

22.06.2021
Court No. 19
Item no.45
CP

CAN 1 of 2021
in
WPA 3060 of 2021

Mahendra Kumar
vs.
Union of India & ors.

(via video conference)

Mr. Pratik Majumder

....for the applicant/petitioner.

Mr. S. Dutta

....for the respondents.

CAN 1 of 2021 is an application for further interim order and/or appropriate order. The petitioner has challenged the order dated April 2, 2021 by filing this application. The order dated April 2, 2021 has been issued by the Assistant Security Commissioner/ RPF, Eastern Railway. By the said order the petitioner's prayer for appointment of a retired Assistant Security Commissioner, Mr. S. K. Dasgupta was turned down by the enquiry officer. Mr. Majumder submits that the tenor of the earlier order of this court would mean that this court had accepted the contention of the petitioner that a senior person higher in rank and well versed in service rules should be allowed to represent the petitioner.

Mr. Majumder draws the attention of the court to the order of a learned coordinate bench which had directed the enquiry officer to revisit the decision as to whether the petitioner should be allowed to be represented in the disciplinary proceeding by a person of his choice who was above the rank of the sub-inspector and also a retired employee. The authority rejected the said prayer of the petitioner by citing Rule 153.8 of the RPF Rules, 1987 and the order of the Hon'ble Apex Court in the matter of D. G. Railway Protection Force & ors. vs. K. Raghuram Babu, reported in (2008) 4 SCC 406. Rule 153.8 of the RPF Rules 1987 is set out herein below:

“153.8 The enrolled member charged shall not be allowed to bring in a legal practitioner at the proceedings but he may be allowed to take the assistance of any other member of the Force (hereinafter referred to as “friend”) where in the opinion of the Inquiry Officer may, at the request of the party charged, put his defence properly. Such “friend” must be a serving member of the Force of or below the rank of Sub-Inspector for the time being posted in the same division or the battalion where the proceedings are pending and not acting as a “friend” in any other proceedings pending anywhere. Such “friend” shall, however, not be allowed to address the Inquiry Officer nor to cross-examine the witnesses.”

The relevant portion of the decision of the Hon'ble Apex Court upholding such Rule is also set out hereunder:

“8. We are of the opinion that the view taken by the Full Bench of the High Court in the impugned judgment is not correct.

9. It is well settled that ordinarily in a domestic/departmental inquiry the person accused of misconduct has to conduct his own case vide *N. Kalindi and others vs. M/s. Tata Locomotive and Engineering Co. Ltd.* Such an inquiry is not a suit or criminal trial where a party has a right to be represented by a lawyer. It is only if there is some rule which permits the accused to be represented by someone else, that he can claim to be so represented in an inquiry vide *Brook Bond India (P) Ltd. vs. Subba Raman*.

10. Similarly, in *Cipla Ltd. and others vs. Ripu Daman Bhanot* and another it was held by this Court that representation could not be claimed as of right. This decision followed the earlier decision *Bharat Petroleum Corporation Ltd. vs. Maharashtra General Kamgar Union* in which the whole case law has been reviewed by this Court.

11. Following the above decision it has to be held that there is no vested or absolute right in any charge-sheeted employee to representation either through a counsel or through any other person unless the statute or rules/standing orders provide for such a right. Moreover, the right to representation through some one, even if granted by the rules, can be granted as a restricted or controlled right. Refusal to grant representation through an agent does not violate the principles of natural justice.

12. In the present case, Rule 153(8) only provides for assistance to a charge-sheeted employee by an agent. Thus, a restricted right of representation has been granted by Rule 153(8). Even if no right of assistance had been granted by the rules, there would be no illegality or unconstitutionality. How then can it be said that when a restricted right is granted, the said restricted right is unconstitutional?

13. We, therefore, respectfully disagree with the Full Bench impugned judgment of the High Court and we are of the view that Rule 153(8) is constitutionally valid.

14. In view of the above, the appeal stands allowed. The impugned judgment of the High

Court is set aside. There shall be no order as to costs.”

Thus, although His Lordship had taken into consideration the stature of the witnesses and had directed the enquiry officer to take a decision on the application of the petitioner for allowing representation by a senior retired employee of the RPF, senior in rank to sub-inspector, the authority has turned down such prayer citing the Rules.

In my opinion, the above-mentioned rule definitely permits the petitioner to be represented by a person of his choice subject to the condition that the person of the petitioner's choice should be still an employee with the RPF in the same division or battalion where the proceeding was going on and should be of or below the rank of a sub-inspector. Such rule has been held to be constitutional. The court cannot direct an authority to act contrary to rules. The rules are unambiguous and nothing extraneous can be read into the rules or added to the same. And as such, the petitioner is granted liberty to be represented by a person of his choice who is still an employee of the RPF in the same division or battalion where the proceedings are going on, of or below the rank of sub-inspector. Such person will assist the petitioner in the proceedings but the submissions, arguments and cross-examination shall be done by

the petitioner. However the enquiry officer shall allow such person to be present along with the petitioner in the sittings.

Now, with regard to the supply of documents to enable the petitioner to effectively defend his case, Mr. Dutta submits that relevant documents have already been provided to the petitioner along with the charge-sheet and also subsequently.

It is the contention of the petitioner that by a representation dated April 7, 2021, the petitioner had prayed for supply of some other documents and had explained in the said representation, the relevance of those documents in the disciplinary proceeding. The said representation has not yet been disposed of.

It is a settled principle of law that it is within the domain of the enquiry officer to consider the prayer for supply of documents and upon considering their relevance and the reasons assigned by the charged officer necessary orders are passed.

Thus without going into the merits of the relevance of those documents, this court directs the enquiry officer to consider and dispose of the representation dated April 7, 2021 and take a decision on the request of the petitioner.

In case the enquiry officer finds any of the documents to be irrelevant or does not accept the

reasons stated by the petitioner for supply of the same, reasons shall be provided by the enquiry officer.

With the above observations and directions CAN 1 of 2021 is disposed of.

WPA 3060 of 2021

The writ petition has been filed challenging the legality of the charge-sheet dated November 5, 2020, order of suspension dated July 31, 2020, competence of the witnesses, preliminary enquiry report and continuation of the disciplinary proceeding side by side with the criminal proceeding pending against the petitioner on identical allegations.

Mr. Dutta, submits that the disciplinary proceeding has progressed and there are no materials before this court which will call for interference in exercise of power of judicial review at the stage of issuance of charge sheet. The petitioner has participated and the service rules provide that parallel proceedings, namely, criminal as also the departmental proceeding can continue.

Thus, in view of the order already passed disposing of the CAN 1 of 2021 and because the disciplinary proceeding is in progress and there is no scope to stay the proceeding at the stage of issuance of charge sheet in this case in exercise of a high prerogative writ, the writ petition is disposed of without entering into the merits thereof. Disposal of

the writ petition will not be construed as a decision on any of the points raised by the petitioner in the writ petition

The petitioner will be at liberty to raise all the points raised in the writ petition at an appropriate stage and even before the enquiry officer. The disciplinary authority is directed to conclude the proceedings expeditiously in terms of the directions passed in the connected application.

It is also made clear that first the enquiry officer should dispose of the representation dated April 7, 2021 and, thereafter proceed with the disciplinary proceeding. The disciplinary proceeding should be held in a free and fair manner upon affording all opportunity to the petitioner to defend his case by adducing both oral and documentary evidence, examine his witnesses and cross-examine the prosecution witnesses.

With the above observations and directions, this writ petition is disposed of. There shall be no order as to costs.

All parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)