

“(G) BECAUSE the petitioner’s request to be defended by an advocate was refused by Mahajan Committee report even though the respondent was represented by a legally trained persons and this had led to violation of the rules of natural justice as held by the Hon’ble Supreme Court of India in Board of Trustees of the Port of Bombay v. Dilipkumar Raghavendranath Nadkarni (1983) 1 SCC 124 and J.K. Aggarwal v. Haryana Seeds Development Corpn. (1991) 2 SCC 283;”

3. In the present case, the Enquiry Officer is admittedly a retired Judge of this Court. Though the petitioner has not taken this ground directly that the petitioner was refused assistance of an advocate although the Enquiry Officer was a retired Judge, however, since this is an admitted fact appearing on record, I am considering the same in view of the ratio of the recent judgment of the Supreme Court in the case of ***Professor Ramesh Chandra Vs. University of Delhi & Ors.*** in Civil Appeal no.8224/2012 decided on 6.2.2015. The Supreme Court in the case of ***Professor Ramesh Chandra (supra)*** holds that in case the enquiry officer is a retired Judge, the charge-sheeted official cannot be denied assistance of an advocate. The relevant paras of the judgment in the case of ***Professor Ramesh Chandra (supra)*** are paras 26 to 30 and which paras read as under:-

“26. We are of the opinion that if an Hon'ble retired Judge of a Court before his appointment as a Judge was a lawyer of any of the party (Delhi University herein), the Disciplinary Authority should not engage such retired Judge as an Inquiry Officer, as the other party may allege bias against the Inquiry Officer and the reputation of the Hon'ble Judge may be at stake.

The University is directed not to engage any Hon'ble retired Judge of any Court, who was earlier a counsel of the University as an Inquiry Officer to hold an inquiry against any of its employee.

27. 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.

28. In *Board of Trustees of the Port of Bombay Vs. Dilipkumar Raghvendra Nath Nandkarni and Others*, (1983) 1 SCC 124, this Court observed:

“10.....Now if the rules prescribed for such an enquiry did not place an embargo on the right of the delinquent employee to be represented by a legal practitioner, the matter would be in the discretion of the Enquiry Officer whether looking to the nature of charges, the type of evidence and complex or simple issues that may arise in the course of enquiry, the delinquent employee in order to afford a reasonable opportunity to defend himself should be permitted to appear through a legal practitioner.....

12.....In our view we have reached a stage in our onward march to fair play in action that where in an enquiry before a domestic tribunal the delinquent officer is pitted against a legally trained mind, if he seeks permission to appear through a legal practitioner the refusal to grant this request would amount to denial of a reasonable request to defend himself and the essential principles of natural justice would be violated.....”

29. In *J.K. Aggarwal v. Haryana Seeds Development Corporation*, (1991) 2 SCC 283, this Court held that the denial of the assistance of a legal practitioner in inquiry proceedings would be unfair. This Court held as follows:

“8. It would appear that in the inquiry, the Respondent-Corporation was represented by its Personnel and Administration Manager who is stated to be a man of law. The rule itself recognises that where the charges are so

serious as to entail a dismissal from service the inquiry authority may permit the services of a lawyer. This rule vests a discretion. In the matter of exercise of this discretion one of the relevant factors is whether there is likelihood of the combat being unequal entailing a miscarriage or failure of justice and a denial of a real and reasonable opportunity for defence by reasons of the Appellant being pitted against a presenting officer who is trained in law. Legal Adviser and a lawyer are for this purpose somewhat liberally construed and must include "whoever assists or advises on facts and in law must be deemed to be in the position of a legal adviser". In the last analysis, a decision has to be reached on a case to case basis on the situational particularities and the special requirements of justice of the case. It is unnecessary, therefore, to go into the larger question "whether as a sequel to an adverse verdict in a domestic enquiry serious civil and pecuniary consequences are likely to ensue, in order to enable the person so likely to suffer such consequences with a view to giving him a reasonable opportunity to defend himself, on his request, should be permitted to appear through a legal practitioner" which was kept open in Board of Trustees of the Port of Bombay v. Dilipkumar. However, it was held in that case (**SCC p. 132, para 12**)

“... In our view we have reached a stage in our onward march to fair play in action that where in an enquiry before a domestic tribunal the delinquent officer is pitted against a legally trained mind, if he seeks permission to appear through a legal practitioner the refusal to grant this request would amount to denial of a reasonable request to defend himself and the essential principles of natural justice would be violated...”

30. In view of the law laid down by this Court, we are of the view that if any person who is or was a legal practitioner, including a retired Hon'ble Judge is appointed as Inquiry Officer in an inquiry initiated against an employee, the denial of assistance of legal practitioner to the charged employee would be unfair.” (underlining added)

4. Para 30 of the judgment in the case of ***Professor Ramesh Chandra (supra)*** reproduced above lays down the ratio that where the enquiry officer is a legal practitioner or a retired Judge, the charge-sheeted official cannot be denied assistance of a legal practitioner to represent him. Since in the present case, the admitted position which emerges on record is that the petitioner was denied the request to be represented by an advocate and the Enquiry Officer is a retired Judge of this Court, ratio of the judgment in the case of ***Professor Ramesh Chandra (supra)*** squarely applies.

5. Learned counsel for the respondent argues that the ratio in the judgment in the case of ***Professor Ramesh Chandra (supra)*** cannot apply to the present case because the Enquiry Officer in this case was appointed before the judgment in the case of ***Professor Ramesh Chandra (supra)*** was passed, however, the argument urged is misconceived because when Supreme Court passes a judgment, that judgment lays down the law by interpreting existing legal position, and unless the judgment states that the ratio of the judgment is to be prospectively applied, the same will apply to all cases. In fact, the argument of the respondent overlooks the aspect that even in the case of ***Professor Ramesh Chandra (supra)*** there was no law on the aspect that the enquiry officer if is a Judge, then, the charge-sheeted official is needed to be represented by an advocate and yet the judgment in

the case of *Professor Ramesh Chandra (supra)* quashes the enquiry proceedings on the ground that the charge-sheeted official was denied assistance of an advocate in spite of the fact that the enquiry officer was a retired Judge and the charge-sheeted official was denied representation by an advocate.

6. In view of the above, the writ petition is allowed. Impugned resolution of the respondent/University is quashed. Respondent/University, however, will be at liberty to initiate and complete fresh departmental proceedings against the petitioner, of course in accordance with law.

MARCH 12, 2015
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VALMIKI J. MEHTA, J