

(1995) 05 DEL CK 0066

In the Delhi High Court

Case No : Civil Writ Petition No. 3818 of 1994

Subha Mukherjee

APPELLANT

Vs

UCO Bank

RESPONDENT

Date of Decision : 19-05-1995

Acts Referred:

Constitution of India, 1950 — Article 22(1)

Citation : (1995) 3 AD 103 : (1995) 34 DRJ 333 : (1996) 1 LLJ 83

Hon'ble Judges : S.D. Pandit, J;P.K. Bahri, J

Bench : Division Bench

Advocate : B. Bhattacharya and D.S. Chauhan, for the Appellant;

Judgement

S.D. Pandit, J.

(1) Rule D.B.

(2) We have heard learned counsel for the parties at length and, hence, we proceed to decide the writ petition finally.

(3) Petitioner Subha Mukherjee joint Uco Bank as a Clerk on 13.6.1966. She was promoted as an Officer, Junior Management Scale-I on 1.7.1976. On 1.7.1983 she was promoted to the rank of Officer, Middle Management Scale-11. She is working as an Officer at Nehru Place Branch of the respondent in New Delhi. On 24.1.1994 she has been charge-sheeted as regards her conduct in the remittance dated 19.2.1990 in respect of the amount of Rs.26,17,50,000.00 . The petitioner has denied and disputed the charges leveled against .her by filing her reply on 3.5.1994. Thereafter, the appointing authority was pleased to proceed with a departmental proceeding against her and accordingly appointed an Enquiry Officer and one Shri P.K. Bandopadhyay as a Presenting Office in the said departmental proceeding. Petitioner had given an application -cum-letter on 24.8.1994 seeking permission to engage a legal practitioner. Her application had been rejected by order dated 27.8.94 and, Therefore, she has come in writ jurisdiction before this Court. It is her contention that the order rejecting her

prayer for being represented by a legal practitioner is illegal as well as against the principles of natural justice. She has, Therefore, prayed for setting aside of the said order and to allow her to engage a legal practitioner in the said disciplinary proceedings.

(4) The claim of the petitioner is resisted by the respondent bank by filing the counter affidavit. It is contended on behalf of the bank that the Presenting Officer who is to represent the bank in the disciplinary proceedings against the petitioner is neither an advocate nor a legally trained person and there is no involvement of any complicated questions of law or fact in the proceedings in question and that it pertains to a routine normal banking transaction. Therefore, in view of the provisions of Rule 7 of Bank Regulations, the petitioner is not entitled to engage a legal practitioner when the Presenting Officer on behalf of the Bank is not a legal practitioner. "It is, Therefore, contended that this petition be dismissed with costs.

(5) Petitioner has produced the copy of Uco Bank Regulations pertaining to the dispute in question. Regulation No.7 is the relevant regulation and it reads as under:

"THE Officer-employee may take the assistance of any other officer employee but may not engage a legal practitioner for the purpose unless the Presenting Officer appointed by the disciplinary authority is a legal practitioner or the disciplinary authority having regard to the circumstances of the case so permits."

IF the above provisions of Regulation 7 are considered, then it would be quite clear that the employee of the bank is not as of right entitled to engage a legal practitioner in the disciplinary proceedings. Admittedly, in the instant case the bank has not engaged any legal practitioner as a Presenting Officer., When the employer Bank is not being represented by any legal practitioner in the said disciplinary proceedings the petitioner cannot claim as of right for being represented by a legal practitioner in the said proceedings.

(6) No doubt if the above provisions of Regulation 7 are considered then it would be quite clear that a discretion lies with the disciplinary authority for permitting the employee to be represented by a legal practitioner having regard to the circumstances of the case. Therefore, it is necessary to see as to what is the charge against the present petitioner. The charge against the petitioner reads as under:

ARTICLES of Charge Smt. Subha Mookherjee, is hereby charged as under for committing serious irregularities in February/March, 1990 while functioning as an officer in Parliament" Street Branch of the Bank:

"1).She, in a very negligent and reckless manner, and grossly violating the Bank's rules and procedures, contributed to wrongful remittance by telegraphic transfer of any enormous sum of Rs.26,17,50,000.00 in favor of Shri Harshad S. Mehta at Harnam Street Branch against two cheques aggregating

Rs.26,17,50,000.00 drawn in favor of "Uco Bank only". She allowed such remittance even though there was no authentic and acceptable instructions Therefore from Power Finance Corporation Ltd., the true owner of these funds. She thus contributed to the funds of Pfc Ltd. to be diverted to a wrong account exposing the Bank to huge financial risk.

2.A)She negligently effected the remittance of such a huge sum without ensuring that the relative it transaction was duly recorded in the relative books and records of the branch on 19.2.1990.

2.B)Only after a gap of 21 days i.e. on 12.3.90 she relied, prepared, signed and passed the relative debit and credit vouchers for bringing the transaction of 19.2.1990 to branch books but failed to obtain any confirmation in writing of the then Assistant General Manager of Parliament Street Branch for rectification of irregularity of such a magnitude.

2.C)She negligently did not recover/get recovered commission and other out of pocket expenses on 19.2.90 itself in respect of It remittance of Rs.26.175 crores. She also failed to notice the said discrepancy even while sending the revised it message on 20.2.90. The recovery in this respect of Rs.2,500.00 has been made on 22.2.90 by debiting the account of Harshad Mehta and crediting Working Expenses (TT

).

3.Smt.Mookherjee, by acting in such negligent and irregular manner, failed to take all possible steps to ensure and protect the interest of the Bank.

THE above mentioned actions of Smt.Subha Mookherjee constitute misconduct in terms of Regulation 3 read with Regulation 24 of the Uco Bank Officer Employees" (Conduct) Regulations, 1976, punishable under Uco Bank Officer Employees" (Discipline & Appeal) Regulations, 1976"

(7) Keeping in view the contents of the charge it would be quite clear that there is no involvement of any complicated question of either law or fact. What has been alleged against the present petitioner is her acts of negligence in not following the instructions issued by the Bank from time to time. Merely because there is involvement of a huge amount of Rs.26,17,50,000.00 or there happens to be a reference to Shri Harshad Mehta who is involved in shares scam, it could not be said that there are any complicated questions of fact or law involved in the present case.

(8) When there is no involvement of any complicated questions of law or fact in the case in which the present petitioner is involved in the disciplinary proceedings and when the Presenting Officer is not either a legal practitioner or law officer or officer trained in law, the disciplinary authority's, refusal of petitioner's prayer to allow hereto be represented by a legal practitioner could not be said to be a perverse order. It could also not be said that the order passed by the disciplinary authority is either against the principles of natural justice or in

contravention of any legal rights of the petitioner. It could also not be said that by refusing the request of the petitioner the petitioner has been put in an unequal position in the said disciplinary proceedings. There are various legislations in which there is a specific provision in the Act that the parties shall not be represented by a legal practitioner as of right. For example, in the Family Courts Act, 1984 there is a specific provision u/s 13 of the said Act that a party shall not be represented by an advocate. The validity of the said section was challenged before the Supreme Court in CW.1124/87 titled Kanpur Bar Association Vs. Union of India decided on 4.1.1988. The Supreme Court upheld the validity of Section 13 of the act and it has been held that no party as of right can claim to be represented by a legal practitioner. A similar provision was also there in Maharashtra Restoration of Lands to Scheduled Tribes Act (14 of 1975) and that provision was challenged before the Supreme Court in the case of Lingappa Pochanna Appelwar Vs. State of Maharashtra and Another, . In the said case it has been laid down by the Apex Court as under:-

"NOW it is well settled that apart from the provisions of Article 22(1) of the Constitution, no litigant has a fundamental right to be represented by a lawyer in any Court. The only fundamental right recognised by the Constitution is that under Article 22(1) by which an accused who is arrested and detained in custody is entitled to consult and be defended by a legal practitioner of his choice. In all other matters i.e. in suits or other proceedings in Which the accused is not arrested and detained on a criminal charge, the litigant has no fundamental right to be represented by a legal practitioner."

(9) Learned counsel for the petitioner has cited before us the cases of Board of Trustees of the Port of Bombay Vs. Dilipkumar Raghavendranath Nadkarni and Others, ; J.K. Aggarwal Vs. Haryana Seeds Development Corporation Ltd. and others, ; and Alakendu Sarkar Vs. State of West Bengal & Others 1981 (2) Slr 33. If the facts of all these three cases are seen then it would be quite clear that they are not applicable to the case before us. In the case of Board of Trustees, Port of Bombay Vs. Dilip Kumar (Supra) the employer was represented by a legal officer and, consequently, the rejection of the request of the employee to be presented by lawyer has been held as a denial of reasonable opportunity of hearing to the- employee. That would be quite clear from the facts stated in para 3 of Page 110"

"BEFORE the enquiry opened, the first respondent submitted a request seeking permission to engage a legal practitioner for his defense. The Chairman of the appellant rejected this request and simultaneously appointed two officers, namely, Shri R.K. Shetty and Shri A.B. Chaudhary, Legal Adviser and Junior Assistant Legal Adviser respectively of the appellant as Presenting Officers before the Enquiry Officer."

IN the aforesaid case the Supreme Court also considered and followed its earlier decision in C.L. Subramaniam Vs. Collector of Customs, Cochin, . In C.L. Subramaniam Vs. Collector of Customs (Supra) the employer was represented by

a trained prosecutor and the employee was denied the opportunity to engage a legal practitioner to defend him.

(10) In the case of J.K. Aggarwal Vs. Haryana Seeds Development Corporation Limited [Supra] it was found by the apex court that the employee was pitted against a Presenting Officer who was trained in law and, Therefore, it was held that where the Presenting Officer, was a person with legal attainment and experience and the employee had no legal background, refusal of services of a lawyer to the delinquent officer resulted in denial of natural justice.

(11) In the case of Alakendu Sarkar Vs. State of West Bengal & Ors. .(supra), as per the provisions of West Bengal Rules there was no provision saying that the employee may not be represented by a legal practitioner in a departmental enquiry and it was also found that there was involvement of complicated questions of law as well as fact and, Therefore, rejection of the prayer of the employee to be represented by an advocate was held to be improper rejection and the matter was remanded with a direction: to give the employee the assistance of a lawyer.

(12) Thus, all these three cases are not applicable to the facts before us. In the instant case the Presenting Officer is not a legal practitioner. There is nothing on record to show that he has undergone any legal training. The Presenting Officer is a graduate in Pharmacy. Petitioner is also a graduate in arts. The Presenting Officer is comparatively a junior officer. He joined the bank in the year 1977 as per the Additional Affidavit filed by the petitioner herself No doubt at present he is working since about one year prior to the filing of the petition as an Assistant Chief Officer in the Vigilance Department of Enquiry Cell of the Uco Bank Zonal Officer, New Delhi. But merely because he is working in the said Vigilance Department he could not be said to be a legally trained person. There is nothing on record to show that he was deputed to undergo any legal training. It must be remembered that petitioner is not denied the right of being represented by another employee of the Bank. It has been mentioned in the counter affidavit of the respondent that in another proceedings pending against the petitioner she is represented by another employee Shri Asim Paul who is B.Sc.(Engg.) CAIIB-II who has vast experience of working in senior posts in the bank in various departments. The documents produced Along with the counter affidavit also show that the said Shri Asim Paul has acted as a representative for not only the petitioner but for other delinquent officers in 1991 and 1992.

(13) It is not the case that the petitioner is not permitted to be represented by another employee of the bank and to take assistance of her colleague as the disciplinary authority is assisted by an employee of the bank. Therefore, the denial of her request to be represented by a legal practitioner could not be said to be putting her in an unequal position and thereby acting against the principles of natural justice.

(14) Therefore, in view of the material on record it is quite clear that the

discretion used by the disciplinary authority could not be said to be resulting into any denial of fundamental right of the petitioner. It could also not be said to be against the principles of natural justice.

(15) In conclusion we hold that there is no merit in the present petition and, , Therefore, the petition deserves to be dismissed. We accordingly dismiss the writ petition but in the circumstances of the case we direct the parties to bear their , respective costs.