely ignored that circumstance. Therefore, that authority clearly failed to exercise the power conferred on it under the rule. It is not unlikely that the Disciplinary Authority's refusal to permit the appellant to engage a legal practitioner in the circumstances mentioned earlier had caused serious prejudice to the appellant and had amounted to a denial of reasonable opportunity to defend himself. After considering the various decisions in Brooke Bond India (Private) Ltd. case, Dunlop Rubber Co. Ltd. case, Board of Trustees of Port of Bombay's case and S.L. Kapoor's case, the Supreme Court has ultimately ruled that it is therefore, a moot point whether or not the presenting officer was trained in the legal discipline. In any event, having put in not less than 20 years of service in the personnel department of private sector undertakings, it cannot be validly claimed that he was not legally trained. Ultimately, the ruling is that a vague answer is neither a proper nor an adequate reply in disproof of the specific allegation and therefore the allegation remains unanswered and must consequently be accepted in the absence of any cogent reply. In the absence of specific denial, the claim of the respondent that he was pitted against a legally trained person who is familiar with the procedures of the domestic enquiry including the legal consequences thereof should be accepted. In the absence of such expertise by the officer, the denial of assistance of a legally trained person would render the disciplinary proceedings vitiated. Therefore, the order of termination passed against the petitioner on the said enquiry fails. This principle has been accepted and ruled by the Supreme Court after taking into account its earlier decision."

6. On the other hand, Mr. V. Vijayashankar, learned counsel appearing for respondents 2 and 3 would submit that the Presenting Officer is not a legal practitioner or a person having a legal background and as such, the denial of legal assistance to the petitioner is as per the service rules and no violation as alleged by the petitioner had taken place. Referring to Rule 10(8A) of EPF Staff (CCA) Rules, 1971, he would submit that the proviso therein enables the employee to take the assistance of any other employee or government servant posted in any office either at his Headquarters or at the place where the enquiry is held to present the case on his behalf. It is his contention that knowing the rule position pretty well, the petitioner has always been insisting for an Advocate as a defence assistance, so as to drag on the enquiry.

7. To substantiate his stand, learned counsel appearing for respondents 2 and 3 has relied on the following decisions:

(i) Crescent Dyes and Chemicals Ltd. Vs. Ram Naresh Tripathi,

"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. In the instant case the delinquent's right of representation was regulated by the Standing Orders which permitted a clerk or a workman working with him in the same department to represent him and this right stood expanded on Sections 21 and 22(h) permitting representation through an officer, staff-member or a member of the union, albeit on being authorised by the State Government. The object and purpose of such provisions is to ensure that the domestic enquiry is completed with despatch and is not prolonged endlessly. Secondly, when the person defending the delinquent is from the department or establishment in which the delinquent is working he would be well conversant with the working of that department and the relevant rules and would, therefore, be able to render satisfactory service to the delinquent. Thirdly, not only would the entire proceedings be completed quickly but also inexpensively. It is, therefore, not correct to contend that the Standing Order or Section 22(ii) of the Act conflicts with the principles of natural justice."

(ii) Bharat Petroleum Corporation Ltd. Vs. Maharashtra General. Kamgar Union and Ors,

"38. The Model Standing Orders, no doubt, provided that a delinquent employee could be represented in the disciplinary proceedings through another employee who may not be the employee of the parent establishment to which the delinquent belongs and may be an employee elsewhere, though he may be a member of the trade union, but this rule of representation has not been disturbed by the Certified Standing Orders, inasmuch as it still provides that the delinquent employee can be represented in the disciplinary proceedings through an employee. The only embargo is that the representative should be an employee of the parent establishment. The choice of the delinquent in selecting his representative is affected only to the extent that the representative has to be a co-employee of the same establishment in which the delinquent is employed. There appears to be some logic behind this as a co-employee would be fully aware of the conditions prevailing in the parent establishment, its Service Rules, including the Standing Orders, and would be in a better position, than an outsider, to assist the delinquent in the domestic proceedings for a fair and early disposal. The basic features of the Model Standing Orders are thus retained and the right of representation in the disciplinary proceedings through another employee is not altered, affected or taken away. The Standing Orders conform to all standards of reasonableness and fairness and, therefore, the appellate authority was fully justified in certifying the Draft Standing Orders as submitted by the appellant."

(iii) M/s Cipla Ltd. and Others Vs. Ripu Daman Bhanot and Another,

"13. In N. Kalindi v. Tata Locomotive & Engg. Co. Ltd., it was held that a workman against whom a departmental enquiry 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. v. 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 in *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."

(iv) *D.G. Railway Protection Force and Others Vs. K. Raghuram Babu*,

"9. It is well settled that ordinarily in a domestic/departmental enquiry the person accused of misconduct has to conduct his own case vide *N. Kalindi v. Tata Locomotive and Engg. Co. Ltd.* Such an inquiry is not a suit or criminal trial where a party has a right to be represented by a lawyer. It is only if there is some rule which permits the accused to be represented by someone else, that he can claim to be so represented in an inquiry vide *Brooke Bond India (P) Ltd. v. Subba Raman*.

10. Similarly, in *Cipla Ltd. v. Ripu Daman Bhanot* it was held by this Court that representation could not be claimed as of right. This decision followed the earlier decision *Bharat Petroleum Corpn. Ltd. v. Maharashtra General Kamgar Union*, in which the whole case law has been reviewed by this Court.

11. Following the above decision it has to be held that there is no vested or absolute right in any charge-sheeted employee to representation either through a counsel or through any other person unless the statute or rules/standing orders provide for such a right. Moreover, the right to representation through someone, even if granted by the rules, can be granted as a restricted or controlled right. Refusal to grant representation through an agent does not violate the principles of natural justice."

8. We have given careful consideration to the submissions made by the learned counsel on either side and perused the materials available on record.

9. On going through the pleadings, what comes to be known is that the petitioner joined the services of the 2nd respondent as a LDC and promoted as UDC, Senior Assistant and Section Supervisor. While he was working as Section Supervisor in the office of the 2nd respondent, on 10.05.2010, based on a complaint, the CBI implicated the petitioner in a case of demand and acceptance of bribe of Rs. 5,000/-, pursuant to which, he was placed under suspension on

11.05.2010. Thereafter, the order of suspension was revoked and he was reinstated on 01.11.2010 and posted as Section Supervisor in the Sub-Regional Office, Puducherry. By that time, the CBI initiated criminal proceedings against him and the same was taken on file as C.C. No. 25 of 2010 by the XIV Additional City Civil Court, Chennai (CBI Court) and by a judgment dated 10.10.2013, punishment of one year Rigorous Imprisonment was imposed, against which, the petitioner preferred an appeal before this Court in Criminal Appeal No. 721 of 2013, whereby, the punishment imposed on the petitioner was suspended. That being so, the 2nd respondent issued a Charge Memo dated 30.10.2012, which would read thus:

"Article 1:

Shri S. Jayavelu, S.S. while working at Regional Office, Chennai in Accounts Group 28 during May, 2010 is alleged to have committed grave misconduct in as much as he is alleged to have demanded and received an illegal gratification of Rs. 5,000/- for processing EPF final settlement claims in respect of 11 ex-employees of M/s. S.S. Annamalai Enterprise Group in violation of Rule 3(1)(i) and Rule 3(1)(iii) of the CCS (Conduct) Rules, 1964.

Thus, the said Shri S. Jayavelu, S.S. by the aforesaid act had failed to maintain absolute integrity and had acted in a manner unbecoming of an Employee of Central Board of Trustees, EPF, thereby violating Rule 3(1)(i) and 3(1)(iii) of CCS (Conduct) Rules, 1964 which have mutatis mutandis been made applicable to the employees of Central Board of Trustees, Employees Provident Fund Organization by virtue of Regulation 27 of EPF (Staff and Conditions of Service) Regulations, 1962."

10. On receiving the said charge memo, the petitioner gave an explanation dated 22.01.2013 denying the charges levelled against him and he also made a representation dated 20.06.2013 to drop the charges. However, the 2nd respondent proceeded with the enquiry in respect of the charge memo dated 30.10.2012 and nominated the 3rd respondent as the Inquiry Officer. The allegation in the charge memo as also the criminal proceedings rest on the same set of facts and that the documents and witnesses are also same.

11. In the criminal proceedings, the petitioner had the assistance of a legal practitioner, through whom he was able to cross-examine the witnesses and substantiate his stand. It is to be noted that the witnesses who have been examined in the criminal proceedings are cited as witnesses in the departmental enquiry proceedings also. The witnesses relied upon by the Department are: three Inspectors of Police - CBI; Sub-Inspector of Police - CBI; two Police Constables-CBI; Office Superintendent - CPWD; Travelling Ticket Examiner - Southern Railways; Accountant of one S.S. Annamalai Enterprises, etc. To defend his case effectively, the petitioner made representations dated 14.11.2013 and 21.11.2013 to the 2nd respondent seeking permission to avail the assistance of a legal practitioner. But, the 2nd respondent, by an order dated 27.11.2013

rejected the petitioner's request on the ground that the Presenting Officer is not a legal practitioner and that the Departmental Enquiry is not court proceedings requiring legal expertise.

12. Further, it is seen that the 3rd respondent commenced the enquiry by examining one Mr. N. Annavu (P.W. 1) and the petitioner was compelled to cross-examine the said witness. Thereafter, one Mr. N. Shantharam was examined-in-chief and the enquiry was adjourned to 29.11.2013 for continuation of chief-examination and for cross-examination. On 29.11.2013, the petitioner was again compelled to cross-examine P.W. 2., for which the petitioner protested, as he was not extended the assistance of a legal practitioner. In such circumstances, the petitioner approached the 1st respondent Tribunal challenging the order of the 2nd respondent dated 27.11.2013 by filing O.A. No. 1695 of 2013. However, the claim of the petitioner was rejected by the Tribunal, by an order dated 22.01.2014, against which, the petitioner is before this Court.

13. Reiterating the facts pertaining to the petitioner's appointment, promotion, issuance of charge memo, suspension and the punishment imposed by the Trial Court in their counter, respondents 2 and 3 would specifically state that only the punishment imposed by the Trial Court has been suspended and that the conviction has not been stayed. Referring to Rule 10(8A) of EPF Staff (CCA) Rules (in short "EPF Rules"), which prohibits the equivalent from engaging a legal practitioner unless the Presenting Officer is an Advocate or a Legal Practitioner, respondents/EPF Organization would submit that the petitioner is not entitled to the assistance of an Advocate.

14. On the above background pleadings, the core question is whether the departmental proceedings be allowed to continue on the charge memo issued to the petitioner, in a circumstance where the petitioner had been denied the opportunity to engage a legal practitioner to defend his case effectively.

15. To examine the above question, it would be worth referring to the Statutes.

Rule 19 of the CCS (CCA) Rules r/w EPF Staff (CCA) Rules, 1971 and EPF (Staff & Conditions of Service) Regulations provides that in case of an employee who has been convicted by the criminal court, the disciplinary authority has got powers to impose penalty after giving an opportunity to the convicted person to make representation on the penalty proposed to be imposed.

Rule 10(8A) of EPF Staff (CCA) Rules, 1971 provides:

The employee may take the assistance of any other employee or Government Servant posted in any office either at his Headquarters or at the place where the enquiry 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 disciplinary authority is a legal practitioner or the disciplinary authority having regard to the circumstance of the case so permits.

Provided that the employee may take the assistance of any other employee or

Government Servant posted at any other station, if the enquiry authority having regard to the circumstances of the case and for the reasons to be recorded in writing so permits.

16. In *C.L. Subramaniam v. Collector of Customs, Cochin* (supra), the grievance of the appellant therein was that he was pitted against a trained prosecutor. The grounds urged by the appellant in support of his request for permission to engage a legal practitioner were by no means irrelevant. With reference to Rule 15 of the Central Civil Services (Classification, Control and Appeal) Rules, 1957, the Supreme Court held that Government servants by and large have no legal training. At any rate, it is nobody's case that the appellant had legal training. Moreover 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 accusation against the appellant threatened his very likelihood. Any adverse verdict against him was bound to be disastrous to him, as he cannot be expected to act calmly and with deliberation. 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. For the said reasons, the Supreme Court allowed the appeal opining that the appellant had not been afforded a reasonable opportunity to defend himself.

17. In *A.K. Roy and Others Vs. Union of India (UOI) and Others*, , the learned Chief Justice while rejecting the contention that a detenu should be entitled to appear through a legal adviser before the Advisory Board observed that Article 22(3)(b) makes it clear that the legal practitioner should not be permitted to appear before an Advisory Board for any party. While noting this constitutional mandate, the learned Chief Justice proceeded to examine, what would be the effect if the department is represented before the Advisory Board by a legally trained person. It was held that in such a situation despite the inhibition of Article 22(3)(b), the fair procedure as contemplated by Article 21 requires that a detenu be permitted to appear by a legal practitioner.

18. Coming to the case on hand, it is not in dispute that criminal proceedings were initiated against the petitioner and punishment of one year Rigorous Imprisonment was imposed on him. Later, when the petitioner took the matter on appeal, the punishment imposed on him was stayed, but the conviction was not stayed by this Court. To the charge memo dated 30.10.2012 issued by the 2nd respondent, the petitioner gave an explanation dated 22.01.2013 denying the charges levelled against him. When the 2nd respondent proceeded with the enquiry in respect of the said charge memo and nominated the 3rd respondent as the Inquiry Officer, the petitioner sought permission to avail the assistance of a legal practitioner, which was rejected by the 2nd respondent on the ground that the Presenting Officer is not a legal practitioner and that the Departmental Enquiry is not court proceedings requiring legal expertise.

19. It is seen that the witnesses who have been examined in the criminal

proceedings are cited as witnesses in the departmental enquiry proceedings also. In the criminal proceedings, the petitioner was extended the assistance of a legal practitioner, whereas, in the departmental proceedings, his request to have the assistance of a legal practitioner was turned down by the 2nd respondent. According to respondents 2 and 3, though Rule 10(8A) enables an employee to take the assistance of any other employee or government servant posted in any office either at his Headquarters or at the place where the enquiry is held to present the case on his behalf, the same Rule prohibits engagement of a legal practitioner for the said purpose unless the Presenting Officer appointed by the disciplinary authority is a legal practitioner.

20. Now what has to be seen is that whether the Presenting Officer representing the Department in the enquiry proceedings is a legally trained person or not. A perusal of records would show that the Presenting Officer in this case viz. Mr. O. Ram Mohan is working as an Enforcement Officer and he is discharging Quasi Judicial functions under the Employees Provident Fund and Miscellaneous Provisions Act. Thus, he is a legally trained person and that is the reason why he has been appointed as a Presenting Officer.

21. Rule 10 which contemplates the procedures for imposing major penalties also provides that the authority is in itself no substitute for a thorough knowledge in him of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (in short "EPF Act") and Schemes framed there under and Manual and the departmental instructions and a working knowledge of various laws especially those having a bearing on labour welfare coupled with hard work and right attitude towards employer and employees. He should be fully conversant with the various forms prescribed in or under the schemes and which are found in the Schemes or Manual and the Indian Penal Code. As the EPF Act is a welfare legislation, a working knowledge of various labour laws, especially, Industrial Disputes Act, Factories Act, Working Journalists Act, Payment of Wages Act, etc. are necessary.

22. It is also not in dispute that the charges levelled against the petitioner is for violation of Conduct Rules. When the petitioner was permitted to engage a legal practitioner in the criminal proceedings, denial of such assistance in the departmental proceedings is the issue that has grown large leading the petitioner to this Court. The grievance of the petitioner is pitted against a trained prosecutor. The Disciplinary authority did not consider the petitioner's grievance and brushed aside his request for engaging the assistance of a legal practitioner.

23. In the case on hand, the Presenting Officer is undoubtedly a legally trained person. While Rule 10(8A) of the EPF Rules does not permit to engage a legal practitioner when the Presenting Officer is a legally trained person, the request of the petitioner to engage a legal practitioner to defend his case effectively cannot be brushed aside, as denial of the same would be against the principles of natural justice.

24. What comes in aid to the petitioner in this case is Rule 10(8A). Though the said Rule contemplates that the employee may take the assistance of any other employee or Government Servant posted in any office either at his Headquarters or at the place where the enquiry 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 disciplinary authority is a legal practitioner, it also contemplates that the disciplinary authority having regard to the circumstance of the case, shall permit to engage a legal practitioner.

25. The legal principles in permitting a legal practitioner to assist the delinquent employee in order to get fair justice has to be looked into by the court of consideration for keeping balance between the parties and not to countenance the bringing in and perpetuation of an imbalance in the conduct of disciplinary proceedings and by any act of the employer, the employee should not be put to disadvantage in the conduct of the disciplinary proceedings. The cardinal principle and the rule must prevail and guide and there cannot be prosecution of disciplinary proceedings in derogation thereof and effective defence shall be made available to the person facing the disciplinary proceedings. The delinquent is entitled to legal assistance of a legal practitioner, when a trained legal person has been presenting the case on behalf of the Department. Therefore, such legal principles need to be applied to the facts of the present case also.

26. Thus, it is clear that permission to engage a legal practitioner is a parameter absolutely within the domain of the disciplinary authority. In this case, though the Presenting Officer is a legally trained person having knowledge in Labour Laws, EPF Laws and Indian Penal Code, the petitioner cannot be denied the right of legal assistance in the departmental proceedings. Therefore, in view of the settled legal position, the decision taken by the Tribunal vide the impugned proceedings cannot be allowed to stand and it has to be set aside. Accordingly, the impugned order dated 22.01.2014 passed by the 1st respondent in O.A. No. 1695 of 2013 is set aside and the Writ Petition is allowed remanding the matter to respondents 2 and 3, who shall conduct enquiry in respect of the charge memo dated 30.10.2012 bearing No. TB/PDY/ADM/VIG/S.J.VELU/2012 after permitting the petitioner to engage a legal practitioner to effectively defend his case, within a period of six (6) weeks from the date of receipt of a copy of this order. No costs. Consequently, connected M.P. No. 1 of 2013 is closed.