

224

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.14947 of 2015

Date of decision: March 16, 2016

Anil Bamania

.....Petitioner

Versus

Managing Director, State Bank of Patiala
and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Sunil Kumar Bhardwaj, Advocate
for the petitioner.

Mr. Vikas Chatrath, Advocate
for the respondents.

SABINA, J

Petitioner has filed this petition under Article 226 of the Constitution of India seeking a writ in the nature of Certiorari for quashing the impugned order dated 23.05.2015 (Annexure P-11) and order dated 13.07.2015 (Annexure P-14).

Learned counsel for the petitioner has submitted that the petitioner was working as a Clerk with the respondents. Charge-sheet dated 28.02.2015 (Annexure P-5) was issued to the petitioner. Petitioner submitted his reply to the said charge-sheet. Thereafter, Inquiry Officer was appointed. During inquiry proceedings, petitioner moved an application dated 21.04.2015 (Annexure P-8) for permitting him to engage hand-writing and finger-print expert and a lawyer for his defence in the departmental proceedings. As per Clause-12 of the Memorandum of Settlement dated

10.04.2002, an employee could be permitted to be defended by a lawyer with the permission of the Bank. However, the request of the petitioner has been denied vide the impugned orders on irrelevant consideration.

Learned counsel for the respondents, on the other hand has submitted that there was no occasion for permitting the petitioner to be defended by a lawyer as the presenting officer is not a legally trained person.

The facts in the present case are not in dispute. Petitioner has moved an application Annexure P-8 for permitting him to engage hand-writing and finger-print expert for cross-examination of the hand-writing and finger-print expert examined by the Bank and to enable him to engage a lawyer for his defence.

The application Annexure P-8 reads as under:-

“That the Presenting Officer of the Bank has produced on record of Inquiry the report of Shri Vikram Raj Singh Chauhan Handwriting & Finger Print Expert, Patiala and cited his name as witness in the inquiry.

That the charge leveled against the EPA is a serious one and the Bank has engaged Shri Vikram Raj Singh Chauhan Handwriting & Finger Print Expert, Patiala to prove the charge of impersonating someone else in my place in the written test as well as interview conducted by SBI CRPD on 23.1.2011 and 13.6.2011 respectively.

That I had submitted the reply dated 16-3-2015 in response to the charge sheet and made humble prayer for supplying me the coloured

Photograph of the Call letters issued for written test/ Interview and of my specimen thumb impression/ signatures obtained by the investigating officer on 14.12.2013 so that I may be able to submit effective defence which have not been supplied to me as yet by the Disciplinary Authority.

That in the light of seriousness of the charges, I submit that it will not be possible for me to cross examine Shri Vikram Raj Singh Chauhan, Handwriting & Finger Print expert, who is to be produced by the Bank as its witness, effectively which require skill of technically qualified person. So I desire the assistance of some Handwriting and Finger Print Expert in the inquiry for cross-examination of the Bank's witness Shri Vikram Raj Singh Chauhan, Handwriting and Finger Print Expert and for production of evidence of such Expert in defence. Kindly accord me permission for engaging the Handwriting and Finger Print Expert for said purpose.

That apart from the above, I also pray that Handwriting and Finger Print Expert to be engaged by me may be permitted to inspect the related original documents which are on record of the Bank in my presence. This is quite essential to enable the EPA to come prepared for defence.

That I have not been able to get the assistance of any office bearer of the Union/ Association and none of the leader has consented to represent my case in the inquiry. I am feeling handicapped. Hence I want to engage lawyer for defending myself in the inquiry. It is submitted that opportunity to defend through lawyer is provided even to criminals involved in heinous crime by the

Court where none is ready to defend to ensure natural justice even in such cases. My request for permission to engage lawyer is supported by the following decision of Hon'ble Calcutta High Court given in the case of Bank Employee:-

*2005 (2) R S J 203 (calcutta)
Khitish Chandra Rabidas Vs. Union of India & Ors*

"Disciplinary proceedings-Defence helper-Engaging of lawyer-Application by petitioner a Bank employee seeking permission rejected even though provision of settlement provides so-From the provision the granting permission would rather be the rule, and refusal an exception-When the provision does not specify the case fit for permission, or the grounds on which permission is to be refused, the disciplinary authority can not refuse it in the absence of compelling reasons for refusal-Direction to disciplinary authority to consider afresh the prayer of petitioner."

I had submitted my request before the Inquiry Officer for being allowed to engage the Handwriting and Finger Print expert and also the lawyer but I have been suggested by the Inquiry Officer to take the matter with your honour for granting the permission and it had been so recorded in the proceedings held on 16-4-2014.

I accordingly request your honour to kindly grant me permission to engage Handwriting & Finger Print expert for cross examination of Shri Vikram Raj Singh Chauhan Hand Writing & Finger Print expert and for inspecting the original record for submission of his report in defence and also for engaging the Lawyer to defend me so that justice is done. I shall be ever grateful to your honour for

such act of kindness.”

The said application moved by the petitioner was rejected vide order dated 23.05.2015 (Annexure P-11). The said order reads as under:-

“Please refer to your letter dated 18.05.2015 vide which you have requested for engaging handwriting & finger print expert for cross examination of Shri Vikram Raj Singh Chauhan, Handwriting and Finger Print Expert and engaging a Lawyer to defend you.

In this regard, you have already been advised that “an employee is permitted to be defended by a representative of a registered union of bank employees of which he is a member of the date first notified for the commencement of the enquiry in terms of clause 12 (i) (x) of Memorandum of Settlement on Disciplinary Action Procedure for Workmen signed Between IBA and Workmen Union at Mumbai on 10th April, 2002 as circulated vide Head Officer Circular No.Per/33 dated 12.09.2002.

As it is a departmental enquiry proceedings, you may defend your case through bank union representative and your request for permission for engaging handwriting & finger print expert for cross examination and outside lawyer to defend you can not be considered.”

Appeal filed by the petitioner against the order Annexure P-11 was dismissed vide order dated 13.07.2015 (Annexure P-14). The said order reads under:-

“Please refer to your appeal application dated 11.06.2015, made against the decision of Disciplinary Authority i.e. AGM-II (Hry.) dated

23.05.2015, regarding engaging of Hand Writing & Finger Print Expert and Lawyer for defence in the departmental enquiry.

After going through the contents of appeal application and related facts of the case, I may bring to your notice that neither the Enquiry Officer nor Bank's Presenting Officer are legally trained persons in the enquiry proceedings, therefore, your appeal for engaging a Lawyer as well as bringing Hand Writing & Finger Print Expert for cross examination cannot be considered in the internal enquiry proceedings, as such, stands rejected.

However, you may defend your case as per para 12 (1) (i) & (ii) of Memorandum of Settlement on Disciplinary Action Procedure for Workmen signed between IBA and the Workmen Unions at Mumbai on 10.04.2012 circulated vide H.O. Circular No.Per/33 dated 12.09.2002 and may produce any document kept on Bank's record/witness relevant with your case.

As such, I, while upholding the decision of AGM-II, Panipat dated 23.05.2015 also reject your appeal for staying enquiry proceedings."

Clause-12(a) of the Bipartite settlement dated 10.04.2012 reads as under:-

"12. The procedure in such cases shall be as follows:-

(a) An employee against whom disciplinary action is proposed or likely to be taken shall be given a charge-sheet clearly setting forth the circumstances appearing against him and a date shall be fixed for enquiry, sufficient time being given to him to enable him to prepare and give his explanation as also to produce any evidence that

he may wish to tender in his defence. He shall be permitted to appear before the officer conducting the enquiry, to cross-examine any witness on whose evidence the charge rests and to examine witnesses and produce other evidence in his defence. He shall also be permitted to be defended;

(i) (x) by a representative of a registered trade union of bank employees of which he is a member on the date first notified for the commencement of the enquiry.

(y) where the employee is not a member of any trade union of bank employees on the aforesaid dates by a representative of a registered trade union of employees of the bank in which he is employed;

OR

(ii) at the request of the said union by a representative of the state federation or all India Organisation to which such union is affiliated;

OR

(iii) with the Bank's permission, by a lawyer. He shall also be given a hearing as regards the nature of the proposed punishment in case any charge is established against him."

Thus, as per the above provision, an employee can seek assistance of a lawyer with Bank's permission during inquiry proceedings.

In the present case, disciplinary action has been initiated against the petitioner on the allegation that on the original call letter for written examination, the thumb impression and signatures did not match with the

signatures/thumb impression of the petitioner. During domestic inquiry, respondents have examined Vikram Raj Singh Chauhan hand-writing and finger-print expert. Since the expert has been examined by the respondents during inquiry proceedings, petitioner was liable to be granted permission to enable him to engage hand-writing and finger-print expert so as he could cross-examine Vikram Raj Singh Chauhan expert examined by the Bank. It would not be possible for a layman to cross-examine the expert on various technical aspects. The case of the petitioner was that he was unable to get assistance of office bearer of the Union/Association and none of the leaders had consented to represent him during inquiry proceedings. Due to this reason, he was feeling handicapped and wanted to engage a lawyer for his defence during inquiry proceedings. The said aspect of the submission made by the petitioner was however, not considered by the Bank while passing the order Annexure P-11. Since the Bipartite settlement permits an employee to seek assistance of a lawyer in domestic proceedings with Bank's permission, in the facts and circumstances of the present case, the Bank should have permitted the petitioner to be defended/represented by a lawyer as it was the case of the petitioner that none of the Union leaders had consented to represent him in inquiry proceedings. Thus, respondents fell in error while rejecting the application (Annexure P-8) moved by the petitioner vide the impugned orders.

Accordingly, this petition is allowed. Impugned orders dated 23.05.2015 (Annexure P-11) 13.07.2015 (Annexure P-14) are set aside. Consequently, application (Annexure P-8) moved by the petitioner is allowed. It is hoped that the petitioner shall not delay the inquiry proceedings.

**(SABINA)
JUDGE**

March 16, 2016
mahavir