

(1986) 12 CAL CK 0008
In the Calcutta High Court
Case No : F. M. A. T. No. 3264 of 1986

Sri Nilabja Das

APPELLANT

Vs

The Zonal Manager, Indian Bank and Others

RESPONDENT

Date of Decision : 05-12-1986

Acts Referred:

Citation : 91 CWN 554

Hon'ble Judges : Prabir Kumar Majumdar, J;G.N. Ray, J

Bench : Division Bench

Advocate : P.K. Dutta and Amal Kumar Mitra, for the Appellant; Aloke Chakraborty, for the Respondent

Judgement

G.N. Ray, J.—This Appeal is directed against the dismissal of the writ petition by the learned trial Judge in C.O. No. 11188(W) of 1986. The appellant was appointed to the post of Clerk-cum-Shroff in the Indian Bank with effect from 9th June, 1980 and on 9th May, 1981 he was confirmed to the said post. By an order dated 30th October, 1984 the appellant was suspended on some grievous charges of fraudulent withdrawals to the extent of Rs. 28,800/- in the Ballygunge Branch concerning the Savings Accounts of two constituents of the said Branch. A departmental proceeding was initiated against the appellant to meet the said charges. The appellant did not receive any assistance from any representative of a registered trade union of the Bank employees to act as a defence helper in the said departmental proceeding and it appears that he had agreed initially to conduct his case by himself. It appears that four of the witnesses have been examined on behalf of the Bank administration and two more witnesses are to be examined by the Bank to substantiate the charges against the appellant. The appellant thereafter played for engaging a lawyer for conducting his case in the said departmental proceeding and it appears that the Regional Manager has considered the appellant's appeal to engage a lawyer in the departmental proceeding and has rejected the same on the ground that as the Bank had not engaged any lawyer, the appellant should not be allowed to take assistance of a

lawyer. The appellant contends that in the facts and circumstances of the case the respondents viz. the Bank authorities acted illegally and malafide in refusing to allow the appellant to take assistance of a lawyer in the departmental proceeding and the refusal to allow the appellant to have his case conducted by a lawyer has amounted to gross failure of justice, thereby vitiating the departmental proceedings itself.

2. No Rule "Nisi" was issued on the said writ petition of the appellant but the writ petition was heard as a contested application upon notice to the respondents and the learned trial Judge has disposed of the said writ petition by rejecting the same on the finding that the facts did not warrant the intervention of the writ court at that stage. It may be noted that the learned trial Judge has not indicated any reason as to why it appeared to the learned trial Judge that intervention of the writ court, at that stage was not warranted.

3. The short point involved in the instant appeal is as to whether or not in the facts and circumstances of the case the appellant can reasonably claim the assistance of a lawyer in defending in the departmental proceeding. The relevant provision in this regard as appearing in the Bi-partite Settlements between Indian Banks' Association and All India Bank Employees Association can be set out as follows

19.12. The procedure in such cases shall be as follows:

(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 enquiry, sufficient time being given to him to enable him to prepare and give his explanation so also to produce any evidence that he may wish to tender in his defence. He shall be permitted to appear before the officer conducting the enquiry, to cross-examine any witness on whose evidence the charge rests and to examine witness and produce other evidence in his defence. He shall also be permitted to be defended (i) (x) by a 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 enquiry.(y) where the employee is not member of any trade union of bank employees on the aforesaid date, by a representative of a registered trade union of employees of the bank in which he is employed

OR

(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.

He shall also be given a hearing as regards the nature of proposed punishment in case any charge is established against him.

4. Referring to the aforesaid rules and procedure in the matter of engagement of a lawyer in the departmental proceeding, Mr. Dutta, the learned counsel for the appellant has submitted that a delinquent officer must be given all reasonable opportunities to effectively defend his own case and according to the aforesaid procedure the appellant should have been allowed to appear through a lawyer in the departmental proceeding. He has contended that it is the case of the appellant that he has been expelled from the membership of the union of the employees of the said Bank. Accordingly there is no scope or likelihood of getting any assistance by the representative of the registered trade union of the employees of the Bank in which the appellant is employed. Mr. Dutta has submitted that when the appellant was a member of the union and has been expelled, neither the clauses (x) and (y) of sub-rule(i) of the said Rules is attracted in his case and also sub-rule (ii) is inapplicable in the case of the appellant because the appellant being an expelled member of the union, there will be hardly any occasion for the request of the union to give a representative of the State Federation and All Indian Organisation to which the union is affiliated. Mr. Dutta has therefore submitted that in the facts of the case clause (iii) is squarely attracted and under the said clause with the permission of the Bank a lawyer can be engaged by the appellant. Mr. Dutta has submitted that unreasonably the Regional Manager disallowed the prayer of the appellant to engage a lawyer simply on the footing that as the Bank had not engaged any lawyer, the appellant would not be permitted to engage a lawyer. Mr. Dutta has submitted that if the prayer for engaging a lawyer is rejected simply on the footing that when the Bank does not change a lawyer, no lawyer can be engaged, the very provision of clause (iii) will be nugatory. The Regional Manager has not made any finding that in the facts and circumstances of the case there was no necessity of engaging a lawyer and the appellant could reasonably defend his own case. Hence, such contention sought to be raised by the Bank at the hearing should not be accepted by the Court. Mr. Dutta has submitted that as the appellant could not get any assistance from the representative of the union, initially he intended to conduct his own case and as a matter of fact had conducted the disciplinary proceeding on his own upto a certain stage. The appellant is young in age and quite in experienced with the detailed procedure and. functioning of the Bank including the internal rules for maintaining savings bank accounts and withdrawals of sums from savings bank accounts. The allegations in the departmental proceeding against the appellant are serious and any adverse finding in the departmental proceeding is likely to bring a serious consequence. He has submitted that it is the case of the Bank that only two more witnesses are to be examined by the Bank. Mr. Dutta has submitted that he has failed to appreciate any earthly reason in refusing the appellant to take assistance of a lawyer in cross-examining the said two witnesses. He has submitted that the Bank, in the facts of the case, is denying the reasonable opportunity to the appellant to defend his case in the departmental proceeding. He has submitted that fairplay and justice depend on the facts and circumstances of each case and no general principle can be laid down governing the cases

where the assistance of the lawyer should be given. In this connection, he has referred to the decision of the Supreme Court made in the case of Sawai Singh Vs. State of Rajasthan, . Mr. Dutta has also referred to a single bench decision of this Court made in the case of Hansila Prasad v. Union of India reported in 1986 (2) Calcutta High Court Notes, 182. In the said case, there were charges of forgery of bank records and the learned Judge considering the fact has held that engagement of a defence, lawyer will be justified in the facts of the case. Mr. Dutta has, therefore, submitted that the Bank should be directed to allow the appellant to engage a defence lawyer for the purpose of conducting his case.

5. Mr. Chakraborty, the learned counsel appearing for the Bank, has, however, submitted that the delinquent officer cannot claim the right to engage a lawyer on the score that such assistance of a lawyer is an essential element of natural justice. Permission to engage a lawyer is essentially a discretionary right of the Bank administration and if for good reasons such "discretion has not been exercised by the Bank administration, interference by the writ court is not called for. In support of this contention Mr. Chakraborty has referred to a Bench decision of this Court made in the case of Indian Photographic Co. Ltd. v. Sumitra Mohan Kumar reported in 87 CWN 1115- It has been held in the said decision that the question of engagement of a lawyer in the departmental proceeding should normally be left to the discretion of the Tribunal but it has also been observed that though court should discourage the involvement of lawyer in simple domestic enquiries for avoiding completion and delay, yet the Court cannot ignore the necessity of such representation in exceptional cases where refusal of such a representation would constitute failure of the enquiry itself The Division Bench has also held that where the trial court applied the correct legal principles and while the trial court applied the correct legal principles and while exercising its judicial discretion was conscious" of the prayer for engaging a lawyer, the Appeal Court should not interfere with such discretion exercised by the trial court on proper consideration of the relevant facts. Mr. Chakraborty has submitted that as in the instant case the learned trial judge in the exercise of his discretion was of the view that there was no necessity to interfere with the decision of Bank administration in the matter of engagement of a lawyer, the appeal court even if it is inclined to hold that a lawyer should have been engaged, should not interfere. Mr. Chakraborty has referred to a decision of the Supreme " Court made in the case of C.L. Subramaniam Vs. Collector of Customs, Cochin, . It has been held in the said decision that natural justice does not demand engagement of a lawyer. It depends on the facts of the case and ordinarily in the departmental proceeding the delinquent officer conducts his own case. Mr. Chakraborty has, "therefore, submitted that in the instant departmental proceeding- there cannot be any difficulty for the delinquent officer to conduct the proceeding by himself and as a matter of fact he.had agreed to do so. He has also not-been pitted against a lawyer engaged by the Bank and precisely for the reason the Regional Manager has not allowed the prayer for engaging a lawyer by the delinquent of facer Mr. Chakraborty has contended that for examining the

remaining; witnesses there is no necessity of engaging a lawyer by the delinquent officer and he also; cannot claim the same as a matter of right. Mr. Chakraborty has submitted that the Bank has no intention to create difficulties for the delinquent officer but on a matter of principle, the Bank does not intend to allow the engagement of the lawyer by the appellant. He, therefore, submits that the appeal should fail.

6. After considering the respective contentions of the learned counsels appearing for the parties, it appears to us that in a departmental proceeding all reasonable opportunities should be given to the delinquent officer to defend himself and fairly and justice should be the paramount consideration of the charging department. What should be the fair play and justice cannot be put in a straight jacket but it must necessarily depend on the facts and circumstances of each case. In our view, in the instant case Mr. Dutta is justified in his contention that clauses (ii) and (iii) are not applicable in the special facts of the case because the appellant has been expelled from the union. Although the appellant had agreed to conduct his case at the beginning and as a matter of fact has done so upto a certain stage, if the appellant has felt difficulty in examining the remaining witnesses, we do not think that in the facts and circumstances of the case it will be proper to deny the assistance of a lawyer. After all serious charges have been brought against the appellant who is not very experienced in the service of the Bank. If the appellant feels difficulty subsequently in conducting his own case it will be only fair and consonant to justice to allow him to engage a lawyer for cross-examining the remaining witnesses and such permission can be given under clause (iii) of the aforesaid rules of procedure of the departmental proceeding. In our view, Mr. Dutta is also justified in his contention that the prayer of the appellant to engage a lawyer was not rejected by the Regional Manager on a finding that the departmental" proceeding being a simple one there was no difficulty of the appellant to conduct his own case but such prayer was rejected simply on the ground that when the Bank had not engaged a lawyer the appellant would not be permitted to engage a lawyer. In purview, rejection of the prayer of engaging a lawyer only on such consideration is not proper. Since the learned trial Judge has not indicated any reason it cannot be said that discretion has been exercised after constituting the relevant facts. We, therefore, allow this appeal and direct the Bank authorities to allow the appellant to engage a lawyer in the departmental proceeding so as to enable such lawyer to cross-examine the remaining witnesses to be examined by the department. We make it clear that the appellant will not be permitted to cross-examine the witnesses whose evidences had already been taken and closed. After the witnesses are examined we do not think that there will be any necessity of appearance of a lawyer in the departmental proceeding for the appellant and the appellant will be entitled to submit his arguments in writing by taking assistance of the lawyer if the appellant so desires. Since the departmental proceeding is pending for a long time it is only desirable that the same should be concluded at an early date. The Bank is directed to inform the appellant the next date of hearing of the

departmental proceeding at least a week in advance so that the delinquent employee can engage a lawyer and get his assistance in the departmental proceeding. The appeal is accordingly disposed of.

There will be no order as to costs.

Prabir Kumar Majumdar, J.

I agree.