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

**Decided on : 24.08.2015**

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**W.P.(C) 7952/2015**

**MUKESH KUMAR**

..... Petitioner

Through: Mr J.C. Malik and Ms G.K. Upadhy,  
Advs for petitioner.

versus

**UNION OF INDIA & ORS.**

..... Respondents

Through: Mr Vivekanand Mishra and Mr Atul  
Pandey, Advs for respondents 1 and 2

**CORAM:**

**HON'BLE MR. JUSTICE S. RAVINDRA BHAT**

**HON'BLE MS. JUSTICE DEEPA SHARMA**

**MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)**

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1. Issue notice. Mr Vivekanand Mishra, Advocate accepts notice on behalf of the respondents.
2. The petitioner alleges that the disciplinary enquiry conducted against him is likely to be prejudicial to him as he has been deprived of the defence assistant of his choice. Charge-sheet in this case was issued on 07.01.2014. It is alleged that the petitioner had used forged medical bills which were reimbursed to him by NTPC. Notice of the enquiry was given on 01.02.2014. The petitioner was, during the course of preliminary hearings, asked to indicate a defense assistant of his choice and submit a list of three such officials/employees. He accordingly did so and one of them Shri

Anjanaiya gave his consent letter indicating his willingness to act as the petitioner's defense assistant. On 21.03.2014, the concerned letter was given in Deoli, Rajasthan. The petitioner was subsequently transferred at his request to the DMRC, New Delhi. Later, the Enquiry Officer appointed Shri Anjanaiya and approved his name as defence assistant on 29.07.2014. Subsequently, the Enquiry Officer was changed and eventually the respondents asked the petitioner to change the defence assistant in view of the fact that he was now transferred to Delhi. It is alleged that the respondents are proceeding with the enquiry and in the absence of defence assistant in whom he has confidence, the petitioner is likely to be prejudiced gravely inasmuch as he is likely to face adverse orders. The respondents argued that the petitioner's right to seek a defence officer of his choice is limited by the availability of such defence assistant/personnel at the place where the enquiry is held. In this regard they rely upon Rule 36 (8) (a) of the Central Industrial Security Force Rules, 2001 which pertinently reads as follows:-

*“36 (8)(a): The enrolled member of the Force so charged may be permitted by the inquiring authority to present his case with the assistance of any other member of the Force posted at the place of inquiry. He will give three choices for his defence assistance and the controlling officer will depute any one of the three indicated by him.”*

3. From the above, it is apparent that the controversy is a narrow and limited one i.e. whether the petitioner's right to choose the defense assistant is conditional upon the place of enquiry as being suggested by CISF. Although the first sentence in Rule 36 (8)(a) supports the CISF's contention that the assistance of any member of the Force is dependent on the place of

enquiry, at the same time, the second sentence, i.e., the petitioner was given three choice for indicating the defense assistant, in the opinion of the Court, broadens the scope of the rule itself. The basis for providing such an entitlement, rather eligibility of the charged officer to seek defence assistance from within the Force who is not a part of the Force is that he is not permitted to seek legal assistance of a duly qualified lawyer. Equally, he cannot seek any assistance from outside, i.e., he cannot engage any retired personnel or other individual who does not belong to the Force. If these two aspects are kept in mind, the over emphasis on “place of inquiry” in the opinion of the Court, would result in harsh and oppressive consequences.

4. In the present instance itself, even though the petitioner’s first choice of Shri Anjanaiya was, in fact, approved by the Enquiry Officer, that was set at naught because the Enquiry Officer was subsequently changed and upon petitioner’s transfer to New Delhi, he was asked to choose another officer. If the respondents’ views are held to be correct, then it can lead to further anomalous circumstances for instance, another subsequent posting of the petitioner can result in the originally appointed defence assistant being unable to proceed with the case and his (the petitioner’s) having to again indicate afresh another panel or choice of three persons in the new place of posting. Such an anomalous situation, a consequence dependant on where the employer chooses to deploy or transfer the charged officer—or indeed even defence assistant, cannot be the basis for an interpretation of a rule which has to be uniformly applied. In other words, once the defence assistant is indicated and approved, the CISF has to ensure circumstances conducive to his actually functioning and rendering effective defence assistance to the charged official.

5. In the light of the above conclusion, the CISF is hereby directed to ensure that Shri Anjanaiya attends the hearing of the enquiry after giving him reasonable notice to participate in the proceedings. The defence assistant shall be afforded due reasonable opportunity to go through/inspect the enquiry record after consulting the petitioner by making such application(s) in that regard, including examination of witnesses etc. Furthermore, the CISF shall ensure that Shri Anjanaiya is granted appropriate accommodation from his official duty by way of leave or temporary attachment for the purpose of conduct and conclusion of enquiry which, in the given circumstances, shall be completed within three months from today.

The writ petition is allowed in the above terms.

*Dasti.*

**S. RAVINDRA BHAT  
(JUDGE)**

**DEEPA SHARMA  
(JUDGE)**

**AUGUST 24, 2015  
BG**