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**(2007) 04 DEL CK 0193**

**In the Delhi High Court**

**Case No :** Writ Petition (C) No. 2764 of 2007

Vijay Thakur

APPELLANT

Vs

Videsh Sanchar Nigam Ltd. and Others

RESPONDENT

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**Date of Decision :** 20-04-2007

**Acts Referred:**

Bharat Sanchar Nigam Limited (Conduct, Discipline and Appeal) Rules, 1992 — Rule 29

**Citation :** (2007) 140 DLT 181 : (2007) 2 ILR Delhi 82 : (2007) 3 LLJ 871

**Hon'ble Judges :** Hima Kohli, J

**Bench :** Single Bench

**Advocate :** T.N. Razdan, for the Appellant; Rishi Aggarwal, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

Hima Kohli, J.—With the consent of the parties, the writ petition is being taken up at the stage of admission and is being disposed of.

2. The present writ petition has been filed by the petitioner praying inter alias for quashing the charge-sheet and the order of suspension dated 08.2.2007 issued against the petitioner and/or in the alternative, for setting aside the order of the respondent No. 3 dated 2.4.2007 and permission to the petitioner to be defended by a legal practitioner.

3. In the course of arguments, learned Counsel for the petitioner has restricted his relief to the second prayer i.e. for setting aside the order dated 2.4.2007, passed by the respondent No. 3 while reserving his right to assail the charge sheet in the pending enquiry proceedings.

4. It is submitted by the counsel for the petitioner that the petitioner is working in the capacity of a General Manager in the Delhi branch of the respondent. He submits that the respondent served upon the petitioner on 22.2.2007, a charge-sheet dated 08.2.2007. The respondent No. 3, the enquiry officer, called upon the petitioner to be present before him on 2.4.2007, on which date, the petitioner was represented by an advocate as a defense assistant. An objection

was raised to the appearance of an advocate by the Presenting Officer of the respondent on the ground that he was not a practicing lawyer, but was an employee of the respondent. After hearing both the parties, the respondent No. 3 held that a practicing advocate cannot be allowed to participate in the departmental enquiry as a defense assistant since the charged official failed to establish that the Presenting Officer is a practicing lawyer. However, an opportunity was granted to the petitioner to avail the services of any public servant as his defense assistant, if he so desired. With these observations, the application filed by the petitioner for being represented by an advocate was rejected. Aggrieved by the aforesaid order, the petitioner has filed the present writ petition.

5. Counsel for the the petitioner relies upon Rule 29, Clause (iv) and (vi)(a) of the VSNL (Conduct, Discipline and Appeal) Rules, 1992, which states as below:

Rule 29. Procedure for imposing major penalties:

iv) On receipt of the written statement of the employee or if no such statement is received within the time specified, an enquiry may be held by the Enquiry Officer constituted under Sub-rule (ii). Provided that it may not be necessary to hold an enquiry in respect of the charges admitted by the employee in his written statement. The Enquiry Officer shall, however, record its findings on each such charge.

vi(a) An employee may take the assistance of any other public servant or a legal practitioner with the permission of the Enquiry Officer.

6. Learned Counsel for the petitioner submits that in view of the fact that the Enquiry Officer, as appointed by the respondent No. 2, is a practicing advocate, being a standing counsel for the Union of India and that the Presenting Officer is a law graduate who worked in the department till April, 2006 as a Legal Manager and is presently working in the Administration; the petitioner ought to be permitted to appoint a defense assistant, of equal status to defend him i.e., a practicing advocate.

7. Counsel for the petitioner argues that the Supreme Court has held that if the Presenting Officer of the management is a man of law then refusing to grant permission to the delinquent employee to be defended by a legal practitioner may entail mis-carriage of justice. in support of his contentions, has relied upon the following judgments:

1. Dr. K. Subba Rao v. State of Hyderabad reported as AIR 1957 Pra. 414

2. Board of Trustees of the Port of Bombay Vs. Dilipkumar Raghavendranath Nadkarni and Others,

3. J.K. Aggarwal Vs. Haryana Seeds Development Corporation Ltd. and others,

8. Learned Counsel for the respondent who appears on advance notice, opposes the writ petition and states that the contention of the petitioner is mis-conceived

inasmuch as the Presenting Officer of the respondent cannot be equated with a practicing lawyer as he is an employee of the respondent/VSNL and that the respondent No. 3 was justified in rejecting the request to engage a practicing lawyer on his behalf as a defense assistant. He further states that in similar circumstances, as in the case of the parties herein, the request of the delinquent officer for engaging a legal practitioner was rejected and even in the present case, there is no justification for engaging a legal practitioner inasmuch as the charges against the petitioner herein are not of such a nature that he cannot depend upon himself. He places reliance on the following judgments:

1. State of Rajasthan, Jaipur Vs. S.K. Dutt Sharma, and
2. Food Corporation of India Vs. Bant Singh and another,
3. Harinarayan Srivastav Vs. United Commercial Bank and another,

9. I have heard counsels for both the parties. The court has also been taken through the charge-sheet dated 08.2.2007, annexed with the writ petition. Each matter has its own peculiarities and the facts and circumstances of each matter have to be examined on a case to case basis depending on the circumstances thereof. Facts on the record reveal that the Enquiry Officer himself is a practicing advocate and a standing counsel for the Union of India. The Presenting Officer appearing on behalf of the respondent/management is not only a law graduate, but till April, 2006 worked as a legal manager and thus it cannot be denied that he is truly "a legal person" or "a man of law". As admitted by both the parties, the charges leveled against the petitioner are of a nature which if proved, are likely to result in imposition of a major penalty on the petitioner.

10. As held by the Supreme Court in the case of J.K. Aggarwal (supra), reproduced as under:

8. It would appear that in the inquiry, the Respondent-Corporation was represented by its Personnel and Administration Manager who is stated to be a man of law. The rule itself recognises that where the charges are so serious as to entail a dismissal from service the inquiry-authority may permit the services of a lawyer. This rule vests a discretion. In the matter of exercise of this discretion one of the relevant factors is whether there is likelihood of the combat being unequal entailing a miscarriage or failure of justice and a denial of a real and reasonable opportunity for defense by reason of the appellant being pitted against a presenting-officer who is trained in law. Legal Adviser and a lawyer are for this purpose somewhat liberally construed and must include "whoever assists or advises on facts and in law must be deemed to be in the position of a legal adviser". In the last analysis, a decision has to be reached on a case to case basis on the situational particularities and the special requirements of justice of the case....

9. On a consideration of the matter, we are persuaded to the view that the refusal to sanction the service of a lawyer in the inquiry was not a proper

exercise of the discretion under the rule resulting in a failure of natural justice; particularly, in view of the fact that the Presenting-Officer was a person with legal attainments and experience. It was said that the appellant was no less adept having been in the position of a Senior-Executive and could have defended, and did defend, himself competently; but as was observed by the learned Master of Rolls in Pett's case that in defending himself one may tend to become "nervous" or "tongue tied", Moreover, appellant, it is claimed, has had no legal background. The refusal of the service of a lawyer, in the facts of this case, results in denial of natural justice.

11. The aforesaid judgment was rendered by the Supreme Court while taking note of an earlier judgment in the case of Board of Trustees of the Port of Bombay (supra), and the court went on to hold as below:

12. ...In our view we have reached a stage in our onward march to fairplay 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 would amount to denial of a reasonable request to defend himself and the essential principles of natural justice would be violated....

12. The contention of the respondent that the petitioner is not entitled to assistance of a legal practitioner as the respondent has itself chosen not to appoint a legal practitioner and because the Presenting Officer holds a post of Senior Manager (Administration), does not hold any water in view of the fact that the presenting officer is a law graduate and has been working as a legal manager in the respondent department till the year 2006. Thus, it is only just, fair and proper that the petitioner is permitted to engage a legal practitioner to defend him in the inquiry proceedings. It is in the fitness of things that when reference is made to principles of natural justice and reasonable opportunity, the Court takes into its fold the real purpose of an inquiry i.e. to permit a delinquent employee to establish his case to the best of his ability before the Enquiry Officer, particularly, when the charges framed are likely to result in imposition of major penalties on the petitioner. For the said purpose, if the rules permit engaging a legal practitioner, and the enquiry officer himself is a practicing advocate, while the presenting officer is a legal person, there appears no justification in denying the services of legal practitioner to the petitioner. The contention of the respondent that the charges are simple and, Therefore, can be defended by the petitioner himself, without the assistance of a legal practitioner, is not the ground on which the application of the petitioner, filed before the respondent No. 3, was rejected. As noted above, the reason for rejecting the request of the petitioner is that the petitioner has failed to establish that the Presenting Officer is a practicing lawyer.

13. It may further be noted that the respondents are not likely to be affected adversely, merely, if the petitioner is permitted to engage an advocate to represent his case in the departmental inquiry. Therefore, this Court deems it fit

and proper to quash the order dated 02.04.2007 passed by the respondent No. 3. Liberty is granted to the petitioner to take the assistance of a practicing lawyer as defense assistant in the departmental proceedings. Needless to state that the respondent shall also be permitted to represent itself in the departmental proceedings through a practicing advocate. The petitioner shall also be at liberty to challenge the validity and legality of the charge sheet before the Enquiry Officer.

14. The writ petition is allowed to the aforesaid extent. The parties are left to bear their own costs.