

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **WP(C) No.6961/2010**

% **Date of Decision: 11.01.2011**

India Trade Promotion Organisation & Anr. .... Petitioners

Through Mr. Piyush Sharma, Advocate

Versus

P.K. Jindal & Anr. .... Respondents

Through Mr. S. Janani, Advocate for respondent  
No. 1

Mr. B.V. Niren, CGSC & Mr. Abhishek  
Goyal, Advocate for respondent No. 2

**CORAM:**

**HON'BLE MR. JUSTICE ANIL KUMAR**

**HON'BLE MS. JUSTICE VEENA BIRBAL**

- |    |                                                                       |     |
|----|-----------------------------------------------------------------------|-----|
| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not?                                | NO  |
| 3. | Whether the judgment should be reported in the Digest?                | NO  |

**ANIL KUMAR, J.**

\*

1. The petitioner has challenged the order dated 2<sup>nd</sup> February, 2010 passed by the Central Administrative Tribunal, Principal Bench in TA No. 511/2009 titled as P.K. Jindal Vs. Union of India & Ors. quashing the order dated 8/9<sup>th</sup> June, 2000 passed by the Disciplinary Authority imposing penalty of withholding three increments of pay with

cumulative effect and granting opportunity to the petitioner to proceed against the respondent after allowing him the assistance of a defence assistant from the stage when he was denied the services of the defence assistant and directing the petitioner to complete the inquiry within three months from the date of receipt of certified copy of order dated 2<sup>nd</sup> February, 2010 as 15 years had already expired.

2. Brief facts to comprehend the controversies between the parties are that the respondent was appointed as Assistant Manager (re-designated as Dy. Manager) with the petitioner. After seven years of service, he was appointed as Dy. Manager (re-designated as Manager) and after four years of service as Manager, he was promoted to the post of Joint Manger (re-designated as Sr. Manager) in Finance and Accounts Division.

3. The respondent asserted that on 29<sup>th</sup> December, 1994, the then Assistant Manager (Finance) Sh. A.K. Sahani had taken earned leave for 16 days, w.e.f. 29th December 1994 to 13th January 1995, which was sanctioned by the respondent as a Joint Manager (re-designated as Sr. Manager). He had asked for a substitute during the leave period of Mr. Sahani, however, no substitute was provided.

4. During the period from 3<sup>rd</sup> January, 1995 to 13<sup>th</sup> January, 1995 seven bills amounting to Rs. 1.72 lacs for payment relating to advertisement were forwarded by Publicity Division to Finance Division along with Bill Forwarding Proforma, Sanction Order Proforma duly certified by authorized officer of Publicity Division including the rates of advertisements which were taken by the Publicity Division and consequent thereto payment was sanctioned by the respondent.

5. On account of a publicity scam in the organization, petitioner was issued a memo dated 8<sup>th</sup> May, 1998 and he was asked to explain the alleged negligence pointed out in the confidential note, which was supported by the DGM Sh. K.S. Dabas. A detailed reply was given by the respondent on 20<sup>th</sup> May, 1998. The promotion of the respondent was deferred by the DPC which met on 12<sup>th</sup> May, 1998 on account of memo dated 8<sup>th</sup> May, 1998. According to the respondent, even Sealed Cover procedure in accordance with ITPO Service Rules and Government Orders was not followed in his case and he was victimized though he had not committed any wrong.

6. The respondent had made a representation dated 26<sup>th</sup> November, 1998, however, the representation was not considered and replied by the petitioner. Thereafter, the respondent was given a memo dated 4<sup>th</sup>

June, 1998 incorporating the charge sheet alleging that while working as Joint Manager (re-designated as Sr. Manager) he had passed adhoc advertisement bills during the year 1995 to the tune of Rs. 1.72 lacs without checking the bills which had no approval of ED or CMD and on 30th June, 1998 Sh. S.K. Mukherjee, IAS, retired was appointed as an Inquiry Officer to inquire into the charges framed against the petitioner.

7. The respondent contended that he gave a detailed reply to the charge sheet. The presenting officer submitted a written brief to the Inquiry Officer and respondent also submitted a defence brief to the Inquiry Officer giving all the details of his defence as well as reply to the charges leveled against him.

8. According to the respondent, the defence brief was completely ignored and was not considered. The respondent also produced a copy of the defence brief dated 6<sup>th</sup> May, 1999 submitted by him before the Inquiry Officer. Since the defence brief of the respondent was ignored the respondent also wrote to the Chairman and Managing Director, by a letter dated 22<sup>nd</sup> June, 1999. According to the respondent without taking his defence brief into consideration, the Inquiry Officer had held him guilty of gross negligence and carelessness.

9. The respondent further contended that he was given a memo along with Inquiry Officer's report and the respondent filed a detailed reply on 20<sup>th</sup> July, 1999 and also submitted his explanation to the Disciplinary Authority. However, the Disciplinary Authority on 8/9<sup>th</sup> June, 2000 after a gap of around one year passed the penalty order of withholding three increments of pay with cumulative effect without passing the speaking order and taking into consideration the pleas and contentions of the respondent. An appeal dated 10<sup>th</sup> July, 2000 was also filed before the Chairman and Managing Director, India Trade Promotion Organisation, Pragati Maidan, however, the Appellate Authority also without taking into account the facts and submissions made by the respondent, dismissed the appeal by order dated 3<sup>rd</sup> August, 2000 and a review petition dated 6<sup>th</sup> November, 2000 was also rejected and order dated 15<sup>th</sup> December, 2000 was communicated to the respondent.

10. The grievance of the respondent was also that the relevant files containing sanctions of the competent authority were not made available by the Publicity Division as had been pointed out by the auditors in their report for which the respondent could not be held responsible. According to him prior to 1998, no approval of CMD was required nor was there were any such Rule. The respondent also

contended that a defence assistant was not provided to him on the ground that he was a retired public servant. By letter dated 4<sup>th</sup> March, 1999, the respondent pointed out serious discrimination and requested the petitioner to allow the services of a defence assistant. According to him, denial of the service of a defence assistant was in contravention to the provisions contained in ITPO Employees (Conduct, Discipline and Appeal) Rules under Clause-39. Reliance was placed by the respondent on CVC Manual, Vol.II, Part I Item 8 (B) contemplating that the Government servant may take assistance of retired government servant to present the case on his behalf and consequently, denial of service of defence assistant to the respondent was in violation of the directives of CVC read with ITPO Employees (Conduct, Discipline and Appeal) Rules. According to the respondent, this amounted to a denial of a fair opportunity and a violation of the principles of natural justice and in the circumstances, he was greatly prejudiced. It was also contended on behalf of the respondent that no person in active employment in the organization was keen to act as a defense assistant fearing retaliatory action from the management. The respondent also contended that the punishment imposed upon him is too harsh and it is dis-proportionate to the allegations and charges made against him.

11. The respondent therefore, challenged his punishment by filing a writ petition in the High Court of Delhi which was later on transferred to the Principal Bench, Central Administrative Tribunal. The Tribunal by order dated 2<sup>nd</sup> February, 2010, has held that perusal of the inquiry proceedings revealed serious defects in the procedure adopted by the petitioner. The Tribunal noted and proceeded on the basis of two serious defects, i.e., not providing the assistance of the defence assistant to the respondent despite specific demand by him and non consideration of his written defence brief. Regarding not allowing the defence assistant nominated by the respondent i.e., Mr. M. Khandelwal, retired Assistant Director (P&T), it was observed by the Tribunal that when his request was denied, the respondent filed an appeal to the Chairman cum Managing Director, which was not even considered. The Tribunal also noted that services of the Defence Assistant were denied to him on the ground that he was a retired public servant. Despite appeal to CMD by letter dated 4<sup>th</sup> March, 1999 pointing out some serious discrimination, the appeal was not considered and any other defense assistant was not provided though the respondent had also contended that no person in active employment in the organization was keen to act as defense assistant fearing retaliatory action from the management. Regarding the second point, it was also noted that the respondent had made a written defence brief on 6<sup>th</sup> May, 1999, a copy

of which was also placed on record as Annexure P-8. However, the Inquiry Officer had observed that the respondent had not submitted the written defence brief and did not take into consideration the pleas and contentions raised by the respondent. As 15 years had elapsed since the alleged negligence on the part of the respondent was invoked against him, the Tribunal has set aside the order of punishment dated 8/9<sup>th</sup> June, 2000 passed by the Disciplinary Authority and order dated 3<sup>rd</sup> August, 2000 passed by the Appellate Authority and has directed the petitioner to proceed against the respondent allowing him the assistance of the defence assistant from the stage when he was denied the service of defence assistant and consider his defence brief and complete the inquiry within three months.

12. The learned counsel for the petitioner has vehemently contended that the ITPO Employees (Conduct, Discipline and Appeal) Rules contends that the employee can take the assistance of another public servant to present his case but may not engage a retired public servant in accordance with relevant rules. The explanation of Rule-27 is as under:-

**“EXPLANATION**

It will not be necessary to show the documents listed with the charge sheet or any other documents to the employee at this stage.

(4) On receipt of the written statement of the employee, or if no such statement is received within the time specified, an inquiry may be held by the Disciplinary Authority itself, or by any other public servant appointed as an Inquiring Authority under Sub-clause (2) provided that may not be necessary to hold an inquiry in respect of the charges admitted by the employee in his written statement. The Disciplinary Authority shall, however, record its findings on each such charge.

(5) Where the Disciplinary Authority itself inquires or appoints an inquiry authority for holding an inquiry, it may, by an order, appoint a public servant to be known as the "Presenting Officer" to present on its behalf the case in support of the articles of charge.

(6) The employee may take the assistance of another public servant to present his case, but may not engage a legal practitioner for the purpose unless the person nominated by the Disciplinary Authority is a legal practitioner or unless the Disciplinary Authority having regard to the circumstances of the case, so permits.

(7) On the date fixed by the Inquiring Authority the employee shall appear before the Inquiring Authority at the time, place and date specified in the notice. The Inquiring Authority shall ask the employee whether he pleads guilty or has any defence to make and if he pleads guilty to any of the articles of charge, the Inquiring Authority shall record the plea, sign the record and obtain the signature of the employee concerned thereon. The Inquiring Authority shall return a finding of guilt in respect of those articles of charge to which the employee concerned pleads guilty.

(8) If the employee does not plead guilty, the Inquiring Authority shall adjourn the case to a later date not exceeding thirty days, after recording an order that the employee may, for the purpose of preparing his defence.

(i) Inspect the documents listed with the Charge Sheet.

ii) Submit a list of additional documents and witnesses that he wants to examine; and

(iii) Be supplied with the copies of Statements of witnesses, if any, listed in the Charge Sheet.”

In the circumstances it is contended that the respondent could not have taken the assistance of a retired public servant to act as a defense assistant on his behalf.

13. The learned counsel also relied on (1999) 1 SCC 626 Bharat Petroleum Corporation Limited Vs. Mahanagar General Kamgar Union and Ors; (2004) 13 SCC 427; Ravi Malik Vs. National Film Development Corporation Limited and Ors. (2008) 4 SCC 406; DG Railway Protection Force and Ors. Vs. K. Raghuram Babu to contend that the respondent was not entitled for a retired public servant as a defense assistant.

14. The Tribunal has noted that the assistance of defense assistant had also been denied to the respondent on the ground that he was a retired public servant. There appears to be a typographical error in the order of the Tribunal as the respondent is not a retired officer and the defense assistant nominated by him was denied to him on the ground that the nominated defense assistant was a retired public servant. Therefore, what is to be considered is whether a retired public servant could act as a defense assistant or not to the respondent and whether it could be denied by the petitioner. If the person nominated by the

respondent was a retired public servant and under ITPO Employees (Conduct, Discipline and Appeal) Rules a retired public servant could not be appointed as a defence assistant then he should have been provided another defence assistant especially in view of categorical assertions by the respondent that no public servant of the Organization was ready to be a defence assistant because of the apprehension of retaliatory action by the petitioner against such person. In any case the representation of the respondent dated 4<sup>th</sup> March, 1999 regarding providing him a defense assistant, ought to have been considered and decided by the petitioner. Denial of defence assistant by the Inquiry Officer and not adjudicating the representation by the respondent to CMD vide representation dated 4<sup>th</sup> March, 1999 is in violation of the principles of natural justice in the facts and circumstances. In the circumstances, it could not be held that no prejudice was caused to the respondent on account of not providing a defence assistant to him.

15. To justify their act of not approving a retired public servant as the defense assistant which was nominated by the respondent, the learned counsel for the petitioner has relied on certain precedents. Perusal of those precedents, however, revealed that they are distinguishable. In Bharat Petroleum Corporation Limited (supra), the Supreme Court had held that the draft standing orders permitting the delinquent to be

represented in a domestic inquiry only by a fellow workman of the same establishment were neither unreasonable nor unfair nor such orders were in consonance with model standing orders which permitted representation of the delinquent by an office bearer of the Union of which the delinquent was a member. The ratio of the case relied on by the petitioner is apparently distinguishable as petitioner had nominated a retired public servant as a defense assistant which was denied on the ground that the explanations to Clause-27 contemplates public servant which will not include a retired public servant. There are no specific rules that a retired public servant could not be appointed as a defense assistant.

16. Perusal of Clause-6 of Explanation of Rule-27 rather reveals that public servant has been used in contradistinction to a legal practitioner. What is contemplated is that a delinquent may not engage a legal practitioner unless permitted by the Disciplinary Authority. The said clause-6 does not contemplate that a retired public servant cannot be taken by the delinquent employee as the assistant. In any case, as has been noted by the Tribunal his representation to provide defence assistant to the CMD of the petitioner by representation dated 4<sup>th</sup> March, 1999 was not even considered and no cogent reasons had been given for denying the defense assistant to the respondent.

17. This is not in dispute that the disciplinary authority was represented by a presenting officer. The rules also contemplates that an employee may take the assistance of another public servant to present his case, but may not engage a legal practitioner for the purpose unless the person nominated by the disciplinary authority is a legal practitioner or unless the disciplinary authority having regard to the circumstances of the case, so permits. It is also not the case of the respondent that he wanted to engage a legal practitioner. The relevant rule does not specifically contemplate that a retired public servant cannot be permitted to be a defense assistant as has been stipulated about a legal practitioner. It is a settled principle of interpretation that exclusion must either be specifically provided or the language of the rule should be such that it definitely follows by necessary implication. The words of the rule, therefore, should be explicit or the intent should be irresistibly expressed for exclusion. If it was so intended, the framers of the rule could also simply use the expression like 'public servant in office'. Absence of such specific language reflects that the authorities never intended to restrict the scope of 'public servant' to the serving officers/officials. The principle of necessary implication further requires that the exclusion should be an irresistible conclusion and should also be in conformity with the purpose and object of the rule. An exclusion

clause should be reflected in clear, unambiguous, explicit and specific terms or language, as in the clauses excluding the jurisdiction of the Court the framers of the law apply a specific language.

18. The Supreme Court in the case of Union of India and ors. Vs Alok Kumar, (2010) 5 SCC 349 where the question involved was, whether a retired public servant could be appointed as an enquiry officer had distinguished its earlier case of Ravi Malik (supra) relied on by the learned counsel for the petitioner. In case of Ravi Malik the Supreme Court had interpreted Rule-23(B) of National Film Development Corporation Limited and in view of the instructions issued by the Central Vigilance Commission, it was held that the public servant used in Rule-23 (B) meant that the person appointed as an inquiry officer must be a servant of the public and not a person, who was a servant of the public and therefore, a retired officer would not be a public servant for the purpose of Rule-23(B) to be appointed as Inquiry Officer. If under Rule-23(B) of National Film Development Corporation Limited, a retired person cannot be appointed as an Inquiry Officer, it cannot be held that a retired public servant cannot be appointed as a defence assistant as the Explanation-6 of Rule-27 of the petitioner makes a distinction between a public servant and a legal practitioner and contemplates that a legal practitioner cannot be appointed as a defence

assistant unless the Disciplinary Authority so permits. Rather rules of the petitioner permits a retired public servant to be an Inquiry Officer which was not permissible under the rules of National Film Development Corporation. If a retired public servant can be appointed in case of petitioner as an Inquiry Officer, then why the expression public servant for defense assistant would exclude a retired public servant does not seem to have any rational nor any cogent reason as has been disclosed by the learned counsel for the petitioner. In Alok Kumar (supra) the Supreme Court in para 38 of the order had held:

“38.....The rule of contextual interpretation requires that the court should examine every word of statute in its context, while keeping in mind the preamble of the statute, other provisions thereof, pari material statutes, if any, and the mischief intended to be remedied. Context often provides a key to the meaning of the word and the sense it carries. It is also a well established and cardinal principle of construction that when the rules and regulations have been framed dealing with different aspects of the service of the employees, the Courts would attempt to make a harmonious construction and try to save the provision, not strike it down rendering the provision ineffective. The Court would normally adopt an interpretation which is in line with the purpose of such regulations. The.....”

19. In DG Railway Protection Force & Ors. (Supra) the Rule of the Railway Protection Force was held to be constitutionally valid which contemplates that an employee accused of misconduct has to conduct

his own case. The Supreme Court has not laid down that if a Rule permits a public servant as a Defense Assistant then, a retired public servant cannot be a defense assistant and consequently on the basis of these precedents, the petitioner cannot contend that the respondent was not entitled for a defense assistant which was nominated by him who was a retired public servant.

20. The Tribunal has also set aside the order on the ground that the defense brief of the respondent incorporating his pleas and contentions had not been considered on the ground that no defense brief was filed by the respondent which is contrary to the record. The respondent had filed a defense brief on 6<sup>th</sup> May, 1999, a copy of which was also placed on record as Annexure P-8 on page-33 of the paper book, which fact could not be denied by the petitioner. From the perusal of the record, it is also apparent that whatsoever notices were given by the petitioner, were replied by the respondent and the defense brief dated 6<sup>th</sup> May, 1999 was also filed. In the circumstances, the inquiry officer ought to have considered the pleas and contentions raised by the respondent and consideration of the pleas and contentions of the respondent could not be denied on the ground that no defense brief was filed. In the circumstances, non consideration of the pleas and contentions of the respondent will be a violation of the principles of natural justice and the

observation and inferences of the Tribunal cannot be termed to be illegal or unsustainable.

21. On account of violation of principles of natural justice, if the Tribunal has directed the petitioners to provide the respondent with a defense assistant and to proceed from the stage where the defense assistant had to be provided to the respondent, the order of the Tribunal cannot be termed to be illegal or perverse or unsustainable or contrary to record so as to entail any interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

22. In the circumstances, this Court finds no merit to interfere with the order of the Tribunal dated 2<sup>nd</sup> February, 2010 directing the petitioners to provide a defense assistant to the respondent and liberty to proceed from the stage when he was denied the assistance of defense assistant and conclude the enquiry within three months. Since three months period from the date of order of the Tribunal has already expired, therefore, now the petitioners shall be liable to conclude the inquiry within a period of three months from the date of receipt of this order and if possible, to carry out the inquiry proceedings on a day to day basis. With these directions, the writ petition is disposed of.

Considering the facts and circumstances, the petitioner shall also be liable to pay a cost of Rs. 20,000/- to the respondent.

**ANIL KUMAR, J.**

**January 11 , 2011**

'rs'

**VEENA BIRBAL, J.**