

**REPORTABLE**

**\* IN THE HIGH COURT OF DELHI AT NEW DELHI**  
**+ WRIT PETITION (CIVIL) NOS.15810 & 16157-58 OF 2006**

**% Date of Decision : 30<sup>th</sup> May, 2008.**

ANIL KUMAR CHANDHOK & ORS. .... Petitioner in WPC 15810/06.

R.K. SHARMA ....Petitioner in WPC 16157/06.

S. MOHAN SINGH ...Petitioner in WPC 16158/06.

Through Mr. V.K.Rao with Mr.K.K.  
Sharma and Mr.Ayusha Kumar,  
Advocates.

**VERSUS**

PUNJAB & SIND BANK & ORS. .... Respondents.

Through Mr. J. Buther and Ms.Geeta  
Kalra, Advocates .

**CORAM:**

**HON'BLE MR. JUSTICE SANJIV KHANNA**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in the Digest ?

**SANJIV KHANNA, J.:**

1. The above Writ Petitions involve common facts and raise common questions of law and are being disposed of by this common judgment. For the sake of convenience, Writ Petition (Civil) No.

15810/2006 filed by Mr. Anil Kumar Chandhok is being treated as the lead case.

2. The petitioners are employees of Punjab and Sind Bank (hereinafter referred to as the respondent no.1, for short). They are office bearers of Punjab and Sind Bank Staff Union, a recognized trade union affiliated to All India Banks Employees Association.

3. Disciplinary proceedings are under way against the petitioners for acts of alleged misconduct vide charge-sheet dated 2<sup>nd</sup> June, 2006. It is alleged that on 10<sup>th</sup> March, 2006, the petitioner, Mr. Anil Kr. Chandhok who was posted at Janakpuri Branch of respondent no.1-Bank, indulged in riotous behavior. It is alleged that the said petitioner was joined in the said act of misbehavior by the other petitioners who were posted at the Chandni Chowk and Cannaught Circus Branches of the Bank. The other petitioners are alleged to have left their respective branches during duty hours without authorization/permission. They created riotous atmosphere and threatened Mrs. Kuldip Kaur Baweja-Branch Manager, who has been impleaded as respondent no.5. It has been alleged in the charge-sheet that the petitioners abused the lady Branch Manager and threatened to physically assault her. It is further alleged that the Bank Branch in question had to stop functioning for an hour on account of actions perpetrated by the petitioners. The respondent no.5 had made two representations dated 11<sup>th</sup> March, 2006 and 20<sup>th</sup> March,

2006 making allegations of unruly behaviour by the petitioners, coupled with use of abusive language. The representation dated 11<sup>th</sup> March is also signed by other staff employees posted at the Janakpuri Branch. The second representation dated 20<sup>th</sup> March, 2006 recounts the same incident in detail and it is submitted that use of vulgar and abusive language with sexual connotations should be treated as such in accordance with law.

4. The petitioners have prayed for quashing of the charge-sheet dated 2<sup>nd</sup> June, 2006 on the grounds that the petitioners are protected workmen, they have been harassed because they have pointed out some irregularities and illegalities in the functioning of the Bank and the allegations against them are false and concocted. However, during the course of hearing, learned counsel for the petitioners did not press or address arguments on any of these grounds. Arguments were made and addressed on the question of the right of the petitioners to appoint one Mr. Praveen Goel, President of All India Punjab and Sind Bank Staff Organisation posted at B.O. Ambala Cantt., Haryana as their defence representative with reference to the procedure prescribed in Staff Circular letter No. 2268 dated 25<sup>th</sup> July, 2002, Clause 12(a).

5. Before I examine the said contention, I may point out that the disciplinary proceedings were not stayed by this Court. While issuing notice on this Writ Petition vide Order dated 13<sup>th</sup> October, 2006, it

was directed that disciplinary proceedings could continue but no final order would be passed. The disciplinary proceedings have accordingly continued. The petitioners have participated in the disciplinary proceedings. They have cross-examined the witnesses produced by the Management before the Inquiry Officer. The petitioners, Mr. Anil Kr. Chandhok and Mr. S. Mohan Singh during the course of departmental proceedings appointed Mr. R.K. Sharma, petitioner in Writ Petition (Civil) No. 16157/2006 as their defence representative. The disciplinary proceedings are at the final stage with the Inquiry Officer having conducted the enquiry and has submitted a report with a finding that the charges against the petitioners stand proven. The said report was submitted on 25<sup>th</sup> February 2007. Thereafter the disciplinary authority considered the report and issued a show cause to the petitioners by letter dated 27<sup>th</sup> April, 2007. In the said letter, punishment of dismissal from service has been suggested and petitioners have been asked to respond to the suggested punishment.

6. Thus, the matter is pending consideration before the disciplinary authority who is required to pass a speaking order. Normally, Courts do not interfere at the initial stage of the disciplinary proceedings, when charge-sheet is issued and the matter is pending before the inquiry officer or the disciplinary authority unless an exceptional case is made out. In case an officer is still aggrieved, he

is entitled to file an appeal and thereafter if he still has any grievance, he can seek judicial review of the decision taken in the departmental proceedings. The present cases do not disclose any exceptional circumstances which will warrant interference by this Court at the present stage. At the time when these Writ Petitions were filed, proceedings were still pending before the Inquiry Officer. The Inquiry Officer has now submitted his report to the Disciplinary Authority, who has issued notice. Reply has been filed by the petitioners and the same are yet to be examined by the Disciplinary Authority and thereafter the said authority will pass a speaking order.

7. Relevant portion of the Clauses 12(a) and 12 (d) of the Staff Circular letter No. 2268 dated 25<sup>th</sup> July, 2002 read as under :-

“(i)(x) by a representative of a registered trade union of bank employee 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 the employees of the bank in which he is employee:

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.

d) If the representative defending the employee is an employee of the same bank at an outstanding branch within the same State, he shall be relieved on special leave (on full pay and allowances) to represent the employee and be paid one return fare. The class of fare to which he will be entitled would be the same as while traveling on duty. In case of any adjournment at the instance of the bank/enquiry officer, he may; be asked to resume duty and if so, will be paid fare for the consequential journey. He shall also be paid full halting allowance for the period he stays at the place of the enquiry for defending the employee as also for the days of the journeys which are undertaken at the bank's cost."

Explanation -"State for the purpose, shall mean the area which constitutes a political state."

8. A careful scrutiny and examination of Clause 12(a) reveals that an employee against whom an enquiry is ordered can appoint a defence representative but the said person should be a representative of a registered trade union of the Bank of which he is a member, on the date of commencement of enquiry. The petitioners in terms of the said Clause were entitled to appoint a representative of the trade union of which they are members, namely, Punjab and Sind Bank Staff Union. Sub-clause (y) stipulates that if an employee against whom enquiry is ordered is not a member of any trade union, he can appoint a representative of a registered trade union as his

defence representative. Sub-clauses (x) and (y) are part of Sub-Clause (i).

9. Sub-Clauses (i), (ii) and (iii) are in the alternative as is clear from the use of the word "OR" in capital in the said Clauses.

10. Sub-Clause (ii) comes into operation when the union makes a request to the Bank that an employee should be defended by a representative of a Federation or an all India organization to which the said union is affiliated. The employee against whom proceedings are pending cannot himself directly make a request for appointment of a representative of the State Federation or All India Organisation as his defence representative. An employee himself has the option to appoint a person of his choice as his representative under Sub-Clause (i). Under Sub-Clause (i), the defence representative should be a member of the registered trade union of the Bank of which an employee is a member and in case an employee is not a member of a trade union, the defence representative should be a member of a registered trade union of the said Bank. Mr. Praveen Goel is not a Member of Punjab and Sind Bank Staff Union. He is an office bearer of All India Punjab and Sind Bank Staff Organisation. He could have been appointed under Sub-Clause (ii) only if a request was made by the union of which the petitioners are the Members. No such request has been made by the Union and therefore Sub-Clause (ii) will not apply in the present cases. Similarly, the petitioners were not entitled

to appoint Mr. J.P.Sharma, an employee of Syndicate Bank and President, Delhi State Bank Employees Federation as their defence representative in view of Sub-Clause (i).

11. Clause 12(d) does not relate to right of an employee to appoint a defence representative. The said clause begin with the words "*If the representative defending the employee...*". Thus, the said Clause begins with a presumption and applies only when the said presumption is satisfied. Clause 12(d), entitles a defence representative to grant of special leave on full pay and allowances and one return fare if he is representing or defending an employee of the same Bank at an outstation Branch within the same State. The Clause does not stipulate that a defence representative must be from the same State and cannot be from a different State. Neither does the said Clause stipulate that a defence representative can be from a different State. The Clause provides that if the defence representative is from the same State and for the purpose of enquiry has to go to an outstation Branch, he shall be relieved on special leave on full pay and allowances and in addition will be entitled to one return fare. It also provides the class of fare and the halting fee which is to be paid to the defence representative. If the said Clause does not apply, the cost will have to be paid by the employee and the defence representative also will not be entitled to special leave on full pay and allowances. Clause 12(d) does not in either way expressly or



impliedly state that the defence representative should be from the same State and cannot be a person from outside the State. This is not the subject matter and purport behind Clause 12 (d). The said clause is silent and neutral on this aspect. The clause entitles a defence representative to payment and leave, if conditions mentioned therein are satisfied. It does not state, who can be a defence representative.

12. The question who can be a defence representative was examined by the Supreme Court in ***Crescent Dyes and Chemicals Limited versus Ram Naresh Tripathy*** reported in (1993) 2 SCC 115. The question which arose for consideration in the said case was whether an employee has a vested right to be represented by a legal practitioner or an agent of his choice in the departmental enquiries and whether denial of the said right would amount to violation of the principles of natural justice. It was held that there is no absolute right of representation unless by the standing orders or under some provision the said right is recognized. The Supreme Court observed that the issue had earlier come up in the cases of ***Kalindi (N) versus Tata Locomotive & Engineering Co. Ltd.*** reported in (AIR) 1960 SC 914, ***Dunlop Rubber Co. versus Workmen*** Reported in (AIR) 1965 SC 1392 and ***Brooke Bond India Pvt. Ltd. versus Subba Raman(S)*** reported in (1961) II LLJ 417. *In the case of Kalindi (N)* (supra), it was noted by the Supreme Court as under:

“Accustomed as we are to the practice in the courts of law to skilful handling of witnesses by lawyers specially trained in the art of examination and cross-examination of witnesses our first inclination is to think that a fair enquiry demands that the person accused of an act should have the assistance of some person, who even if not a lawyer may be accepted to examine and cross-examine witnesses with a fair amount of skill. We have to remember, however, in the first place that these are not enquiries in a court of law. It is necessary to remember also that in these enquiries, fairly simple questions of fact as to whether certain acts of misconduct were committed by a workman or not only fall to be considered and straightforward questioning which a person of fair intelligence and knowledge of conditions prevailing in the industry will be able to do will ordinarily help to elicit the truth. It may often happen that the accused workman will be best suited and fully able to cross-examine the witnesses who have spoken against him and to examine the witnesses in his favour.”

13. The Supreme Court in the said case concluded that in the concerned rules no provision was made that the person against whom an enquiry is held may be represented by anyone else. The Court further held that when the general practice adopted by domestic Tribunals is that the delinquent must conduct his own case, it is difficult to accept the submission that natural justice demands that in such enquiries the workman should be represented by a member of his union. If any enquiry is not otherwise fair, the workman concerned can always challenge its validity in an industrial dispute. The Court, therefore, concluded that a workman against whom an

enquiry is being held by the management has no right to be represented at such enquiry by a representative of his union, though of course an employer in his discretion can and may allow his employee to avail himself of such assistance. It was observed that a delinquent has no right to be represented through counsel or agent of his choice unless the law specifically confers such a right. The object and purpose is to ensure that the domestic enquiry is completed with dispatch and not prolonged endlessly. It was observed that if the person representing the delinquent is from the same department or establishment in which the delinquent is working, he would be well conversant with the working of the department and the rules and would therefore render satisfactory service. It would also help the proceedings being concluded quickly and make the process inexpensive.

14. In view of the decisions cited above the letter dated 10<sup>th</sup> August, 2006 by the disciplinary authority to the inquiry officer objecting to the later allowing Mr. Praveen Kumar to function as defence representative, by itself does not amount to violation of the principles of natural justice. The courts have been very circumspect, while interfering with the proceedings of a departmental enquiry. In the present case the petitioners are hereby directed to submit their replies to the show cause notice dated 27<sup>th</sup> April 2007 and the disciplinary authority will be free to take a decision after taking into

consideration the replies filed by the petitioners and in accordance with law. In case the petitioners are aggrieved by the order passed by the disciplinary authority they shall be free to approach the appropriate forum to impugn the said decision.

15. In view of the observation made above, the Writ petitions are dismissed. In the facts and circumstances of the case, there would be no order as to costs.

**(SANJIV KHANNA)**  
**JUDGE**

**MAY 30, 2008.**

**P**