

CASE NO.:
Appeal (civil) 4335 of 2006

PETITIONER:
The Management of National Seeds Corporation Ltd.

RESPONDENT:
K.V. Rama Reddy

DATE OF JUDGMENT: 29/09/2006

BENCH:
ARIJIT PASAYAT & LOKESHWAR SINGH PANTA

JUDGMENT:
J U D G M E N T
(Arising out of SLP(C) No. 17707 of 2004)

ARIJIT PASAYAT, J.

Leave granted.

Appellant calls in question legality of the judgment rendered by a Division Bench of the Karnataka High Court directing the Management of M/s. National Seeds Corporation Ltd. (hereinafter referred to as the 'Corporation') to consider afresh the respondent's prayer for being represented by a legal practitioner and decide whether same was acceptable or not.

Background facts in a nutshell are as follows:

Respondent was working as Assistant Grade II Area Office at Hassan, Karnataka. It was noticed that the respondent and one G. Ansar Pasha, Seed officer (formerly Area Manager of the Corporation, Hassan) were responsible for huge loss of more than Rupees 63 lakhs because of misappropriation by them. Accordingly complaint was lodged with the Superintendent of Police, CBI, Ganganagar, Bangalore. Simultaneously departmental proceedings were initiated by issuing charge sheets proposing major penalty. The departmental proceedings were initiated on 12.3.2003. On 16.4.2003 Inquiry Officer and Presiding Officer were appointed to inquire into the charges framed as the respondent denied the charges. Respondent sought permission of the disciplinary authority to take assistance of one Shri V. Vishwanathan who was a retired Assistant Manager of the Corporation. The prayer to take his assistance was rejected by the Corporation, in view of Rule 31(7) of National Seeds Corporation (Conduct, Discipline and Appeal) Rules, 1992 (in short the 'Rules'). Respondent challenged the order by filing Writ Petition No.28503 of 2003 before the Karnataka High Court. Challenge was made to legality of Rule 31(7) of the Rules on the ground that the provision denied opportunity to a delinquent employee to avail services of the person of his choice. The High Court did not accept the contention and dismissed the writ petition. After the dismissal of the writ petition, respondent made a representation on 15.11.2003 for permission to take assistance of a legal practitioner. The said request was turned down by order dated 21.11.2003. Against the said order respondent filed Writ Petition No.50793 of 2003,

again challenging that part of rule which permitted engagement of a legal practitioner only when the presenting officer appointed by the disciplinary authority a legal practitioner or the disciplinary authority having regard to the circumstances of the case so permitted. Counter-affidavit was filed by the Corporation taking the stand that the same issues were earlier raised in the previous writ petition which was dismissed. The High Court allowed the writ petition by observing that even though presenting officer was not a legal practitioner, yet the disciplinary authority could permit engagement of a legal practitioner having regard to the circumstances of the case.

In support of the appeal learned counsel for the appellant-Corporation submitted that the law relating to engagement of legal practitioner in a disciplinary proceeding is too well settled. The High Court accepted that there was no legal right to ask for engagement of a legal practitioner. Having accepted this legal position, the High Court erred in holding that disciplinary authority taking into account the factual scenario could permit engagement of legal practitioner. In fact no question of law was involved in the department proceedings. The allegations related to misappropriation and the factual position was within the knowledge of the respondent. It has not been explained as to how a legal practitioner would be in a better position to assist the delinquent officer in respect of factual aspects. In response, learned counsel for the respondent submitted that though engagement of legal practitioner cannot be demanded as a matter of right yet a discretion is vested on the disciplinary authority to permit engagement of a legal practitioner having regard to the circumstances of the case.

The rival submissions have to be tested in the background of Rule 31(7) of the Rules. The same reads as follows:

"Rule 31(7) - The employee may take the assistance of any other employee working in the particular unit where the employee is working/was working at the time of happenings of alleged changes to which the inquiry relates or where the inquiry is being conducted to present the case on his behalf 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."

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 recognize such a right and provide for such representation (See *N. Kalindi v. Tata Locomotive & Engg. Co. Ltd.* (AIR 1960 SC 914), *Dunlop Rubber Co. (India) Ltd. v. Workmen* (AIR 1965 SC 1392), *Crescent Dyes and Chemicals Ltd. v. Ram Naresh Tripathi* (1993 (2) SCC 115), and *Indian Overseas Bank v. Indian Overseas Bank Officers' Association and Another* (2001(9) SCC 540)).

The basic principle is that an employee has no right to representation in the departmental proceedings by another person or a lawyer unless the Service Rules specifically provide for the same. The right to representation is available only to the extent specifically provided for in the Rules. For example, Rule 1712 of the Railway establishment Code provides as under:

"The accused railway servant may present his case with the assistance of any other railway servant employed on the same railway (including a railway servant on leave preparatory to retirement) on which he is working."

The right to representation, therefore, has been made available in a restricted way to a delinquent employee. He has a choice to be represented by another railway employee, but the choice is restricted to the Railway on which he himself is working, that is, if he is an employee of the Western Railway, his choice would be restricted to the employees working on the Western Railway. The choice cannot be allowed to travel to other Railways.

Similarly, a provision has been made in Rule 14(8) of the Central Civil Services (Classification, Control & Appeal) Rules 1965, where too, an employee has been given the choice of being represented in the disciplinary proceedings through a employee.

In N. Kalindi's case (supra) a three-Judge Bench of this Court observed as under:

"Accustomed as we are to the practice in the courts of law to skillful 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 expected 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 witnesses in his favour.

It is helpful to consider in this connection the fact that ordinarily in enquiries before domestic tribunals the

person accused of any misconduct conducts his own case. Rules have been framed by Government as regards the procedure to be followed in enquiries against their own employees. No provision is made in these rules that the person against whom an enquiry is held may be represented by anybody else. When the general practice adopted by domestic tribunals is that the person accused conducts his own case, we are unable to accept an argument that natural justice demands that in the case of enquiries into a charge-sheet of misconduct against a workman he should be represented by a member of his Union. Besides it is necessary to remember that if any enquiry is not otherwise fair, the workman concerned can challenge its validity in an industrial dispute.

Our conclusion therefore is 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."

(Emphasis supplied)

In another decision, namely, Dunlop Rubber Company's case (supra), it was laid down that there was no right to representation in the disciplinary proceedings by another person unless the Service Rules specifically provided for the same.

The matter again came to be considered by a three-Judge Bench of this Court in Crescent Dyes's case (supra), Ahmadi, J. (as he then was) in the context of Section 22(ii) of the Maharashtra Recognition of Trade Unions and Unfair Labour Practices Act, 1971, as also in the context of domestic enquiry, upheld the statutory restrictions imposed on delinquent's choice of representation in the domestic enquiry through an agent.

The earlier decisions in N. Kalindi's case (supra); Dunlop Rubber Company's case (supra) and Brooke Bond India (P) Ltd. v. Subba Raman (S.) and another, (1961 (2) LLJ417), were followed and it was held that the law in this country does not concede an absolute right of representation to an employee as part of his right to be heard. It was further specified that there is no right to representation as such unless the Company, by its Standing Orders, recognises such a right. In this case, it was also laid down that a delinquent employee has no right to be represented in the departmental proceedings by a lawyer unless the facts involved in the disciplinary proceedings were of a complex nature in which case the assistance of a lawyer could be permitted.

We have seriously perused the judgment of the High Court which, curiously, has treated the decision of this Court in Crescent Dyes's case (supra) as a decision in favour of the respondent No.1. The process of reasoning by which this

decision has been held to be in favour of respondent No.1 for coming to the conclusion that he had a right to be represented by a person who, though an office-bearer of the Trade Union, was not an employee of the appellant is absolutely incorrect and we are not prepared to subscribe to this view. Consequently, we are of the opinion that the judgment passed by the High Court in so far as it purports to quash the order of the Appellate Authority, by which the Draft Standing Orders were certified, cannot be sustained.

The position as afore-noted was reiterated in *Bharat Petroleum Corporation Ltd. v. Maharashtra General Kamgar Union & Ors.* (JT 1998 (8) SC 487).

Though it is correct, as submitted by learned counsel for the respondent, that even if the presenting officer is not a legal practitioner, the disciplinary authority having regard to the circumstances of the case may permit engagement of a legal practitioner. But it would depend upon the factual scenario.

Learned counsel for the appellant-Corporation has brought to our notice office memorandum dated 21.11.2003 by which the prayer to engage a legal practitioner to act as a defence assistant was rejected. Reference was made to the rules, though no specific reference has been made to the discretion available to be exercised in particular circumstances of a case. The same has to be noted in the background of the basis of prayer made for the purpose. The reasons indicated by appellant for the purpose are (a) amount alleged to have been misappropriated is Rs.63.67 lakhs (b) number of documents and number of witnesses are relied on by the respondent, and (c) the prayer for availing services of the retired employee has been rejected and the respondent is unable to get any assistance to get any other able co-worker. None of these factors are really relevant for the purpose of deciding us as to whether he should be granted permission to engage the legal practitioner. As noted earlier, he had to explain the factual position with reference to the documents sought to be utilized against him. A legal practitioner would not be in a position to assist the respondent in this regard. It has not been shown as to how a legal practitioner would be in a better position to assist the respondent so far as the documents in question are concerned. As a matter of fact, he would be in a better position to explain and throw light on the question of acceptability or otherwise and the relevance of the documents in question. The High Court has not considered these aspects and has been swayed by the fact that the respondent was physically handicapped person and the amount involved is very huge. As option to be assisted by another employee is given the respondent, he was in no way prejudiced by the refusal to permit engagement of a legal practitioner. The High Court's order is, therefore, unsustainable and is set aside.

Appeal is allowed but in the circumstances without any order as to costs.