THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

WRIT PETITION NO.5435 OF 2015

ORDER:

The petitioner herein sought for a direction to the third respondent-Commissioner for the Departmental Enquiries and Inquiring Authority ("I.A." for brevity), Central Vigilance Commission, New Delhi, to furnish certain documents and also allow the petitioner to engage a qualified legal professional to act as a defence counsel on his behalf.

The petitioner functioned as a General Manager of UCO Bank and retired from service on attaining the age of superannuation. However, he has been subjected to disciplinary proceedings for the alleged breach of approved code of conduct, in that he has committed certain irregularities exposing the interests of the Bank to grave risk. The petitioner, having functioned as a General Manager of a public sector undertaking, has sought for supply of certain documents for his defence of the charges laid against him. He also sought for the assistance of a legal professional to act as a defence counsel. Since the same have not been acceded to, the present Writ Petition is instituted.

It is to be noticed that the Central Vigilance Commission has been approached by the second respondent-UCO Bank for conducting the disciplinary enquiry initiated against the petitioner. One of the commissioners for departmental enquiries has thus been appointed as the I.A. It appears, there were three different charges laid against the petitioner. However, the petitioner has called for supply of certain documents, through his representation dated 12.03.2014. Through daily order sheet No.11 dated 13.03.2014, the I.A. answered the request of the petitioner in the following manner:

> "Most of the documents mentioned in the list are not specific and it is not known which document relates to which charge memo (total three charge memos have been issued to the CO and all the three cases are being dealt separately by the I.A.). The CO is advised to furnish his defence documents for each case SEPARATELY, in the following format."

S.No.	Description/Particulars of the documents with file no., letter no., page no. and date	Relevance of the documents to the specific charge (mention charge number)	Custodian of the document with full address

It is thus clear that the petitioner was advised by the I.A. to furnish the list of documents sought for by him, briefly explaining the relevance of the documents to the specific charge and the custodian of the documents. Perhaps no exception need be drawn to this direction issued by the I.A. inasmuch as while one is entitled to secure copies of the documents for establishing one's defence, he must necessarily point out the relevance of the document sought for to the charge concerned, so that all unnecessary documents need not be ordered to be supplied by the custodian of such documents.

Dealing with the further request of the petitioner for engaging the services of a professional lawyer, the I.A. has pointed out that the Presenting Officer is not a trained lawyer, but he merely holds the qualification of law and hence, the request of the charged officer for engaging a legal professional as defence assistant is not acceded to.

It should also be noted in this context that the petitioner has updated his request for supply of documents and the I.A., through daily order sheet No.15 dated 07.08.2014, has allowed certain documents and disallowed certain other documents. In the daily order sheet No.15 dated 07.08.2014, the I.A. has assigned the reason for disallowance of certain documents, which reads as under.

> "The documents relate to preliminary investigation on the basis of which instance charge sheet came into existence. Thus, the documents are not directly related to the charge sheet and hence, disallowed."

It is perhaps this endorsement of the I.A., which triggered the present Writ Petition.

Heard Sri A.Satya Prasad, learned Senior Counsel appearing on behalf of the learned counsel for the petitioner, who would urge that all necessary documents, which would help the writ petitioner establish his defence, must be made available and such a requirement forms part and parcel of the principles of natural justice. Every opportunity must be provided to a delinquent employee to establish his defence. Therefore, the second respondent-Bank cannot withhold any document, which is under its custody, which would help the petitioner to establish his defence.

There is no quarrel about the proposition expounded by the learned Senior Counsel. All relevant documents, which would help a delinquent employee for establishing his defence, are liable to be made available to him. But, in the instant case, the I.A. has allowed several documents, copies of which were sought for by the petitioner, and has disallowed certain other documents. He has also assigned reasons for such disallowance by spelling out that those documents relate to conducting of preliminary investigation.

Every model employer calls for a preliminary enquiry to be conducted into any grave allegation before it swings into initiating disciplinary action discreet approach on the part of the employer is all the more so required, when it were called upon to deal with a fairly senior level official. In the instant case, the writ petitioner functioned as a General Manager of the second respondent-Bank and in that capacity, he was one of the top executives of the said Bank. Therefore, the Bank would not have run the risk of initiating disciplinary proceedings without first of all ascertaining as to the tenability or reasonableness behind the allegations levelled against one of its top executives. Normally, the preliminary enquiries are conducted either by a superior officer or where it is not so feasible, at least by another officer occupying the same rank and status. The reason for doing so is obvious. Such a preliminary enquiry officer would be familiar with the procedures and practices adopted by the employer for carrying on its day-to-day activities, particularly when the second respondent is a banking institution and there would be in-house practices apart from the guidelines furnished by the Reserve Bank of India or the Ministry of Finance, Government of India, which are liable to be compulsorily adhered to while discharging the functions. Therefore, by entrusting the preliminary enquiry to one of the officers of the Bank, there could be reasonable assurance for the employer that all in-house procedures and practices would be kept in view while examining the conduct of the individual, which is complained of. The preliminary enquiry is only a tool-in-aid either for firming up the opinion on the part of the employer to proceed further in the matter or drop all further action. Preliminary enquiry, therefore, is conducted essentially behind the back of the individual. While conducting the preliminary enquiry, normally, as a rule of prudence, no unfair practices are resorted to in the sense that no employee or outsider would be coerced into making inconvenient submissions against the delinquent, but, however, the strict rules of conducting enquiries would be not adhered to. For instance, various records, registers and correspondence could be gathered and examined by the preliminary enquiring authority. Based thereon he may draw certain conclusions, which are purely provisional in nature. The correspondence may have emanated from the office or the desk of the delinquent employee himself or it may emanate from an altogether different office or desk of the employer. Sometimes, the correspondence may contain confidential information. Therefore, at the stage of conducting preliminary enquiry, if such confidential information is let out, certain unpleasant developments can take place. Sometimes, an avoidable embarrassment could be caused in the process also. It is not difficult to imagine that an officer occupying the same status as that of the writ petitioner, normally the General Manager or for that matter, one occupying even a lesser rank such as the Deputy General Manager or the Assistant General Manager, may be willing to pass on certain sensitive information about the conduct of the superior officers. Such information could be passed on to the higher-ups of the institution for the purpose of protecting the interests of the institution primarily. Therefore, the sensitive and confidential information received by the superior officers, will be viewed with an appropriate degree of impartiality. Every effort would be made to establish the veracity and the genuineness of the information. Therefore, certain amount of confidentiality is required to be maintained by the preliminary enquiring authority. That would be not only in the best interests of the institution, but it would also preserve and protect simultaneously the relationship that is so essentially required to be maintained amongst various sections of the employees. Every organisation requires to be run with a certain amount of delinquence, decency and dexterity. In the process, the essential and core requirement is adherence to discipline. If officers occupying a lesser rank are not to maintain the necessary degree of discipline, it will be the institutional interest, which would be at peril. But, at the same time, to protect and preserve the interests of the institution, information, which is essentially detrimental to the interests of the organisation itself, should not be neglected or prevented from being received. Any such suppression would be counter-productive to the best interests of the organisation. Therefore, for maintaining an appropriate balance in between various competing interests, sense of confidentiality about the business carried out has got to be maintained. I am of the firm opinion that the details of the preliminary enquiry conducted behind the back of the petitioner cannot be disclosed to the petitioner herein unless reliance is placed thereon during the course of the regular enquiry. Though the petitioner may have retired from service of the second respondent-Bank by now, in my opinion, any disclosure of the contents of the preliminary enquiry at this stage would be exposing to grave risk and danger to the institutional interest of the second respondent. Hence, I am not in a position to find fault with the I.A. in having disallowed copies of certain documents sought for by the petitioner to be made available to him at this stage.

However, a word of caution is to be administered in this regard. The third respondent is an impartial arbiter between the second respondent-Bank and the petitioner. He was required to hold the scales even between both of them. The essential job of an I.A. is to find out the truth behind the allegations by adopting a fair and reasonable procedure of collecting material evidence. Strict rules of evidence are not applicable, but, that does not mean that the documents, which have a bearing either upon the charge or upon the defence of an employee, can be denied to him. It is no doubt true that after the advent of the Right to Information Act, 2005 ("the Act" for brevity), access to information, unless it is exempted from disclosure in terms of and in accordance with Section 8 of the said Act, has now become the order of the day. Access to information has now come to be recognised as right in the hands of the citizens of this country. It also brings about transparency and accountability on the part of the public authority. Therefore, the petitioner has every right to access any such information, which he otherwise desires to possess as well, by taking recourse to the provisions of the said Act. But, nonetheless, the third respondent, during the course of conducting enquiry, should he be approached by the petitioner for making available any such document or information, which is in the custody of the second respondent and it has got a direct relationship and bearing upon the charges contained in various charge sheets levelled against the petitioner and also have some component of offering defence to the petitioner against such charges, the same can be ordered to be made available to the petitioner. During the course of conducting enquiry, any such requirement would be considered on its merits.

Learned Senior Counsel for the petitioner has urged that some of the statements, such as CQC statements and comments thereon made by the Head Office of the Bank on the sanction of loans are essentially required by the petitioner. I am not impressed by this submission. Even assuming that the superior officers to the petitioner may have approved the sanction of a particular loan, that does not mean that the petitioner's conduct cannot be examined at any time subsequent thereto. It is one thing to say that loan amounts have been sanctioned by the petitioner to the open knowledge of several others including his superiors and it is altogether a different thing to say as to whether any such sanction lacks *bona fides* or resulted in grave error of judgment deliberately indulged in to cause favour to a particular party which is detrimental to the interests of the Bank. Therefore, the fact that copies of the CQC statements and comments made thereof at the Head Office of the Bank not being made available to the petitioner has not caused any dent to his defence.

It is time that one must recall the principle that it is not a denial of every document, which vitiates the conducting of the disciplinary proceedings. The person, who is seeking the document, apart from establishing the relationship and the nexus of the defence to the charges framed against him, has to necessarily establish the prejudice, which is likely to be caused in the process. I have not found any such pleading set up in this Writ Petition. In the absence of any specific prejudice, which the petitioner is likely to suffer in the process of non-availability of the documents called for by him, I do not find in principle any sustainable objection to the decision taken by the third respondent in denying supply of certain documents to the petitioner. For instance, the CBI report obtained by the bank against the petitioner in respect of the accounts of M/s. S.S.V.G. Group, Hyderabad, is one such document, which the petitioner made a mention of in the pleadings set up in this case. As is too well known, CBI is an investigating agency. It examines the conduct of the individuals from the perspective of any wrong doings on their part, which can legitimately fetch penal consequences, is one facet over which the investigating agency is liable to focus its attention while finalising its reports. Similarly, the availability of quantum of evidence, which can reasonably fetch conviction, can be a matter of assessment, which shall be indulged in prior to launching prosecutions. Therefore, those components could be the subject matter of a report submitted by the CBI. Even assuming for a minute that the whole of the said report or parts thereof are found to be in favour of the writ petitioner, but nonetheless denial of a copy of the CBI report in the matter to him, in my opinion, does not cause any prejudice to the defence of the writ petitioner against the charges laid against him.

Dealing with the other contention of the learned Senior Counsel that the service of a trained lawyer as the defence counsel is unjustly denied to the petitioner, I prefer to point out that the writ petitioner, having rendered several years of service to the Bank and having risen to a rank of the General Manager of the Bank, is expected to know as to how to carefully marshal the facts of the case. Unless the Discipline, Control and Appeal Rules of the employer provide for utilisation of the service of a trained lawyer to act as a defence counsel, as a matter of general rule, the services of trained lawyers as defence counsel are not allowed. The reasons are not far to seek. The lawyers normally get engaged in several Courts and in several cases. The disciplinary enquiries will be conducted normally during the working hours and on working days but may not be conducted only on weekends to suit the convenience of lawyers, and hence, the said lawyers are also expected to get engaged in some other professional engagement on such dates. Therefore, it may not be always suitable for the trained professionals to make themselves convenient to appear as and when the disciplinary proceedings are conducted. As a consequence of that clash of professional engagements, requests are made for adjourning the disciplinary proceedings. The necessity of every employer to conduct disciplinary proceedings in a given time frame would get frustrated sometimes. This apart, where an expertise is not required for putting up any defence, making available the services of a certain expert may not be really warranted or called for. If the charges are fairly complicated and involve explanations to be offered, perhaps in such circumstances allowing trained professionals to act as defence assistant can be seriously considered, but, however, no such attempt has been made to demonstrate before me as to how seriously and complicated the charges are framed against the petitioner in the instant case. I am, therefore, of the opinion that not allowing the services of a trained lawyer to act as the defence assistant to the petitioner is not in breach of either the principles of natural justice or the requirements of law.

In this context, I must necessarily advert to the judgments of the Supreme Court on which reliance has been placed by the learned Senior Counsel, Sri A.Satya Prasad. In **State of U.P. v. Saroj Kumar Sinha**[1], the Supreme Court dealing with the fact of denying some of the essential documents, which form the integral part of the charges, had set out the principle in paragraph No.25 of the judgment, which reads as under.

> "A bare perusal of the aforesaid charges shows that the three charges were based on official documents/official communications. We have earlier noticed the relentless efforts made by the respondent to secure copies of the documents, which was sought to be relied upon, to prove the charges. These were denied by the Department in flagrant disregard of the mandate of Rule 7 sub-rule (v). Therefore, the inquiry proceedings are clearly vitiated having been held in breach of the mandatory sub-rule (v) of Rule 7 of the 1999 Rules."

The judgment of the Supreme Court in **Saroj Kumar Sinha** (1 supra), in my humble opinion, centred around the requirement contained in sub-rule (v) of Rule 7 of the U.P. Government Servant (Discipline and Appeal) Rules, 1999, the contents of which have been quoted in paragraph No.6 of the said judgment. The very opening words of the said Rule clearly spelt out that <u>the charge sheet along with the copy of documentary evidences mentioned therein are required to be supplied to the delinquent employee</u>. In the instant case, no such requirement of the regulations framed by the second respondent has been drawn my attention to nor was any specific pleadings to that effect have been set out in this Writ Petition.

The Supreme Court in **Ramesh Chandra v. University of Delhi (Civil Appeal No.8224 of 2012, decided on 06.02.2015)**, was called upon to examine the impact of denying the services of a trained lawyer as a defence assistant. In paragraph No.27 of the said judgment, the Supreme Court has noted the relevant principle in the following words:-

> "The Inquiry Officer herein being a retired Judge of the High Court is a person of vast legal acumen and experience. The Presenting Officer also would be a person who had sufficient experience in presenting case before Inquiry Officer. In this background, it is also required to consider whether an application of a delinquent employee seeking permission to be represented through a legally trained and qualified lawyer should be allowed or not."

In **Ramesh Chandra**'s case, the relevant facts reveal that he is a Professor of Chemistry department, who was found to be the initiator for establishing Dr.B.R.Ambedkar Centre for Biomedical Research at Delhi University, was later on appointed as the Director of the said institute. He was also subsequently appointed as the Vice Chancellor of Bundelkhand University, Jhansi, but, however, certain complications have arisen resulting in cutting thereof his tenure 15 days prior to its expiry. In the mean time, a Search Committee was constituted for selection of a Vice Chancellor for the Delhi University. One of the names short-listed was that of Prof. Ramesh Chandra. But, however, pursuant to a letter which appears to have been addressed by a competing professor, certain serious allegations have come to be made against Prof.Ramesh Chandra, which have been summarised by the Supreme Court in paragraph No.12 of the judgment. In view of the complicated nature of the charges, the Supreme Court has found that non-providing the assistance of trained professional lawyer as his defence assistant has vitiated the whole exercise.

In the instant case, no such demonstration having been carried out, I am not in a position to appreciate the contention that non-making available the service of a trained professional lawyer as defence assistant, has in any manner vitiated the right to establish the defence of the petitioner. It is all the more so in the absence of any provision in the Discipline, Classification and Control Rules framed by the Bank.

I am, therefore, of the view that the Writ Petition lacks any merit and accordingly, it is dismissed at the admission stage. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand dismissed.

(NOOTY RAMAMOHANA RAO, J)

10th March 2015
RRB

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[1] **(2010) 2 SCC 772**