

(2013) 02 AHC CK 0243

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 4492 of 1999

S.N. Maheshwari

APPELLANT

Vs

General Manager, Syndicate Bank and Others

RESPONDENT

Date of Decision : 22-02-2013

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2013) 3 ADJ 613 : (2013) 4 ALJ 298 : (2013) 2 AWC 1871 : (2013) 2 LLJ 528 : (2013) LLR 700 : (2013) 3 UPLBEC 1974

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Advocate : S.K. Singh, D.P. Singh and Ravi Kiran Jain, for the Appellant; P.K. Singhal, for the Respondent

Final Decision : Dismissed

Judgement

Tarun Agarwala, J.—The petitioner, being aggrieved, by the order of dismissal of his services from the respondent-bank as well as aggrieved by the order of the Appellate Authority has filed the present writ petition. The brief facts leading to the filing of the writ petition is, that the petitioner was appointed as a clerk and, at the relevant moment of time, was doing the work of a Cashier in the respondent-bank at Meerut. In the year 1995, the petitioner was suspended on account of certain charges. Subsequently, on 22nd August, 1995 the petitioner was served with a charge-sheet in which various charges was levelled against him viz., for committing embezzlement, fraud and manipulation in the books of the bank.

2. In a nutshell, the charges were that while working as a Cashier, the account holders had handed over to the petitioner certain amounts inside and outside the bank premises for being deposited in their accounts, which had not been deposited or partially deposited or belatedly deposited. Further charges were that the petitioner made false entries in the saving bank account holders of the customers of the bank and also inflated their balance. There were charges of

manipulation in the records and debiting accounts of the customers without valid vouchers or cheques. There were also charges of diversion of the amount of the customers to other accounts.

3. The petitioner was asked to submit his reply. The petitioner instead of submitting a reply asked for supply of various documents, which in due course was supplied to him, and instead of supplying the documents, no reply to the charge-sheet was filed. Eventually on 3rd January, 1996 an Inquiry Officer was appointed who proceeded to hold an oral inquiry. Notices were served upon the petitioner and the petitioner appeared before the Inquiry Officer. He was asked as to whether he would require to be presented through any defence representative, which he initially declined. At the behest of the petitioner several adjournments were sought before the Inquiry Officer, which were allowed and full opportunity was given to the petitioner to cross-examine the witnesses.

5. The inquiry report was submitted on 30th August, 1997 on the basis of which, the Disciplinary Authority issued a show-cause notice to which he submitted a reply and was also given an opportunity of personal hearing. The Disciplinary Authority, after considering the matter concurred with the findings of the Inquiry Officer and considering the gravity of the charges and seriousness of the offence passed an order of dismissal. The petitioner, being aggrieved, filed an appeal which was also dismissed. The petitioner, thereafter has filed the present writ petition.

5. Heard Sri Ravi Kiran Jain, the learned Senior Counsel assisted by Sri D.P. Singh, the learned counsel for the petitioner and Sri P.K. Singhal, the learned counsel for the respondent-bank.

6. The only point urged before this Court was that the petitioner was not allowed to engage a Lawyer and that his application was wrongly rejected and such rejection was violative of the principles of natural justice. In support of his case the learned counsel for the petitioner placed reliance upon a decision of the Supreme Court in AIR 1991 SC 1221, AIR 1983 SC 109 and a Division Bench judgment of the Madras High Court in Chairman and Managing Director, Hindustan Teleprinters Ltd. Vs. M. Rajan Isaac, .

7. In support of his submission, the learned Senior Counsel appearing for the petitioner placed various documents before the Court to impress that there had been a miscarriage of justice and that the petitioner was being pitted against legally trained persons who were appointed as the presenting officer and the Inquiry Officer, and consequently, since serious questions of fact and law was involved it was not possible for the petitioner who was merely an employee and did not have any legal training to be denied the benefit of engaging a Lawyer.

8. The learned counsel for the petitioner vehemently submitted that this denial of engagement of a Lawyer for his defence was violative of the principles of natural justice.

9. In support of the aforesaid contention, the learned counsel for the petitioner invited the attention of the application dated 26th December, 1996 written by the petitioner to the Inquiry Officer in which it was indicated that since legal complications are involved he may be allowed to engage a Lawyer for his defence. This letter was forwarded by the Inquiry Officer to the Disciplinary Authority who duly considered it and, by an order dated 27th January, 1997, turned down the request of the petitioner on the ground that no legal complications or questions of law arose and that it would be open to the petitioner to utilize the service of a defence representative as per Clause 19.12 of the Bipartite Settlement Award.

10. The petitioner, being aggrieved, by the said order filed Writ Petition No. 1476 of 1997, which was disposed of by an order dated 5th May, 1997 wherein the Court declined to interfere in the impugned order at that stage leaving it open to the petitioner to challenge the said order at the appropriate stage and take such objection available to him under law at the stage before the order of punishment was passed or even otherwise.

11. It transpires that pursuant to the order of the Court an objection dated 9th May, 1997 was raised by the petitioner for engagement of a Lawyer. Subsequently, upon the submission of the inquiry report, the petitioner was given an opportunity of personal hearing and his request for engagement of a Lawyer and denial of natural justice was rejected by the Disciplinary Authority while passing the order of dismissal.

12. The issue that an employee needs to be represented by a trained legal person in a domestic inquiry has been a subject of debate in many decisions and the law on this has been fairly settled.

13. In *N. Katindi v. M/s. Tata Locomotive and Engineering Company Ltd.*, Jamshedpur, AIR 1960 SC 914, it was contended that since the workman was not allowed to be represented in the inquiry by a representative of a particular Union, the order of dismissal was not based upon a proper and valid inquiry and was violative of the principles of natural justice, such contention was repelled by the Supreme Court holding that:

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 practice 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.

14. The supreme Court held that a workman against whom an inquiry was being held had no right to be represented in such inquiry. Similar view was again upheld by Supreme Court in *Brooke Bond India (Private) Ltd. v. Subba Raman (S) and another*, 1961 (2) LLJ 417.

15. In *The Dunlop Rubber Co. Vs. Workmen*, , the Supreme Court held:

The Tribunal was also wrong in thinking that there was a denial of natural justice because the workmen were refused that assistance of a representative of their own Union. Under the Standing Orders it is clearly provided that at such enquiries only a representative of a Union which is registered under the Indian Trade Unions Act and recognised by the Company can assist. Technically, therefore, the demand of the workmen that they should be represented by their own Union could not be accepted. But we cannot say that the action of the Enquiry Officer was for that reason illegal or amounted to a denial of natural justice. In this connection, we have repeatedly emphasised that in holding domestic enquiries, reasonable opportunity should be given to the delinquent employees to meet the charge framed against them and it is desirable that at such an enquiry the employees should be given liberty to represent their case, by person of their choice, if there is no standing order against such a course being adopted and if there is nothing otherwise objectionable in the said request. But as we have just indicated, in the circumstances of this case, we have no doubt that the failure of the Enquiry Officer to accede to the request made by the employees does not introduce any serious defect in the enquiry itself, and so, we have no hesitation in holding that the result of the said enquiry cannot be successfully challenged in the present proceedings.

The Supreme Court in the aforesaid decision held that even if the workman was entitled to be represented by a representative as per the standing order, the refusal to accede to the request of the workman for insistence of a representative of their Union was held as not violative of the principles of natural justice, though it was observed that an employee should be given a liberty to represent their case by a person of their choice.

16. In *Harinarayan Srivastav Vs. United Commercial Bank and another*, , the claim of an assistance of a Lawyer was rejected on the ground that Clause 19.12 of the Bipartite Settlement only provided an option to the employee to seek for a Lawyer's assistance. The Supreme Court while considering the said clause held that even if the Bipartite Settlement provided a clause enabling the petitioner to have a Lawyer assistance, it was only an option and that the same cannot be claimed as a matter of right.

17. In *J.K. Aggarwal Vs. Haryana Seeds Development Corporation Ltd. and others*, , the Supreme Court held that the right of representation by a Lawyer may not in all cases be held to be part of natural justice and that no general principle valid in all cases can be enunciated. However, the Supreme Court held that even though the rule only vests a discretion while exercising such discretion

one of the relevant factors that should be considered is whether there is a likelihood of a combat being unequal entailing a failure or miscarriage of justice or a denial of rule a reasonable opportunity of defence by reason of the workman being pitted against a presenting officer who is trained in law.

18. In the light of the aforesaid, the Supreme Court, in the case of J.K. Aggarwal (supra), held that the refusal to sanction the service of the Lawyer in the inquiry was not a proper exercise of the discretion under the Rule leading it to a failure of natural justice. Similarly, in the case of Board of Trustees of the Port of Bombay Vs. Dilipkumar Raghavendranath Nadkarni and Others, , the Court held that where the request of an employee in an inquiry against him for being represented by a Lawyer was refused while legally trained officers were appointed as presenting officer of the employer, the inquiry would be deemed to be vitiated for denying the employee a reasonable opportunity of hearing especially when the request was not acceded too.

19. In case of Chairman and Managing Director, Hindustan Teleprinters Ltd. Vs. M. Rajan Isaac, , a Division Bench judgment of the Madras High Court after considering the relevant case laws on the subject held that for the purpose of the said case the denial of a lawyer to the workman was violative of the principles of natural justice, since he was pitted against a legally trained person who was the presenting officer.

20. From the aforesaid decisions, it is clear that the general rule is, that in the absence of Rules, an employee has no right to seek the assistance of a Lawyer in a departmental inquiry and that the principles of natural justice is not violated nor does it postulate a right to be represented in a departmental proceedings but, there is an exception, and that is, that if the workman is pitted against a legally trained person in the departmental proceedings and the workman is not familiar with the legal procedures involved in the departmental inquiry, in such a scenario, the Rule of equity and natural justice clearly postulate that the employer must act in fairness and permit an employee to be represented by a Lawyer who is a legally trained person and is aware of the legal procedures involved in a departmental inquiry.

21. In the light of the aforesaid, the Court finds from a perusal of the inquiry proceedings which has been annexed in the counter-affidavit that right from very inception, the Inquiry Officer directed the petitioner to engage a defence representative, which he declined and intimated the Inquiry Officer that as and when he requires he will engage a defence representative of his own choice. The inquiry proceedings indicate that at some stage the petitioner had engaged one Sri Anil Kumar Srivastava as his defence representative. By a letter dated 19th December, 1996, Sri Anil Kumar Srivastava who was a State Secretary of the Syndicate Bank Employees Union declined to represent the petitioner and advised him to engage a Lawyer. Based on that, the petitioner moved an application dated 26th December, 1996 before the Inquiry Officer indicating therein that since legal complications are involved, he may be permitted to

engage a Lawyer. This application was forwarded to the Disciplinary Authority, who declined to accept the request and by an order dated 27th January, 1997 turned down the request on the ground that no legal complications are involved nor any questions of law are involved.

22. The Court further finds that pursuant to the disposal of the writ petition of the petitioner on 5th May, 1997 the petitioner appeared before the Disciplinary Authority pursuant to the show-cause notice along with a defence representative and that they were given full opportunity of hearing.

23. From the aforesaid, the Court finds that no such averment was ever raised by the petitioner that he has been pitted against a presenting officer who is a legally trained person or that the petitioner was not aware of the legal procedures and, therefore, required the assistance of a Lawyer. The only ground urged was that legal complications were involved. Even before this Court, there is no averment in the writ petition to the extent that the Inquiry Officer or the presenting officer were trained legal experts or that he was pitted against persons of legal mind nor there is any averment to the extent that he was unaware of the legal procedures in the inquiry proceedings.

24. The only ground taken by the petitioner in paragraphs 47 and 49 of the writ petition is, that the order of the Disciplinary Authority as well as of the appellate authority was violative of the principles of natural justice and that the application of the petitioner for permitting to engage a Lawyer was illegally rejected by the bank. There is no averment to the effect that the petitioner was pitted against legally trained persons and, that justice required that he should be represented by a Lawyer.

25. In this regard before proceeding further, paragraph 19.12 of the Bipartite Settlement Award which is relevant to the issue in hand is extracted hereunder:

Clause 19.12: The procedure in such cases shall be as followed:

(a) An employee against whom disciplinary action is proposed or likely to be taken shall be given a charge-sheet clearly setting forth the circumstances appearing against him and a date shall be fixed for inquiry, sufficient time shall be fixed for enquiry, sufficient time being given to him to enable him to prepare and give his explanation as also to produce any evidence that he may wish to tender in his defence. He shall also be permitted to be defended.

(i) (x) by representative of a registered trade union of bank employees of which he is a member on the date first notified for the commencement of the inquiry.

(y) where the employee is not a member of any trade union of bank employee on the aforesaid date by a representative of a registered trade union of employees of the bank in which he is employed;

(ii) at the request of the said union by a representative of the state federation or all India Organisation to which such union is affiliated;

OR

(iii) with the Bank's permission, by a Lawyer.

This clause was interpreted by the Supreme Court in Harinarain Srivastav's case (Supra) wherein the Supreme Court held that even if the Bipartite Settlement provided a clause enabling the bank officer to have a Lawyer assistance it was only an option and, therefore, the same cannot be claimed as a matter of right.

26. In the light of the aforesaid, the Court finds that ample opportunity was given to the petitioner to defend himself. Pull opportunity was given to the petitioner to cross-examine the witnesses. Pull opportunity was given to the petitioner to engage a defence representative as per Clause 19.12 of the Bipartite Settlement Award. The Court finds that the petitioner initially declined to take a defence representative but subsequently, engaged a defence representative of his own choice, which was duly allowed. The request for engagement of a Lawyer was declined by the employer on the ground that no complicated questions of law arises.

27. The Court further finds that before the Inquiry Officer and before the Disciplinary Authority as well as before this Court, no such averment was ever raised that the Inquiry Officer or the presenting officer were legally trained, and that, the petitioner, being an untrained legal person, had and no knowledge of the procedure involved in the departmental proceedings. Consequently, the Court is of the opinion that the request for engagement of a Lawyer was rightly turned down.

28. The decisions cited by the learned counsel for the petitioner are distinguishable and are not applicable to the present set and circumstances of the case.

29. The Court further finds that the petitioner did not submit any reply to the charge-sheet and kept on asking for documents, which were duly supplied. The Court finds that when the charges has not been disputed or denied by the workman, the Disciplinary Authority could have concluded the matter there and then but chose to hold an oral inquiry. The Inquiry Officer proceeded with the inquiry and examined the relevant witnesses and documents after giving full opportunity to the petitioner. The Court finds from a perusal of the inquiry proceedings, which has been annexed to the counter affidavit that full opportunity was given to the petitioner to defend himself and that the principles of natural justice, as embodied under Article 14 of the Constitution of India, was fully complied with. There was no violation of the principles of audi alteram partem.

30. The Court, from a perusal of the charge-sheet, finds that the charges are not complicated nor does it involve any serious questions of law. No doubt the charges were one of embezzlement and fraud, which were serious in nature but nonetheless the charges were not complicated which required the assistance of a

Lawyer.

31. In the light of the aforesaid, the Court is of the opinion that failure to permit the petitioner to engage a Lawyer was not violative of the principles of natural justice in the instant case.

In the light of the aforesaid, the Court does not find any error in the impugned orders.

The writ petition fails and is dismissed.