

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30/08/2002

CORAM

THE HON'BLE MR.JUSTICE E.PADMANABHAN

WRIT PETITION NO. 5969 of 2002 and WRIT PETITION NO. 5970 of 2002  
and W.P.No. 5971 of 2002

AND

WPMP.Nos: 8263 to 8367 2002 and WVMP.No:629 of 2002

K.Jagannathan ..Petitioner

-Vs-

1. Indian Overseas Bank  
rep. by the Dy General Manager  
Disciplinary Authority,  
Conduct and Disciplinary Action cell  
Central Office,  
763, Anna Salai, Chennai-2

2. A.S.Shanmuganathan  
The Presenting Officer  
Indian Overseas bank  
Conduct and Disciplinary Action cell  
Central Office,  
763, Anna Salai, Chennai-2

3. K.Deivasigamani  
The Enquiry Officer,  
Indian Overseas bank  
Conduct and Disciplinary Action cell  
Central Office,  
763, Anna Salai, Chennai-2 ..Respondents

For petitioner:: Mr.K.Chandru Senior Counsel  
for Mr.S.Jayakumar

For respondents: Mr.N.G.R.Prasad

Writ Petitions are filed under Article 226 of The Constitution of  
India praying for the issue of a writ of Certiorarified Mandamus, as stated  
therein.

:O R D E R

The petitioner in W.P.No.5969 of 2002 has prayed for the issue of a writ of certiorarified mandamus calling for the records o the first respondent herein in his proceedings dated 7.2.2002 bearing Ref.NO.DO:DGM:(MRK):DAL:061:2002 and quash the same and consequently direct the 1st respondent to permit the petitioner to have the assistance of a lawyer or legally trained person in the enquiry to be conducted by the 2nd respondent.

2. The petitioner in W.P.No.5970 of 2002 has prayed for the issue of a writ of certiorarified mandamus calling for the records o the first respondent herein in his proceedings dated 7.2.2002 bearing Ref.NO.DO:DGM:(MRK):DA:061:2002 and quash the same and consequently direct the 1st respondent to make available to the petitioner or accord permission to visit the branch and Regional Office for perusing the records to submit explanation.

3. The petitioner in W.P.No.5969 of 2002 has prayed for the issue of a writ of certiorarified mandamus calling for the records o the first respondent herein in his proceedings dated 7.2.2002 bearing Ref.NO.DO:DGM:(MRK):DAL:061:2002 and quash the same and consequently direct the 1st respondent to order for a joint enquiry against other similarly placed co employees of the petitioner who have been issued with charge sheets on similar lines of the petitioner for the enquiry to be conducted by the 2nd respondent.

4. In the above Writ Petitions notice was ordered by K.P. Sivasubramaniam,J., while granting interim stay of all further proceedings dated 26th February 2002. The respondents have been served and they have entered appearance through Mr. N.G.R.Prasad. The respondents moved WVMP NO.629 of 2002 to vacate the order of interim stay.

5. Heard Mr.K.Chandru, learned senior counsel appearing for Mr.S. Jayakumar for the petitioner in all the writ petitions and Mr.N.G.R. Prasad, learned counsel appearing for the respondents in all the writ petitions. With the consent of either side, the writ petitions were taken up for final disposal when the application for stay came up for confirmation besides the application to vacate the interim stay.

6. All the above writ petitions were heard together as the contention advanced in all the writ petitions is identical. It would be sufficient to refer to the facts in one of the writ petition. The petitioner in W.P. No.5969 of 2002 was appointed in the first respondent bank on 10.4.1981 and confirmed on 10.10.1981. The petitioner worked at Suramangalam Branch during December, 1997 to June 1999. During the said posting, certain acts of omission and commission were alleged against the petitioner by the first respondent bank. The first respondent issued a charge sheet dated 2.9.2000. The petitioner was called upon to show cause in writing as to why disciplinary action should not betaken against him. The petitioner sought for extension of time to submit his explanation while seeking opportunity to inspect the documents. However, the respondents directed the petitioner to file his objections with the available materials within ten days. On 23.1 .2000, the

petitioner sent a reply stating that without his being permitted to peruse the relevant documents/files relating to the alleged transaction, he will not be in a position to give his reply to the charge sheet dated 2.9.2000. Without granting time and without affording opportunity the first respondent ordered for enquiry to be conducted and appointed respondents 2 and 3 as the Presenting Officer and Enquiry Officer respectively by letter dated 21.1.2001. the first respondent had proceeded further with the enquiry without affording opportunity. By letter dated 9.5.2001, the petitioner addressed the respondents for permission to peruse the documents/files to give a meaningful reply to the charge memo. The petitioner also requested to conduct a joint enquiry since his colleagues were working with him and who are similarly placed were also being proceeded with the charge sheets for identical alleged charge of misconduct. On 4.2.2002, the petitioner requested the respondents to permit him to avail the assistance of an Advocate/legally trained person in view of the complexity of the issue involved and the seriousness of the charges framed against him, which will have direct relevance in respect of his service. The petitioner relied upon clause 5.21 of the Shastri Award. The respondent has not provided proper opportunity and the third respondent fixed the date of enquiry at the Branch premises. The petitioner has also been permitted to peruse the documents. The enquiry is posted on 27.2.2002. If the enquiry is proceeded, the petitioner apprehends that he will not get justice as it would be a pre determined disciplinary proceedings. The attitude of the respondents is amply proved by the letter of the respondent dated 9.2.2002 refusing to permit the petitioner to have the assistance of a Lawyer to defend him in the enquiry. Aggrieved by the rejection of the request dated 9.2.2002, the present writ petition has been filed.

7. W.P.No.5971 of 2002 has been filed by the very same petitioner seeking for the issue of a writ of certiorarified mandamus to call for the records of the first respondent dated 7.2.2002, quash the same and consequently direct the first respondent to order a joint enquiry against the petitioner and other similarly placed employees of the petitioner who has been issued with the charge sheet on similar lines of the petitioner for the enquiry to be conducted by the second respondent. Mr.K.Chandru, learned senior counsel appearing for the writ petitioner in this writ petition represented that this writ petition is not pressed as the proceedings against other co employees have already been completed and that he only addressed for orders in W.P.No.5 969 of 2002. In the light of the above statement made by Mr.K. Chandru, learned senior counsel for the petitioner, the writ petition No.59 71 of 2002 is dismissed.

8. In W.P.No.5970 of 2002, the very same petitioner K.Jagannathan, has prayed for the issue of a writ of certiorarified mandamus calling for the records of the first respondent in his proceedings dated 7.2.2002 bearing Ref.No.DO:DGM(MRK):DA:061:2002, quash the same and direct the first respondent to make available to the petitioner or accord permission to visit the Regional office to peruse the records and to submit his explanation. Inn this writ petition also no argument was advanced by Mr.K.Chandru and the learned senior counsel advanced arguments only in W.P.No.5969 of 2002. It is clear that the petitioner is not also pressing W.P.No.5970 of 2002 and therefore W.P.No:5970 of 2002 is also dismissed.

9. On behalf of the first respondent a counter has been filed. The first respondent while setting out details and service particulars of the petitioner has stated that between December 1997 to June 1999 when the petitioner was working in Suramangalam branch, Salem certain irregularities were noticed and he was placed under suspension on 18.8.1999. The first respondent bank has also lodged a criminal complaint against the petitioner for alleged defraud and misappropriation of bank's funds to the tune of Rupees One Crore. The petitioner had made himself scarce. On 2.9.2000 a charge sheet was issued to the petitioner. The substance of the charge is that the petitioner fraudulently and dishonestly had passed credits to his account, his wife's account, brother-in-law's accounts maintained at UCO Bank, Salem through clearing from Indian Overseas Bank, Suramangalam Branch without debit to the respective accounts. AS a result of such acts on the part of the petitioner, the first respondent bank has lost to the tune of Rupees One Crore. All the staff involved in the alleged deal were served with the charge sheets. The petitioner is being charged with defrauding and making wrongful gain out of the Bank's money and in respect of others, the emphasis being negligence and non verification of the records properly. It is not necessary to hold a joint enquiry as separate charge sheets were framed against others. The petitioner refused to give explanation to the charge, unless the documents are permitted to be perused. The petitioner persisted with the said stand. The petitioner refused to submit his objection or explanation and he was informed that an enquiry has been ordered. The first respondent appointed an enquiry officer and presenting officer and the enquiry officer fixed the date for enquiry. The petitioner was informed that he can peruse the documents before 15.2.2002. The enclosure to the charge sheet also was served through the Branch besides it was contended that the same were furnished along with the charge memo. It is well open to the petitioner to come and peruse the documents mentioned in the list.

10. The petitioner's demand for assistance of a lawyer is not justified as the bipartite settlement provides a lawyer's assistance only with the permission of the Bank. The petitioner has no absolute right to engage a lawyer. The facts in this case are all simple relating to the debits, credits and day to day banking transaction of which the petitioner is well aware of. The presenting officer and enquiry officer are officers of the bank and they are neither legally trained, nor law graduates. The Apex Court in Harinarayan Srivatsav Vs. United Commercial bank and another reported in 197 (2) LLJ 620 held that when the allegations of the charge sheet are very simple and not complicated, right of representation through lawyer can be denied. The refusal to engage an Advocate is not violative of the principles of natural justice.

11. The petitioner cannot seek for assistance of a legal practitioner on the ground that no person in the Bank is willing to come and defend him. If the petitioner is to be allowed, then every other employee will demand assistance of a lawyer. It is difficult to believe that none of the co employees is willing to assist him. AS per the bipartite agreement entered into by the respondent bank with the majority Union the petitioner is entitled to have ;the assistance of a defence representative from within ;the Bank and

that has never been denied to him. It is enough if he is afforded an opportunity to peruse the documents at the stage of enquiry which the petitioner has availed. The grievance regarding payment of subsistence allowance has been raised in W.P.133841 of 2001 and the same had been disposed of by order dated 3.8.2001. There is no justification to continue the order of interim stay in respect of the departmental enquiry proceedings and the order of interim stay has to be vacated.

12. Heard Mr.K.Chandru, learned senior counsel appearing for the petitioner and MR.N.G.R.Prasad, learned counsel appearing for the respondents 1 and 2. The points and substantial contentions advanced in W.P.No.5969 of 2002 being:

"Whether the refusal to permit the petitioner to have the assistance of a legal practitioner/Advocate to assist him in the departmental proceedings is illegal, contrary to terms of bipartite settlement?"

(ii) Whether on facts the petitioner is entitled to have the assistance as requested by him as the imputations of misconduct being complicated and grievous warrants the assistance of a legal practitioner?"

13. The learned senior counsel appearing for the petitioner referred to the bipartite settlement dated 10th April 2002 and Clause 12 of the settlement is being pressed into service as according to the learned senior counsel, the petitioner is entitled to have the assistance of a lawyer and the first respondent should have granted permission as the charges/misconducts alleged or imputations detailed are grave in nature, While, Mr.N.G.R.Prasad, learned counsel appearing for the respondents stoutly opposed the said contention and contended that the charges are simple in nature and the petitioner, an employee of the Bank is well conversant with the banking transactions and the entries made in the books of accounts maintained in the Branch and therefore he is not entitled to have the assistance of a legal practitioner and he has been rightly denied permission to have the assistance of a lawyer, but he was permitted to have the assistance of a co employee or a representative of a registered trade union of the Bank. The respondent denies the averment that no trade union representative is willing to come forward to assist the petitioner after his suspension. There is no reason at all to disbelieve the version or the statement of the petitioner that no trade Union representative is willing to come forward to assist the petitioner and only on that basis further arguments advanced by the counsel on either side have to be considered.

14 . Clause 12 of the settlement reads thus:-

"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 as 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 witnesses 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 a 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 Organization 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 the proposed punishment in case any charge is established against him."

15. As seen from above clause in the bipartite settlement the petitioner shall be permitted to be defended by a representative of a registered trade union of bank employees of which trade union he is a member or if he is not a member of any trade union of bank employees on the date of first notified for commencement of the enquiry by a representative of a registered trade union in which he is employed or at the request of the union by a representative of a State Federation or All India Organisation to which such Union is affiliated, or with the bank's permission the delinquent shall be permitted to be defended by a lawyer.

16. According to Mr.K.Chandru when no union representative or trade union or representative falling under Clause 12(a)(i) (x)(y) or (ii) is willing to come forward and when the charges are complicated and grave in nature and the imputations have grave implication, the respondents ought not to have rejected the request for permission to have the assistance of a lawyer. As seen from the order impugned the first respondent has rejected the petitioner's request in the following lines:

"Regarding defending the case, you may have the assistance of representative of a registered trade union as per the Bipartite settlement. Considering the facts of the case, I am unable to consider your request to have the assistance of an advocate/legally trained person to present your case in the enquiry"

17. In other words the request of the petitioner has been rejected on the premise or on the view that the facts of the case do not warrant the assistance of a legally trained person. Mr.K.Chandru, learned senior counsel also contended that respondents 2 and 3 are officers in the respondent Bank who are in charge of Conduct and Disciplinary Action Cell, Central Office, and therefore they have rich experience even though they may not be legally trained or they may not possess the legal qualification and it is rather too difficult for the petitioner to face such experienced officers. Mr.Prasad, learned counsel for the respondents also points out that the respondents 3 and 4 are not legally qualified persons, nor they are legally trained, but they are bank officers and therefore it is not necessary to grant permission and no

interference is called for with the order declining to grant permission to have assistance of a lawyer. Mr.Prasad, learned counsel contended that the imputations or charges are simple and hey are not complicated while Mr. Chandru, learned senior counsel contended that the charges are grave, complicated and the implications as well as ramifications or the imputations being grave in nature and consequences will be serious, the petitioner should have been granted permission. Hence, it has to be examined whether the charges are simple in nature? or whether the charges are grave or complicated? or whether it requires the assistance of a legal practitioner for the petitioner being defended?

18. Taking up the first point this court has to examine as to whether the charges framed are simple or complicated or grievous. It is essential to refer to the imputations and they read as hereunder:-

"You have fraudulently introduced the following five S.B. Accounts at Suramangalam Branch: R.Pushpammal (S.B.14000) S.Periaswamy (S.B.1478 3), R.Radhakrishnan (15215), V.Rajagopal (S.B.16090) and R.Sadasivam (S.B.16268); You had fraudulently and dishonestly obtained cheques bearing Nos.0660451, 0660475, 0007431, and 0007440 issued by the S.B. Account holders 14783 and 15215; You have fraudulently got the cheques issued by the S.B.account holder 14783 and S.B.14584 favouring your wife and brother-in-law; You got these cheques sent for collection through UCO Bank, Salem where you were maintaining SB A/c.7629 apart from your wife R.Pushpammal and brother-in-law R.Sadasivam were maintaining S.B.Account Nos.7763 and 7823 respectively; On receipt of those cheques at Suramangalam branch through clearing, the same were stealthily removed and destroyed by you without debiting to the respective accounts but got credits passed on to accounts maintained by your wife and your brother-in-law with UCO Bank, Salem and thus you had defrauded the Bank to the tune of Rs.17 lakhs covered by ten cheques;

xx xx xx xx xx xx xx xx xx xx

xx xx xx xx xx xx xx xx xx xx

You have fraudulently got the cheques issued from R.Radhakrishnan S. B.A/c No.15215 at Suramangalam branch favouring your wife and brother-in-law and you have on various dates got presented the cheques totalling to Rupees ten lakhs in clearing through UCO Bank, Salem; On receipt of the cheques at Suramangalam Branch through clearing the cheques were stealthily removed and destroyed by you without the cheques being debited to the respective accounts but got credits passed on to accounts maintained by your brother in law, your wife and thus you have defrauded he Bank to the tune of Rs.10 lakhs; You have also fraudulently got the cheques issued by G.Savithri known to you presented cheques or Rs.8 lakhs and got it cleared through UCO Bank, Salem where your wife and brother-in-law were maintaining accounts and thus you have defrauded to the tune of Rs.8 lakhs, which cheques were stealthily removed.

Identical imputations are made with respect to Savings Bank Account holders R.Radhakrishnan, S.Sumathi, K.Parthasarathy and it is alleged that to the tune of Rs. 43.52 lakhs; You have fraudulently got the cheques issued and he ha defrauded he Bank. So also by fraudulently obtaining the cheques from persons known to you have have defrauded to the tune of Rs.8.48 lakhs.

Xx xx xx xx xx xx xx xx xx xx

xx xx xx xx xx xx xx xx xx xx

Further, to avoid detection of the fraud/to cover up the fraud you have fraudulently, dishonestly made alterations/manipulations in the various books of accounts during the year 198 in respect of various S.B.Accounts Day Book. To avoid detection of fraud on 28.7.1998 you have manipulated Rs.20 lakhs in G.L. Balance book on 23.6.1998 by wrong arrival of totals; you have posted in the SB Progressive register for SB Ledger No.35 as Rs.5,33,985 instead of Rs.133985.85 on 13.4.1 998. So also posting in various other registers and ledgers; you have fraudulently altered the opening balance, closing balance and C.O summary to the tune of Rs.100 lakhs; you have fraudulently recorded the wrong figures in CO summary in respect of opening and closing of balances of CO accounts while preparing the CO summaries to cover up the fraud committed by you.

Xx xx xx xx xx xx xx xx xx xx

xx xx xx xx xx xx xx xx xx xx The

number of such frauds runs to 42; you have misused your official position and availed loans in the name of your close relatives for your benefit; you have also given to Soman David and S.Jagadish persons know to you U.S \$8350 and got the same encashed in rupees through them on 15.12.1998 in influencing the Manager of Suramangalam Branch and also got issued encashment certificates in their names; you have caused damage to the properties of the Bank and thereby committed grave misconduct within the meaning of para 17.5(d) of the Bipartite settlement dated 14.12.1996 between the Bank and its workmen as amended upto date; the above acts are prejudicial to the interest o of the Bank and it is a misconduct. xx xx xx xx."

19. In the considered view of this court the charges are not simple or so simple as sought to be contended by Mr.Prasad, learned counsel appearing for the respondents, but they are not only complicated, but also grave in nature.

Act of fraud, act of manipulation, fabrications of very many number of accounts, stealthily removing cheques and destruction of cheques are innumerable in numbers and acts of defrauding of substantial amount running to a crore of rupees cannot be stated as not grave and it is definitely requires legal assistance without which the petitioner though he is conversant with the banking transaction will not be in a position to defend himself, much less effectively. The petitioner is also facing criminal misconduct and prosecution is being continued. This court is inclined to sustain the contention of Mr.K.Chandru, learned senior counsel, that the charges are grave, complicated and it is not one or two instance or transaction, but it runs to hundreds and leading to substantial sum and it may if established warrant major punishment of dismissal or removal or alike. In respect of various accounts and dealings with various banks, besides fraud and destruction of records, manipulation of accounts and criminal intent as well. This court holds that the charges are not only grave but also complicated and the petitioner will not be in a position to defend himself effectively without the assistance of a lawyer.

20. As regards the second part of the legal contention that the petitioner is not entitled to legal assistance, learned counsel on either side relied upon various pronouncements. It is essential to refer to some of them



at least.

21. In *H.Srivatsav Vs. UCO Bank and another* reported in 1997 II LLJ (SC) 218 the Apex Court held that denial of assistance of an Advocate is not violation of principles of natural justice as on the facts of that case the High Court held that the facts are not complicated and the assistance of an Advocate is not mandatory in the domestic enquiry. On facts, the above pronouncement of the Supreme Court has no application to the present case and it is distinguishable.

22. In *J.K.Aggarwal Vs. Haryana Seeds Development Corporation Ltd., and others* reported in 1991 (2) SCC 283, the Apex court held that the right of representation by a lawyer may not in all cases be held to be a part of natural justice and no general principle valid in all cases can be enunciated. In the said pronouncement the Apex Court further held that the rule granting permission 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. In that respect, it has been held thus:-

"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 defence by reasons for 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 assist or advises on facts and in law must be deemed to be in the position of a legal adviser". IN the las tnlalysis, 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. It is unnecessary, therefore, to go into the larger question "whether as a sequel to an adverse verdict in a domestic enquiry serious civi and pecuniary consequences are likely to ensue, in order to enable the person so likely to suffer such consequences with a view to giving him a reasonable opportunity to defend himself, on his request, should be permitted to appear through a legal practitioner" which was kept open in *Board of Trustees of the Port of Bombay V. Dilipkumar* (1983 1 SCC 124). However, it was held in that case

"...In our view have reached a stage in our onward march to fair play 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...."

23. In *Board of Trustees of the Port of Bombay V. Dilipkumar*, reported in 1983 (1) SCC 124 Their Lordships of the Supreme Court held that on

facts of the said case refusal of employees request amount to denial of reasonable opportunity to defend himself. In this respect it has been held thus:-

"10. Even in a domestic enquiry there can be very serious charges and adverse verdict may completely destroy the future of the delinquent employee. The adverse verdict may so stigmatize him that his future would be bleak and his reputation and livelihood would be at stake. Such an enquiry is generally treated as a managerial function and the enquiry officer is more often a man of the establishment. Ordinarily he combines the role of a presenting-cum-prosecuting officer and an enquiry officer, a Judge and a prosecutor rolled into one. In the past it could be said that there was an informal atmosphere before such a domestic tribunal and that strict rules of evidence and pitfalls of procedural law did not hamstring the enquiry by such a domestic tribunal. We have moved far away from this stage. The situation is where the employer has on his pay rolls, labour officers, legal advisers, lawyers in the garb of employee and they are appointed presenting-cum-prosecuting officers and the delinquent employee pitted against such legally trained personnel has to defend himself. Now if the rules prescribed for such an enquiry did not place an embargo on the right of the delinquent employee to be represented by a legal practitioner, the matter would be in the discretion of the enquiry officer whether looking to the nature of charges, the type of evidence and complex or simple issues that may arise in the course of enquiry, the delinquent employee in order to afford a reasonable opportunity to defend himself should be permitted to appear through a legal practitioner..... Can one imagine how the scales were weighted and thereby tilted in favour of the prosecuting officer. In this enquiry the employer would be represented by two legally trained minds at the cost of the port trust while the first respondent was asked either to fend for himself in person or have the assistance of another employee such as Nadkarni who is not shown to be a legally trained person but the delinquent employee cannot engage legal practitioner at his cost. Can this ensure a fair enquiry? The answer is not far to seek. Apart from any legal proposition or formulation we would consider this approach as utterly unfair and unjust. More so in absence of rules, the Chairman of the appellant was not precluded from granting a request because the rules did not enact a negative inhibition. Therefore, apart from general propositions, in the facts of this case, this enquiry would be a one sided enquiry weighted against the delinquent officer and would result in denial of reasonable opportunity to defend himself. He was pitted against the two legally trained minds and one has to just view the situation where a person not admitted to the benefits of niceties of law is pitted against two legally trained minds and then asked to fend for himself. In such a situation, it does not require a long argument to convince that the delinquent employee was denied a reasonable opportunity to defend himself and the conclusion arrived at would be in violation of one of the essential principles of natural justice, namely, that a person against whom enquiry is held must be afforded a reasonable opportunity to defend himself."

24. In C.L.Subramaniam Vs. Collector of Customs, Cochin, reported in 1972 (1) LLJ 465, where the delinquent was pitted against the trained prosecutor and the delinquent not being a legal practitioner it was held that

his request should not be brushed aside and denial of permission to engage a counsel has resulted in serious prejudice. In that respect it has been held thus:-

"23. It is needless to say that Rule 15 is a mandatory rule. That rule regulates the guarantee given to Government servants under Art.311 . Government Servants by and large have no legal training. At any rate, it is nobody's case that the appellant had legal training. Moreover when a man is charged with the breach of a rule entailing serious consequences, he is not likely to be in a position to present his case as best as it should be. The accusation against the appellant threatened his very livelihood. Any adverse verdict against him was bound to be disastrous to him, as it has proved to be. In such a situation he cannot be expected to act calmly and with deliberation. That is why Rule 15(5) has 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."

25. In *Indian Overseas Bank Vs. IOB Officers Association and another* reported in 2001 (9) SCC 540, the Supreme Court had occasion to consider the validity in respect of a provision in regulations of nationalised banks restraining officer-employees from taking assistance of another employee who has two pending disciplinary cases on hand to give assistance. The Apex Court held that such a provision is not violative of Art.14. In that context, it has been held thus:-

6. We have carefully considered the submissions made as above. The issue ought to have been considered on the basis of the nature and character or the extent of rights, if any, of an officer-employee to have, in a domestic disciplinary enquiry, the assistance of someone else to represent him for his defence in contesting the charges of misconduct. This aspect has been the subject-matter of consideration by this Court on several occasions and it has been categorically held that the law in this country does not concede an absolute right of representation to an employee in domestic enquiries as part of his right to be heard and that there is no right to representation by somebody else unless the rules or regulation and standing orders, if any, regulating the conduct of disciplinary proceedings specifically recognise such a right and provide for such representation. (*N. Kalindi v. Tata Locomotive & Engg. Co. Ltd.*<sup>1</sup>, *Dunlop Rubber Co. (India) Ltd. v. Workmen*<sup>2</sup>, *Crescent Dyes and Chemicals Ltd. v. Ram Naresh Tripathi*<sup>3</sup> and *Bharat Petroleum Corpn. Ltd. v. Maharashtra General Kamgar Union*<sup>4</sup>.) Irrespective of the desirability or otherwise of giving the employee facing charges of misconduct in a disciplinary proceeding to ensure that his defence does not get debilitated due to inexperience or personal embarrassments, it cannot be claimed as a matter of right and that too as constituting an element of principle of natural justice to assert that a denial thereof would vitiate the enquiry itself."

26. In *Director BCG Vaccine Laboratory Vs. S.Pandian*, reported in 1997 (11) SCC 346 after referring to *Board of Trustees of Bombay case*, cited *supra* *Pett V. Greyhound Racing Association Ltd.*, reported in 1968 (2) All England Reporter 545, the Apex Court held that the direction given by the

Administrative Tribunal directing payment of legal charges payable to the delinquent's Advocate assisting the delinquent in the departmental enquiry is valid and also held that the Advocate is entitled to at the same rate as payable to the Presenting Officer, who was a legal practitioner.

27. In the present case the bipartite settlement provides three contingencies which is alternative to each other. The last of the clause being that with the permission of the bank an employee could avail the assistance of a legal practitioner If the charges are grave, and is complicated, the delinquent should be given all the assistance, including the assistance of an Advocate to defend himself effectively otherwise there will be a violation of principle of natural justice and he will be deprived of a valuable right to defend since the charges being grave in nature may attract graver punishment and it may also cause the very service of the delinquent if charges are established. Therefore, the delinquent in the present case in fairness should have been granted permission to have the assistance of a legal practitioner. It may be that the Presenting Officer and the Enquiry Officer are not legally trained persons, yet they are in the Conduct and Disciplinary Action Cell of the Central Office and have rich experience against whom the petitioner is pitted as the charges are complicated, grave and it runs not only to innumerable transactions but also number of pages and substantial sum. The respondents in fairness should have allowed the petitioner to have the assistance. By the impugned order the respondents have arbitrarily declined to grant permission and refusal to grant permission is solely on the ground that the charges re not complicated. This view of the respondent is against the very gravamen of allegations and the complicated nature of charges

voluminous documents and substantial sum as seen from the charges themselves. The order impugned is vitiated by arbitrariness and it is not a fair exercise of power conferred on the first respondent.

28. One another argument being that the first respondent has not construed the terms of the settlement in the manner required as the object being to have the assistance of either the Union representative or a legal assistance. The words used being shall be permitted to be defended with the Bank's permission by a lawyer. There is no condition in the said clause that a case should be grave or complicated one. All that is required is a formal permission. If we read the clause 1 2 of the agreement, it is clear that the delinquent shall also be permitted to be defended either by a representative of a registered trade Union or with the Bank's permission by a lawyer. A permission is required since Advocate is not part of the establishment of the Bank.

29. The three cases referred to by the counsel for the respondents is in respect of cases where there is no rule or such stipulation or clause in the Bipartite settlement, but this is a case where the bipartite settlement provides that the delinquent shall be permitted to be defended by a lawyer and the only rider being with the Bank's permission. Thus by a reading of the clause 12 of the Bipartite settlement, the permission if any sought for has to be granted as a matter of course and at least wherever the charges or

imputations are grave or complicated and in such a situation where without the assistance of an Advocate or legally trained person, the delinquent will not be in a position to defend himself effectively.

30. It is the duty of the Court to interpret the provisions especially the provisions or the regulation or a stipulation even in an agreement or a settlement under Section 12 (1) or (2) especially a beneficial stipulation liberally so as to be with a wider meaning render a prospective meaning, which would not negate the very object of the rule. The Court has to find out the intention with which the clause has been introduced in the bipartite settlement and the Court has to give force and like to the intention of the parties. Having regard to the context as well as the object of the settlement, the Court has to construe the clause in the settlement in a harmonious way to make it meaningful. The Court has to construe the terms of the settlement in a reasonable way having regard to the context and the object, less the very purpose of the terms of the bipartite settlement will be defeated. Therefore, it is clear that the respondent-bank has the obligation to grant permission to engage or to have the assistance of a legal practitioner when required and rejection of such a request shall be a rarity, while grant of permission shall be construed positively, which alone will further the object of the clause in the settlement.

31. Let us not forget the fact that the respondent is a Nationalised Bank and it satisfies the definition of "other authority" under Article 12 and it has to act reasonably and fairly and not arbitrarily, while considering the request for permission to engage the assistance of a legal practitioner when the office bearers or members of the Trade Union have declined to come forward and assist the petitioner.

32. In the circumstances, the permission declined in this case is illegal and the same is quashed. This writ petition alone is allowed and the respondents shall allow the petitioner to engage a legal practitioner to defend himself in the disciplinary proceedings. But the petitioner shall bear the expense and the petitioner shall not be entitled to claim reimbursement of the expenses in this respect. It may be also open to the respondent Bank to have the assistance of a legal practitioner if so advised as the Presenting Officer or to assist the Presenting Officer.

33. In the result, W.P.No.5969 of 2002 is allowed. W.P.Nos;5970 and 5971 of 2002 are dismissed. Consequently, all the connected Miscellaneous Petitions are closed. No costs.

Internet:Yes

Index:Yes

gkv

30-08-2002

