

(2016) 05 AHC CK 0173
In the Allahabad High Court
Case No : Writ A No. 35828 of 1997

Shri Ram Narain Singh

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 27-05-2016

Acts Referred:

Central Warehousing Corporation (Staff) Regulations, 1986 — Regulation 39(i)(a),
Regulation 61(4), Regulation 61(vi)
Constitution of India, 1950 — Article 226

Citation : (2017) 1 AILLJ 317 : (2016) 5 AllWC 5354 : (2016) 2 CLR 981 :
(2016) 151 FLR 92

Hon'ble Judges : Ashwani Kumar Mishra, J.

Bench : Single Bench

Advocate : R.L. Singh and Sumatra Singh, Advocates, for the Appellant; S.C.,
P.K. Sinha and Pravesh Kumar, Advocates, for the Respondent

Final Decision : Allowed

Judgement

Ashwani Kumar Mishra, J.—This writ petition is directed against the order dated 5th August, 1997, contained in Annexure-1 to the Writ Petition, whereby petitioner has been reduced to his initial pay-scale of Rs. 2720-4430/- on the basis of charges mentioned in the disciplinary proceedings.

2. Facts, in brief, giving rise to filing of this petition are that petitioner was appointed as Assistant Grade-II in the respondent corporation on 19th September 1981. He was, subsequently, transferred to Ballia on 16.7.1984. It appears that on 18th March 1984, the vigilance squad of respondent corporation visited the Ware House at Ballia and found deficiency in stock of food-grains stored amounting to Rs. 35,136.35/-. After expiry of more than three years, a charge-sheet was issued to petitioner as well as two other Ware Housing Assistants as well as Ware House Manager. The charge-sheet which has been brought on record of the writ petition reads as under:-

"Statement Of Article Of Charges Framed Against Shri. R.N. Singh, Waii, CW,

Ballia

That while functioning as WAII at CW. Ballia during the year 1987 and 1988, Shri R.N. Singh colluded with S/Shri T.R. Rajak, Warehouse Manager, N.D. Singh, WAII and K.N. Chaubey, WAII and misappropriated 172.25.700 quintals wheat stocks of FCI partly by manipulation in weighment and partly in 52 bags of parent stocks, which were substituted by "C" class gunnies having no marka and filled up with some grains to make up the shortage in number of bags and attempted to pass it off as storage loss causing a financial loss of Rs. 35,136.35 to the Corporation. The said Shri R.N. Singh, thus committed gross misconduct and failed to maintain absolute integrity and devotion to duty thereby violating regulation 39(i)(a) & (b) of CWC (Staff) Regulations, 1986."

3. Petitioner submitted his reply on 16.5.1991, stating that he was deployed in godown 2-A and 2-E, where fertilizer and palm oil were stored, whereas the deficiency of food-grains had been detected in a different shed i.e. godown Nos. 1-A, 1-C and 1-D. Petitioner stated that it was only in the absence of the employees posted in these sheds that for brief periods he was assigned to look after such work, but he was otherwise deputed to look after work of sheds where no food-grains were stocked. The charges were denied by the petitioner, as such, the inquiry proceedings commenced. The procedure for holding of inquiry was to be regulated in accordance with provisions of the Central Ware Housing Corporation (Staff) Regulations, 1986 (hereinafter referred to as "the Regulations of 1986"). The proceedings of inquiry were undertaken and petitioner was found guilty of the charges levelled against him, by the Inquiry Officer. A show cause notice was thereafter issued on 26.6.1995, to which a reply was submitted stating that petitioner was not provided with the services of Defence Assistant in terms of the applicable provisions of the Regulations of 1986; petitioner was not provided with some of the documents, which had been demanded by him; the orders, whereby charge was assigned to different employees, were demanded so as to substantiate petitioner's plea, but the same was denied and that the inquiry proceedings were not conducted in accordance with principle of natural justice. The disciplinary authority, however, rejected petitioner's defence and by the order impugned held that the petitioner is guilty of charges levelled against him and awarded the punishment already noticed above.

4. Learned counsel for the petitioner contends that the order of punishment passed against the petitioner is bad for following reasons:-

(i) Petitioner was not supplied the documents, which had been demanded by him, in its entirety, inasmuch as petitioner had demanded 12 documents to substantiate his defence, but only 6 documents out of 12 were provided to him.

(ii) Learned counsel submits that the charge of wheat and other foodgrains' stock in the godown was not with him and in order to substantiate it, petitioner had demanded copies of the orders assigning duties to the assistant concerned, but despite specific demand in that regard such documents were not provided.

(iii) Learned counsel submits that Defence Assistant ought to have been provided to the petitioner, in terms of relevant provisions, as petitioner was merely a Class III employee and was not competent to handle complicated proceedings of inquiry, which required interpretation of provisions of law and procedure, and such denial has severely prejudiced the petitioner."

5. Sri P.K. Sinha, who appears for respondent corporation, submits that inquiry proceedings had been validly conducted in accordance with law. Learned counsel submits that in the reply given by the petitioner, he had admitted that the charge of godown where food-grains had been stocked, was occasionally given to petitioner, which amounted to an act of admission on his part, and the same has rightly been relied upon against him. Learned Counsel further submits that the person, whose services had been sought by the petitioner, as Defence Assistant, could not be provided. It is further stated that all relevant documents were provided to the petitioner.

6. Sri Sinha further contends that respondents have already taken a lenient view in the matter and no interference with the order impugned is required. It is also stated that petitioner did not appear before the disciplinary authority in response to the repeated notices issued for the purposes of hearing on the quantum of punishment.

7. I have heard learned counsel for the parties and perused the record.

8. From the charges levelled against the petitioner as well as petitioner's reply submitted, this court finds that the main issue, which had cropped up for consideration before the Inquiry Officer, was as to whether charge of food-grains, shortage whereof had given rise to initiation of disciplinary proceedings, was with the petitioner or not?

9. Petitioner's specific case was that he only had the charge of fertilizer and palm oil. In order to substantiate such defence, petitioner moved an application on 9th December, 1994, contained in Annexure-14 to the writ petition, for producing the work location register as well as the stock register. It is admitted that these documents, despite a demand raised were not provided to petitioner or were produced. It further appears from the record that as against 10-12 documents demanded by the petitioner, vide his application dated 6.9.1994, only 6 out of them were provided on 1.10.1994, vide Annexure-13B. In such circumstances, the documents, which were relevant and material for the purposes of establishing petitioner's innocence, for which specific prayer had been made during the inquiry proceedings by the petitioner, were denied. In such circumstances, this Court is of the opinion that the inquiry proceedings were not conducted in a fair manner, inasmuch as relevant materials and documents to prove petitioner's innocence were denied and were not produced in the inquiry proceedings. The other ground urged on behalf of the petitioner with regard to denial of services of Defence Assistant also appears to have substance. Regulation 61 of the Regulations of 1986 provided for the procedure to be

followed before imposing major penalty. Sub clause (4) of regulation 61 reads as under:-

"61. Procedure for Imposing major penalties.

(vi) The employees may take the assistance of any other employee of the Corporation but shall not engage a legal practitioner for the purpose unless the person nominated by the disciplinary authority is a legal practitioner."

10. The rules specifically entitle services of a Defence Assistant to a charged employee for the purpose of defending him in such proceedings, provided the person concerned is not a legal practitioner unless he is so nominated by the disciplinary authority.

11. In the facts and circumstances of the present case, an application was moved by the petitioner on 19.9.1991 for providing services of one Hari Vishal Singh, as Defence Assistant. The management vide letter dated 7.4.1993 informed the competent authority that permission sought for the purpose has been refused. Petitioner appears to have submitted letters on 15.4.1993, 25.6.1993, 25.7.1994, making inquiries as to why the permission had been refused, but no reply to it was given. Thereafter, petitioner made a fresh application on 14.9.1994 for providing services of Sri. R.K. Dwivedi, as Defence Assistant, and Sri R.K. Dwivedi gave his consent on 25.8.1994. The inquiry officer also requested on 7.9.1994 to the Regional Manager to provide services of the person concerned, as Defence Assistant. It is, however, not in dispute that services of Defence Assistant, despite repeated demands made, were not provided to the petitioner. There is absolutely no reason mentioned in the inquiry report or in the order of disciplinary authority for denial of services of a Defence Assistant. No plausible explanation for the purpose has been furnished before this Court. In such circumstances, this Court finds substance in the argument raised on behalf of the petitioner that denial of services of a Defence Assistant to the petitioner was unreasonable.

12. Learned counsel for the petitioner has invited attention of the Court to a judgment of the Apex Court in Union of India v. Naman Singh Sekhawat reported in (2008) 4 SCC 1. Paragraph 23 of the Judgment, which has been relied upon, is reproduced:-

"23. In the departmental proceeding the appellant was bound to comply with the principles of natural justice. Copies of some documents were not supplied. Services of a legal practitioner, may not be a matter of right, but he was at least entitled to the effective assistance of the departmental representative, Shri Madhukar Sharma. The same was also for all intent and purport denied.

The Tribunal in this behalf opined:"

It is undisputed fact that Shri Mool Singh was examined although his name was not in the list of witnesses. The applicant's request to call Shri Jumma as defence witness was not allowed. Not only this but in the absence of the

departmental representative Shri Madhukar Sharma, the applicant was compelled to cross-examine Shri Mool Singh who was cited as main witness in this case. It is also not disputed that the Inquiry Officer himself has cross-examined the applicant which was the duty of the departmental representatives. It appears that the conduct of the Inquiry Officer in this case has been throughout biased and it appears that he has acted with predetermined notions which should have caused prejudice to the applicant."

We are in general agreement with the said observations."

13. Reliance has also been placed upon judgment of the Apex Court in *Cipla Limited v. Ripu Daman* reported in AIR 1999 SC 1635. Para 6(d) of the judgment reads as under:-

"6(d). These Rules indicate that a person against whom the departmental proceedings have been initiated will be entitled to avail of the assistance of a co-representative of his choice in those proceedings.

In *Kalindi and Ors. v. Tata Locomotive & Engineering Company Ltd.*, AIR 1960 SC 914 1960 (3) SCR 407, 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 Company v. Workmen*, 1965 (2) SCR 139 AIR 1965 SC 1392 1965 (1) LLJ 426, 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 Cycles and Chemicals Ltd. v. Ram Naresh Tripathi*, (1993) 2 SCC 115 1992 Suppl. (3) SCR 559, 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 Corporation Ltd. v. Maharashtra Genl. Kamgar Union & Ors.*, (1999) 1 SCC 626, 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."

14. Learned counsel has also placed reliance upon judgment of the Apex Court in *N. Kalindi v. Tata Engineering and Locomotive Company Limited*, AIR 1960 SC 914, in which following proposition is made in para 2:-

"2. The common contention urged on behalf of the appellants was that the enquiry on the results of which the orders of dismissal were based was not a proper and valid enquiry inasmuch as the workmen were not allowed to be

represented at the enquiry by a representative of the Jamshedpur Union to which these workmen belonged. It has been urged that fair play demands that at such an enquiry the workman concerned should have reasonable assistance for examination and cross-examination of the witnesses and for seeing that proper records are made of the proceeding. It has been argued that a representative of the workmen's Union is best suited to give such assistance and in the absence of such assistance the workman does not get a fair chance of making his case before the Enquiry Officer. It appears that when on June 5, 1953, requests were made on behalf of the several workmen that they should be allowed to be represented by a representative of the Jamshedpur Mazdoor Union at the enquiry to conduct the same on workmen's behalf, the management rejected this request but informed the workmen that they could, if they so desired, be represented by a coworker from the workmen's own department at the enquiry. The question which arises therefore is whether this refusal of the workmen's request to be represented at the enquiry by a representative of their Union vitiated the enquiry.

Accustomed as we are to the practise in the courts of law to skilful handling of witnesses by lawyers specially trained in the art of examination and cross examination of witnesses, our first inclination is to think that a fair enquiry demands that the person accused of an act should have the assistance of some person, who even if not a lawyer may be expected to examine and cross-examine witnesses with a fair amount of skill. We have to remember however in the first place that these are not enquiries in a court of law. It is necessary to remember also that in these enquiries, fairly simple questions of fact as to whether certain acts of misconduct were committed by a workman or not only fall to be considered, and straightforward questioning which a person of fair intelligence and knowledge of conditions prevailing in the industry will be able to do will ordinarily help to elicit the truth. It may often happen that the accused workman will be best suited, and fully able to cross-examine the witnesses who have spoken against him and to examine witnesses in his favour.

It is helpful to consider in this connection the fact that ordinarily in enquiries before domestic tribunals the person accused of any misconduct conducts his own case. Rules have been framed by Government as regards the procedure to be followed in enquiries against their own employees. No provision is made in these rules that the person against whom an enquiry is held may be represented by anybody else. When the general practise adopted by domestic tribunals is that the person accused conducts his own case, we are unable to accept an argument that natural justice demands that in the case of enquiries into a charge-sheet of misconduct against a workman he should be represented by a member of his Union. Besides it is necessary to remember that if any enquiry is not otherwise fair, the workman concerned can challenge its validity in an industrial dispute.

Our conclusion therefore is that a workman against whom an enquiry is being held by the management has no right to be represented at such enquiry by a

representative of his Union; though of course an employer in his discretion can and may allow his employee to avail himself of such assistance.

On behalf of the appellants, Charan Singh, Parmanand and K. Ganguli, it was urged that the orders of dismissal were bad inasmuch as they were based on a finding of guilt of misconduct not mentioned in the charge-sheet. Each of these appellants it appears, was accused in the charge-sheet of four different acts of misconducts:

1. Participating in an illegal strike;
2. Leaving your appointed place of duty;
3. Inciting other employees to strike work;
4. Threatening and intimidating other workers."

15. Reliance has also been place upon judgment of the Apex Court in D.G. Railway Protection Force v. K. Raghuram Babu, 2008 4 SCC 406, in which following has been laid down in para 4 :-

"4. It is well settled that ordinarily in a domestic/departmental inquiry the person accused of misconduct has to conduct his own case vide N. Kalindi and others v. M/s. Tata Locomotive and Engineering Co. Ltd AIR 1960 SC 914. 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 Brook Bond India v. Subba Raman 1961 (11) LLJ 417. Similarly, in Cipla Ltd. And others v. Ripu Daman Bhanot and another 1999 (4) SCC 188 it was held by this Court that representation could not be claimed as of right. This decision followed the earlier decision Bharat Petroleum Corporation Ltd. v. Maharashtra General Kamgar Union 1999(1) SCC 626 in which the whole case law has been reviewed by this Court."

16. For similar proposition, reliance has also been placed upon judgment of the Apex Court in Baghat Ram v. State of Himanchal Pradesh, AIR 1983 SC 454, in which following proposition is made in para 3:-

"3.... The first contention canvassed on behalf of the appellant was that he was denied a reasonable opportunity to defend himself in the inquiry in as much as while the Department was represented by a Presenting Officer, till the first 3 witnesses are examined, he was not given an opportunity to seek assistance of an Officer in his defence, in para 3 (vii) of the Special Leave Petition, the appellant has averred that he was not informed and was not told that there will be a Presenting Officer on behalf of the department till three witnesses were examined on January 8, 1975. He proceeded to state that the petitioner being a Government employee in Class IV service of the level of a Forest Guard, he could not and was not expected to cross-examine witnesses pitted against him and he was labouring under a serious handicap that his own superior who was a co-

delinquent, was being defended by another officer Shri Yudaister Lal. In this connection, in para 14 of the affidavit in opposition filed by Shri K.C. Puri, Under Secretary (Forests) to the Government of Himachal Pradesh has stated as under :

"With reference to para 3 (vii), I submit that it was not obligatory on the part of the Enquiry Officer to have asked the petitioner to get appointed a Government servant of his choice to defend his case. On the other hand it was for the petitioner himself to intimate the name of any Govt. servant whom he intended to use as his Defence Counsel. It may be stated that the petitioner applied for this purpose on 27.2.75 and he was allowed to do so. It was for the petitioner to cross-examine the prosecution witnesses during the course of inquiry, but he did not do so."

What picture emerges from the assertion and counter assertion ? Appellant a Forest Guard belonging to lower echelons of class IV service, whose educational attainment would not be of a very high Order, with this equipment had to face an inquiry jointly held with his superior and in which there was a Presenting Officer, was expected to defend himself without any assistance. The disciplinary authority was represented by a Presenting Officer is not in dispute. It is also not in dispute that the co-delinquent Duni Chand had appointed an Officer of the department to defend him. Between these two well represented parties, appellant had defend for himself. The contention is that the appellant did not apply in time for permission to seek help of another Government servant of the department or a coworker to defend him and as and when the permission was asked for, it was granted. In our opinion, it is a highly technical approach not conducive to a just and fair adjudication of the charges levelled against the appellant. If the department had appointed a Presenting Officer, if a co-delinquent had an officer to defend him, in our opinion, to afford appellant, a class IV semiliterate Forest Guard, reasonable opportunity to defend himself, justice and fair-play demand that the Inquiry Officer should have enquired from the appellant whether he would like to engage someone to defend him. Rules permit such permission being asked for and granted in such circumstances. The Inquiry was being held according to the provisions contained in. Central Civil services (Classification, Control and Appeal) Rules 1965 ("Rules" for short). Sub-rule of Rule 5 provides 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 procedure prescribed for the Inquiry was devised with a view to affording a delinquent Government servant facing a disciplinary proceeding a reasonable opportunity to defend himself. And by a catena of decisions it is well established that the delinquent has a right to cross-examine witnesses examined on behalf of the disciplinary authority and an opportunity to lead his own evidence and to present his side of the case. This is the minimum principle of natural justice which must inform a disciplinary proceeding. To be precise, the provisions

contained in "1965 Rules" do make adequate provisions for the same. The question is whether it has been substantially complied with, and when we say substantial compliance, we mean that it is too much to presume that a Government servant of the level of a Forest Guard would be fully aware of all the intricate rules governing a disciplinary proceeding contained in 1965 Rules that he must seek permission for proper assistance at a proper stage as contemplated by the Rules. In fact, justice and fair play demand that where in a disciplinary proceeding the department is represented by a Presenting officer, it would be incumbent upon the Disciplinary authority while making appointment of a Presenting Officer to appear on his behalf simultaneously to inform the delinquent of the fact of appointment and the right of the delinquent to take help of another Government servant before the commencement of inquiry. At any rate the Inquiry Officer at least must enquire from the delinquent officer whether he would like to engage anyone from the department to defend him and when the delinquent is a Government servant belonging to the lower echelons of service, he would further be informed that he is entitled under the relevant rules to seek assistance of another Government servant belonging to department to represent him. If after this information is conveyed to the delinquent Government servant, he still chooses to proceed with the Inquiry without obtaining assistance, one can say there is substantial compliance with the rules. But in the absence of such information being conveyed, if the Inquiry proceeds, as it has happened in this case, certainly a very vital question would arise whether the appellant delinquent Government servant was afforded a reasonable opportunity to defend himself and if the answer is in the negative, the next question is whether the Inquiry is vitiated ? In this connection, we would like to refer to a decision of this Court in *G.L. Subramanian v. Collector of Customs, Cochin* wherein it was 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 would be weighted against him. That was the case in which the disciplinary authority was represented by a strained prosecutor and the question was whether the delinquent officer was entitled to the assistance of a legal practitioner ? And the answer was in the affirmative. The position is slightly different here. The department was represented by a Presenting Officer, co-delinquent, a superior Officer of the appellant was equally represented by an Officer of his choice and this forest guard had to fend for himself. In such a situation, the view taken by this Court in *The Board of Trustees of the port of Bombay v. Dilipkumar Raghavendranath Nadkani and Ors.* (C.A. No. 3734/82):

"In our view we have reached a stage in our onward march to fair-play in action that where in an enquiry before a domestic tribunal the delinquent officer is pitted against a legally trained, mind, if he seeks permission to appear through a legal practitioner the refusal to grant this request to defend himself and the essential principles of natural justice would be violated."

The principle deducible from the provision contained in Sub-rule (5) of Rule 15

upon its true construction that where department is represented by a Presenting Officer, it would be the duty of the delinquent Officer, more particularly where he is a class IV Government servant whose educational equipment is such as would lead to an inference that he may not be aware of technical rules prescribed for holding inquiry, that he is entitled to be defended by another Government servant of his choice. If the Government servant declined to avail of the opportunity, the inquiry would proceed. But if the delinquent officer is not informed of his right and an overall view of the inquiry shows that the delinquent Government servant was at a comparative disadvantage compared to the disciplinary authority represented by the Presenting Officer and as in the present case, a superior officer, co-delinquent is also represented by an officer of his choice to defend him, the absence of anyone to assist such a Government servant belonging to the lower echelons of service would unless it is shown that he had not suffered any prejudice, vitiate the Inquiry."

17. The ratio laid down by the Apex Court in the judgments, noticed above, is to the effect that although a Defence Assistant cannot be claimed as a matter of right, but such assistance can be claimed if it is so provided under the applicable service rules. In the facts of the present case, the rules did provide for services of a Defence Assistant to a charged employee.

18. Rationale for providing such services have been found in the fact that workmen and lower grade employees or less qualified persons who may not be having knowledge of procedure and requirement of law, for the purpose of defending themselves in disciplinary proceedings, where employers are represented by legally trained presenting officers. It is to secure a right to the charged employee of appropriately defending him that provision has been incorporated in the service rules applicable herein. Admittedly, petitioner had availed of services of a Defence Assistant and despite repeated requests made in that regard, such facility has been denied to him. No reason for denial of such right has been brought on record. In the opinion of the Court, respondents were not justified in denying services of a Defence Assistant and the inquiry proceedings are vitiated on that ground as well. It is further noticed that petitioner is merely a Class-III employee and on account of the fact that services of Defence Assistant has been denied to him, he has been denied right to adequately defend himself.

19. Learned counsel for the respondents has placed reliance upon a judgment of the Apex Court in *Union Bank of India v. Vishwa Mohan*, 1998 4 SCC 310, in order to contend that in the absence of prejudice shown, the mere failure to provide Defence Assistant would not be fatal, is not liable to be accepted, as it has been found that petitioner's right to defend himself has been breached on account of failure on the part of the respondents to provide services of the Defence Assistant.

20. For the reasons and discussions, aforesaid, this Court is of the opinion that the order impugned is in violation of the provisions contained under the

applicable service regulations and is otherwise in violation of principles of natural justice. It is further observed that the inquiry officer as well as disciplinary authority have not specifically dealt with the defence set up by the petitioner and there is failure on their part to consider the relevant issues raised, which renders the order bad for non application of mind.

21. Consequently, the writ petition succeeds and is allowed. The order dated 5.8.1997, contained in Annexure-18 to the writ petition, passed by the respondent No. 2, is set aside. It shall, however, be open for the respondents to proceed, afresh, in accordance with law.