

PETITIONER:
M/S CIPLA LTD. & ORS.

Vs.

RESPONDENT:
RIPU DAMAN BHANOT & ANR.

DATE OF JUDGMENT: 12/04/1999

BENCH:
S.Saghir Ahmad, S.Rajendra Babu

JUDGMENT:

S.SAGHIR AHMAD, J.

Leave granted.

The appellant is a pharmaceutical company engaged in manufacturing and marketing of various pharmaceutical products.

The respondent was appointed as a Medical Representative of the appellant with his headquarter at Ludhiana. Under the jobs assigned to the respondent, he was to visit the doctors, hospitals and chemists to promote the sale of medicines manufactured and marketed by the appellant. One of the duties of the respondent was to submit a daily report of the visits made by him specifying the persons visited and the samples or promotional materials distributed by him. In the daily report of 31st of August, 1989, the respondent indicated that he had visited one Dr. K.R. Singla at Ropar. He also indicated in his daily report that he had visited M/s Singla Medicos, Ropar to whom he distributed various samples of the appellant's products. It was later discovered by the appellant that Dr. Singla had already died on 7th of August, 1989, having been killed by the terrorists and that M/s Singla Medicos at Ropar had been closed from 08.08.1989 onwards.

Rule 14 of the Service Rules applicable to the Medical Representatives employed in the appellant's Company provides as under:-

"14. MISCONDUCT

(d) Fraud or dishonesty in connection with the Company's business or property.

(1) Submission of false daily reports or irregularity in submission of daily reports."

Since the respondent had submitted a report that he had visited Dr. Singla on 31.8.1989 which was obviously false as Dr. Singla had already been killed by the terrorists on 7th of August, 1989, a charge-sheet for the misconduct, specified in Rule 14, was issued to him on 23.12.1989 on the basis of which a departmental enquiry was

held against the respondent which was completed on 18.5.1990 and the findings recorded by the Enquiry officer were that the charges levelled against him were fully proved. On the basis of the above findings, the services of the respondent were terminated by order dated 18.6.1990. This order was challenged by the respondent in the departmental appeal on 26.6.1990 but the appeal was dismissed. The respondent thereafter raised an industrial dispute which was referred to the Labour Court, Ludhiana on 10.4.1991. While the matter was pending before the Labour Court, the appellant moved an application on 10.3.1995 that since the respondent was only a Medical Representative, he was not covered by the definition of "workman" as laid down in the Industrial Disputes Act, 1947 and consequently the proceedings before the Labour Court were wholly without jurisdiction. The preliminary objection raised by the appellant was accepted by the Labour Court which, by its Award dated 02.05.1995, held that the respondent was not a "workman" and consequently dismissed the reference. The respondent challenged this Award before the Punjab & Haryana High Court and by its judgment dated 12.08.1996, the High Court set aside the Award and remanded the case back to the Labour Court for deciding the matter afresh. On 22.12.1997, the Labour Court decided another preliminary issue which was to the effect "whether a fair and proper enquiry was held" and it was held that fair and proper enquiry was not held and the termination order passed by the appellant was wholly illegal and void as it was found by the Labour Court that the respondent, in spite of his request, was not allowed the assistance of an advocate. It was further found that the termination order was passed by an authority who was not the appointing authority of the respondent and, therefore, it was bad. The appellant, thereafter, filed Writ Petition No.1010 of 1998 in the Punjab & Haryana High Court but the High Court by its judgment dated 23.05.1998 dismissed the Writ Petition. It is in these circumstances that the present appeal has been filed in this Court.

We have heard the learned counsel for the parties.

Mr. Ashok Desai, learned senior counsel appearing on behalf of the appellant has contended that since the Service Rules applicable to the respondent specifically provided that he can have the assistance of a co-representative in the departmental enquiry, the Labour Court was wrong in holding that the respondent was entitled to the assistance of an advocate.

Learned counsel appearing on behalf of the respondent has contended that though the Service Rules allow the assistance of a co-representative in the departmental enquiry, the respondent, nevertheless, was entitled to be represented by a practising advocate in the departmental proceedings as the questions involved in those proceedings were complicated which could not be tackled by the respondent as he was not aware of the basic principles of legal proceedings or their implications, or, for that matter, the manner in which those proceedings were to be conducted.

The relevant Service Rules are quoted below:-

"16. a) The Representative against whom an enquiry

has to be held shall be given a charge-sheet, clearly setting forth the circumstances appearing against him and requiring explanation. He shall be given an opportunity to answer the charge and be permitted to be defended by a co-Representative of his choice. Except for reasons to be recorded in writing by an Officer holding the enquiry, the Representative shall be permitted to produce witnesses in his defence and to cross-examine witnesses on whose evidence the charge rests. A concise summary of the evidence produced by either side and the Representative's plea shall be recorded.

b) A Representative against whom action is proposed to be taken under Service Rule 16 may be suspended pending enquiry. A Representative who is suspended shall be paid a subsistence allowance during the period of suspension at the rate of 50% of his salary. The order of suspension shall take effect immediately on the receipt of the communication to the Representative. If, as a result of the enquiry held, or explanation tendered, it is decided not to take any action against the Representative he shall be deemed to have been on duty and shall be entitled to full salary for the period of suspension.

c) In awarding punishment under the Service Rules, the Manager shall take into account the gravity of the misconduct, the previous record, if any, of the Representative, any other extenuating or aggravating circumstances that may exist.

d) If a Representative refuses to accept a charge-sheet, order or any other communication issued in accordance with the Service Rules and provided that the same is sent by registered post acknowledgement due and if he refuses to acknowledge the receipt of the communication and if he fails to attend the enquiry, the enquiry shall be conducted ex-parte and the Representative shall be responsible for the consequences thereof."

These Rules indicate that a person against whom the departmental proceedings have been initiated will be entitled to avail of the assistance of a co-representative of his choice in those proceedings.

In *Kalindi and Ors. vs. Tata Locomotive & Engineering Company Ltd.*, AIR 1960 SC 914 = 1960 (3) SCR 407, it was held that a workman against whom a departmental enquiry is held by the Management has no right to be represented at such enquiry by an outsider, not even by a representative of his Union though the Management may in its discretion allow the employee to avail of such assistance. So also in *Dunlop Rubber Company vs. Workmen*, 1965 (2) SCR 139 = AIR 1965 SC 1392 = 1965 (1) LLJ 426, it was laid down that an employee has no right to be represented in the disciplinary proceedings by another person unless the Service Rules specifically provided for the same. A Three-Judge Bench of this Court in *Crescent Dyes and Chemicals Ltd. vs. Ram Naresh Tripathi*, (1993) 2 SCC 115 = 1992 Suppl. (3) SCR 559, laid down that the right to be represented in the departmental proceedings initiated against a delinquent employee can be regulated or restricted by the Management or by the Service Rules. It was held that the right to be represented by an advocate in the

departmental proceedings can be restricted and regulated by statutes or by the Service Rules including the Standing Orders, applicable to the employee concerned. The whole case law was reviewed by this Court in *Bharat Petroleum Corporation Ltd. vs. Maharashtra Genl. Kamgar Union & Ors.*, (1999) 1 SCC 626, and it was held that a delinquent employee has no right to be represented by an advocate in the departmental proceedings and that if a right to be represented by a co-workman is given to him, the departmental proceedings would not be bad only for the reason that the assistance of an advocate was not provided to him.

The finding of the Labour Court that the order of termination was bad for the reason that it was not issued by the Personnel Manager who was the appointing authority of the respondent but was issued by the General Manager (Marketing) who was not competent cannot be sustained as in recording this finding, the Labour Court does not refer to Service Rules which ought to have been done as it was pointed out to him that the General Manager (Marketing) was an Officer superior in rank to the Personnel Manager but the Labour Court brushed aside the submission on the ground that nothing was brought on record to indicate that the General Manager (Marketing) was superior in rank. We refrain ourselves from making any observation on the merit of this question as the whole matter is being remanded for deciding these questions afresh. We would only say that the Labour Court should decide all the issues together and shall not split the issues into preliminary or non-preliminary issues so that the proceedings may come to an end at the earliest.

In view of the above, the Interim Award passed by the Labour Court cannot be sustained nor can the judgment passed by the High Court be upheld. The appeal is consequently allowed. The Interim Award passed by the Labour Court as upheld by the High Court is set aside and the Labour Court is directed to decide the whole matter afresh in the light of the observations made above and in accordance with law.