
(1998) 02 DEL CK 0049
In the Delhi High Court
Case No : Civil Writ No. 4910 of 1995

S.L. Tagra

APPELLANT

Vs

New India Assurance Co. Ltd. and Others

RESPONDENT

Date of Decision : 01-02-1998

Acts Referred:

General Insurance (Conduct, Discipline and Appeal) Rules, 1975 — Rule 25(6)

Citation : (1998) 72 DLT 97

Hon'ble Judges : K. Ramamoorthy, J;Devinder Gupta, J

Bench : Division Bench

Advocate : Rajiv Nayyar, Maninder Acharya and Kamal Mehta, for the Appellant;
Saurab Parkash, for the Respondent

Final Decision : Dismissed

Judgement

Devinder Gupta, J.—Validity of Rule 25(6) of the General Insurance (Conduct, Discipline and Appeal) Rules, 1975; (hereinafter referred to as "the Rules") and of communications dated 22.5.1995 and 15.11.1995 issued by respondent No. 2 declining the petitioner's request to engage an Advocate as his Legal Assistant in the Departmental Enquiry initiated against the petitioner by respondent No. 1- Company is under challenge in this petition.

2. The petitioner on 18.11.1994 filed Civil Writ No. 4730/94, titled as S.L. Tagra v. New India Assurance Company Limited and Ors., seeking quashing of memorandum dated 4.11.1993 purporting to hold disciplinary enquiry against him and further sought direction against respondent No. 1 to initiate disciplinary proceedings against respondents 2 to 7 for the alleged illegal conspiring in settling one insurance claim and causing financial loss to respondent No. 1- Company. During pendency of the said proceedings the petitioner was served with charge sheet. The petitioner prayed the Competent Authority for being allowed legal assistance on the ground that the Presenting Officer and the Enquiry Officer are professional experts and most of the witnesses are from C.B.I., who have also professional expertise. The petitioner's request was turned

down through communication dated 22.5.1995 against which the petitioner preferred an appeal, which was also turned down. Accordingly, the petitioner filed this second petition seeking for quashing the validity of the aforementioned Rule and the two communications.

3. According to the petitioner the evidence to be led during the departmental proceedings is highly complicated one and the same would require legal assistance, in the absence of which, it will not be possible for him to effectively defend himself. Denial of legal assistance, Therefore, would amount to violation of principles of natural justice. The petitioner with reference to numerous facts has alleged that those deserve to be duly brought on record during disciplinary proceedings, in the absence of which it will not be possible for him to unearth the major conspiracy, for which purpose, he had preferred C.W. 4730/94 seeking direction against respondent No. 1 to take suitable action against the real culprits. The same cannot be done in the absence of legal assistance.

4. Rule 25(6), validity of which is under challenge and on which basis petitioner's request for legal assistance was turned down reads :

"The employee may take the assistance of any other employee but may not engage a legal practitioner for the purpose."

5. The petitioner has alleged that the Rule is arbitrary. It does not provide equal rights to the Presenting Officer and the delinquent during the disciplinary proceedings. It is vocative of principles of natural justice as it deprives the delinquent of an effective opportunity to defend himself in the disciplinary proceedings, especially when the delinquent is pitted against Presenting Officer, who is well conversant with the principles of law. In fact he is a Lawyer in the garb of the Presenting Officer. It is also the petitioner's case that the Rule is liable to be struck down on the ground that it violates Article 21 of the Constitution of India. The nature of charges against the petitioner is such that it may lead to imposition of major penalty resulting in loss of livelihood. The Rule also leaves no discretion with the Competent Authority to allow legal assistance, even in those cases where Presenting Officer may be a legal practitioner.

6. Respondent No. 1 in its reply stated that refusal on the part of respondent No. 2 to accord permission to the petitioner to engage Legal Assistant is perfectly legal and is strictly in accordance with the Rules. Departmental enquiry is also being held according to Rules. Rule does not permit legal assistance and the Rule, which do not permit legal assistance is neither contrary to law, nor is vocative of any of the alleged rights. The same is valid and does not deny equal rights. It is stated that in the instant case the Presenting Officer is neither a Lawyer, nor a person with a law degree. He is only an ex-employee of Central Bureau of Investigation. The case is not one, which requires elaborate evidence or even calling for special skills in cross-examination of witnesses. It is only a case involving technical questions relating to insurance claims and their settlement with which the petitioner would be far more familiar than even the

officer of C.B.I., who is acting as the Presenting Officer on behalf of the Management. The petitioner is better placed vis-a-vis the Presenting Officer to bring out the points that he wishes to place on record.

7. We have heard learned Counsel for the parties at length and been taken through the record.

8. The following is the statement of imputation in support of Articles of Charges framed against the petitioner:

"During the year 1992-93, Shri S.L.Tagra was working as Sr. Div. Manager in the New India Assurance Co. Ltd., Connaught Circus, New Delhi. The firm M/s. Foremost Chemicals had taken an insurance policy for Rs. 28 lakhs with this Company for their factory at Bahadurgarh, which also included risk of fire. The policy was valid from 24.2.92 to 23.2.93. On 17.7.92, a major fire broke out in the said factory for which a claim was lodged by the insured. Shri Sudhir Kumar, of M/s. Foremost Chemicals was looking after the processing of the claim with the Insurance Company. The Insurance Company completed the necessary claim formalities but did not make the payment till 7.1.93 when on enquiry by Shri Sudhir Kumar about his claim, a demand of bribe of Rs. 1 lakh was made by Shri B.S. Sikka for making the payment of fire claim. Shri B.S. Sikka told Shri Sudhir Kumar that this amount was to be shared by him with Shri S.L. Tagra, Sr. Divl. Manager. Shri B.S. Sikka being AO(Dev.) was reporting to Shri S.L. Tagra and the main function of Shri B.S. Sikka was to procure the business and to service the clients under the instructions of the Sr. Divl. Manager Shri S.L.Tagra. Shri B.S. Sikka also called the complainant in the office of insurance company on 8.1.93 around noon for the face to face talk with Shri S.L.Tagra to confirm that bribe amount was to be shared by Shri Tagra. After registration of the F.I.R. on 8.1.93, one independent witness Shri Mukesh Aggarwal, Inspector, Customs, New Delhi, was sent along with Shri Sudhir Kumar to the office of the insurance company in the noon. Both of them were taken to the chamber of Shri Tagra by Shri B.S. Sikka. In the chamber of Shri S.L. Tagra, the witness was again introduced to Shri S.L. Tagra as partner of Shri Sudhir Kumar. Shri Sudhir Kumar inquired about the claim from Shri S.L. Tagra. Shri Tagra told them that he has seen the file and the objections have been complied with. Shri Tagra assured them that the claim cheque will be delivered to them within 2-3 days. At this Shri Mukesh Aggarwal further asked Shri Tagra about the payment to be made to him. Shri Tagra told them that they should talk to Shri B.S. Sikka about the same.

Subsequently, Shri B.S. Sikka was successfully trapped in the evening of 8.1.93 while demanding and accepting a bribe of Rs. 1 lakh from Shri Sudhir Kumar.

During the house search of Shri S.L.Tagra, photo copies of a few papers relating to M/s. Foremost Chemicals were also recovered.

From the above facts, it will be evident that Shri S.L. Tagra failed to maintain absolute integrity and devotion to duty and acted in a manner unbecoming of a public servant. He thus contravened the provisions of Rules 3(1)(i)(ii) and (iii) of

General Insurance (Conduct, Discipline and Appeal) Rules, 1975 as amended from time to time."

9. The basic grievance of the petitioner is that the Presenting Officer appointed by respondent No. 1 is a C.B.I. Officer. He is not only conversant fully with the procedure of the enquiry proceedings but has also legal trained mind. Despite petitioner's request for being provided with legal assistance during the proceedings, in view of the complicated nature of the case, the request was turned down. Such denial of legal assistance would place the petitioner on an unequal platform as opposed to the Presenting Officer and thus amounts to violation of Article 16 of the Constitution and moreover Rule 25(6) is violative of Article 14 of the Constitution and is liable to be struck down. In support of his proposition, reliance has been placed by learned Counsel for the petitioner on a number of decisions, which may be dealt with at this stage.

10. Division Bench of Andhra Pradesh in *Dr. K. Subba Rao Vs. State of Hyderabad (now Andhra Pradesh)*, held that refusal to accede to allow professional help during the course of enquiry, which according to the delinquent was the result of a pre-conceived plan and a concerted action on the part of the department, was unjustified and that during the Enquiry, the Officer should have been allowed an opportunity to defend himself by taking professional help of a Lawyer. It is not clear from the said decision that whether the service rule applicable permitted taking of assistance of a legal practitioner.

11. In *Ramesh Chandra Verma Vs. R.D. Verma and Others*, relying upon the decision of *Dr. K. Subba Rao* case (supra), it was held that in departmental proceedings the delinquent is not entitled to claim as a matter of right the facility of taking legal advice but refusal to afford a reasonable opportunity to take such an advice, when viewed in the light of the other circumstances may legitimately lead to the inference that the delinquent was not given a reasonable opportunity. In the said decision also, no service rule came for adjudication on the question of opportunity to defend through legal practitioner.

12. In *Nripendra Nath Bagchi Vs. Chief Secretary, Govt. of West Bengal*, it was held that having regard to the volume of depositions, number of witnesses and documents, refusal to allow the delinquent the assistance of a Lawyer even for the purpose of taking notes amounts to denial of an adequate opportunity, when Rule 55 of the Civil Services (Classification, Control and Appeal) Rules (then applicable) provided "adequate opportunity" and Article 311 of the Constitution directed "reasonable opportunity" to be given.

13. In *Nitya Ranjan Bohidar Vs. The State*, case of the delinquent was taken to be of unusual complexity in which delinquent was having no experience of law. Refusal to permit him representation by a Lawyer was held as amounting to denial of reasonable opportunity of showing cause, especially when the prosecution was conducted by an experienced police officer. It was held that in the absence of Rules, it was entirely with the discretion to the Tribunal to allow

or refuse to allow either party to be represented by Counsel.

14. Decision of the Court of Appeal in *Pett v. Greyhound Racing Association Ltd.*, (1968) 2 All. ER 545 was also relied upon. It was an appeal from an order arising out of an interlocutory injunction restraining the respondent from holding an enquiry on the question whether drugs had been administered to appellant's dog. The rules of the club to which the trainer had agreed did not prescribe the procedure to be followed at such an enquiry and did not exclude legal representation. The procedure in fact followed was to allow the trainer to be present, to hear the evidence and to question the witnesses. The trainer sought to be represented by Counsel and Solicitor at the enquiry, which was not allowed. On appeal from grant of injunction restraining the enquiry from being held unless the trainer was allowed to be represented, the Court of Appeal held that prima facie the trainer was entitled to an oral hearing and the enquiry being one of serious importance to him, to be represented at it by Counsel and Solicitor, for which he was entitled not only to appear himself but also to appoint an Agent on his behalf. So he was entitled to appoint a Counsel. To the same effect the decision of the Court of Appeal relied upon was that of *Enderby Town football Club Ltd. v. The football Association Ltd. and Anr.*, (1971) 1 All. ER 215.

15. Reliance was also placed on the decision of the Supreme Court in *C.L. Subramaniam Vs. Collector of Customs, Cochin*, . Rule 15(5) of the Civil Services (Classification, Control and Appeal) Rules, 1967 was held to be mandatory by Supreme Court observing that it regulates the guarantee given to Government Servants under Article 311. It was held that the Government Servants by and large have no legal training and when a man is charged with the breach of a rule entailing serious consequences, he is not likely to be a position to present his case as best as it should be and for that reason alone Rule 15(5) had 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. Thus the relevant rule did provide for assistance through legal practitioner.

16. In *Suryanarayan Pujari v. Union of India and Ors.*, 1992 Lab. I.C. 735, disciplinary proceedings against delinquent were held under Central Civil Services (Classification, Control and Appeal) Rules, 1965. The delinquent was denied opportunity to be defended by a Lawyer. It was held that such a denial amounted to violation of principles of natural justice. In the said case Circular of Government of India was applicable, which vested discretion in the Competent Authority to permit assistance through Lawyer, which had been denied to the incumbent.

17. Learned Counsel for the respondent placed reliance on the decision of Supreme Court in *Maharashtra State Board of Secondary and Higher Secondary Education Vs. K.S. Gandhi and Others*, . Inquiry against 283 students into the allegations of fabrication in moderates mark sheet was conducted under the provisions of Maharashtra Secondary and Higher Secondary Education Board Act,

1965. Inquiry was held to be legal and valid in the facts and circumstances of that case even in the absence of denial of legal assistance during enquiry. In the said case legality and validity of any rule was not involved.

18. In *Crescent Dyes and Chemicals Ltd. Vs. Ram Naresh Tripathi*, , the question involved was that whether a delinquent is entitled to be represented by an office bearer of another Trade Union, who is not a member of either a recognised union or an unrecognised union functioning within the Undertaking in which the delinquent is employed notwithstanding the statutory limitation contained in the Standing Orders and Clause (ii) of Section 22 of the Maharashtra Recognition of Trade Unions and Unfair Labour Practices Act, 1971. On examination of number of decisions on the point, the Supreme Court held that the law in India does not concede to an absolute right of representation as an aspect of the right to be heard, which is one of the elements of principles of natural justice. Following the three earlier decisions, namely, *Kalindi and Others Vs. Tata Locomotive and Engineering Co. Ltd.*, ; *Brooke Bond India (P) Ltd. v. Subha Raman(S)*, (1961) II LLJ 417; and *The Dunlop Rubber Co. Vs. Workmen*, it was held that there is no right to representation as such unless the Company by its Standing Orders recognises such a right. 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 rule of natural justice in so far as the delinquent's right of hearing is concerned, cannot and does not extend to a right to be represented through Counsel or Agent. The Court observed :

"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 in so far 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(ii) 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 dispatch 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 in expansively. 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."

19. Having considered the decisions, which have been relied upon by learned Counsel for the parties, we are of the view that the question involved in this case stands concluded by decision of Supreme Court in *Crescent Dyes and Chemicals Ltd.*'s case (supra). After due consideration of the decisions of English Courts and leading decisions relatable to the law in India, it was held that right to be represented by Counsel or an Agent of one's own choice under the decisions of English Courts is not an absolute right and can be controlled, restricted or regulated by law, rules or regulations. However, if the charge is of a serious and complex nature, the delinquent's request to be represented through Counsel or Agent could be considered. But so far as the law applicable in India is concerned, there is no right to representation as such unless the Company by its Standing Orders recognises such a right. It was held that right to be represented through Counsel or Agent can be restricted, controlled or regulated by statutes, rules, regulations or Standing Orders. A delinquent has no right to be represented through Counsel or Agent unless the law specifically conferred such a right. The requirement of rules of natural justice, in so far as the delinquent's right of hearing is concerned, cannot and does not extend to a right to be represented through Counsel or Agent.

20. In view of the aforementioned decision, when the service rules applicable to the petitioner does not entitle him to engage a legal practitioner by way of assistance but only enables him to have assistance of any other employee, it cannot be said that the said right is discriminatory or vocative of principles of natural justice. The petitioner has no right to be represented by a legal practitioner either under service regulation or otherwise, even in a case where the Presenting Officer may be a C.B.I. Officer. In *Crescent Dyes and Chemicals Ltd.*'s case (supra) the object and purpose of similar service rule, which is impugned in this case has been considered that denial of right to be represented by Counsel is to ensure that domestic enquiry is completed with dispatch and is not prolonged endlessly. 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 be able to render satisfactory service to the delinquent and that the entire proceedings would not only be completed quickly but also inexpensively .

21. In view of the decision of Supreme Court in *Crescent Dyes and Chemicals*' case (supra), we do not find any force in the petitioner's submission that the impugned order, which has denied him right to be represented by Counsel is bad in law or that Rule 25(6) of the Rules is invalid. Accordingly, the petition is dismissed. Parties are left to bear their own costs.