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

CWP-5318-2019 (O&M)
Date of Decision:05.10.2023

GIRISH KUMAR MEHTANI .... Petitioner

Versus

STATE BANK OF INDIA AND OTHERS ..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Raghav Sharma, Advocate with
Mr. Som Nath Aneja, Advocate
for the petitioner.

Mr. Kapil Kakkar, Advocate
for the respondents.

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JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petitioner under Articles 226/227 of the Constitution of India is seeking setting aside of order dated 23.07.2018 (Annexure P-2) whereby respondent No.3 has declined request of the petitioner to permit him to engage an advocate to defend his case in the departmental proceedings and order dated 01.09.2018 (Annexure P-1) whereby appeal of the petitioner has been dismissed.

2. The petitioner was appointed as Cashier cum Clerk by respondent-Bank on 22.04.1993. The petitioner was appointed on probation and period of probation was 6 months. The petitioner came to be suspended vide order dated 14.09.2016 (Annexure P-5). The petitioner was called upon to explain his act and conduct while working at AMM Branch, Bhiwani as Single Window Operator (SWO). The petitioner filed

reply to explanation sought by the respondent-Bank. The respondent-Bank vide order dated 19.09.2017 decided to charge-sheet (Annexure P-7) the petitioner. The petitioner submitted his reply dated 10.01.2018 to aforesaid charge-sheet. The respondent-Bank appointed Satish Chander Gupta as an Enquiry Officer to conduct the department enquiry. The petitioner requested Enquiry Officer to permit him to engage an advocate, however, respondent-Bank declined request of the petitioner. The petitioner preferred an appeal which came to be dismissed vide order dated 01.09.2018 (Annexure P-1).

3. Learned counsel for the petitioner *inter alia* contends that a Memorandum of Settlement dated 10.04.2002 has been executed between the Management of 52 Banks as well as representatives of the Indian Banks Association. As per Clause 12 of the Settlement dated 10.04.2002, an employee may be represented before the Disciplinary Authority by an advocate. The petitioner has requested respondent-Bank to permit him to engage an advocate, however, respondent-Bank without assigning any reason and in a mechanical manner rejected request of the petitioner. The Appellate Authority has followed the suit. The Clause 12 specifically permits petitioner to engage an advocate, thus, respondent-Bank has wrongly rejected request of the petitioner.

The petitioner in support of his contention relied upon judgment of Division Bench of Bombay High Court in ***'Antonio B. Furtado Vs. Chairman & Managing Director, Bank of India, Bombay and others' 1985 SCC Online Bom 141***, Calcutta High Court in ***'Khitish Chandra Rabidas Vs. Union of India and others' 2004 SCC Online Cal 544*** and this Court in ***'Anil Bamania Vs. Managing Director, State Bank***

of Patiala and others' 2016 SCC Online P&H 7248.

4. Per contra, learned counsel for the respondent-Bank submits that petitioner has no absolute or vested right to engage an advocate during departmental proceedings. There is no complex or legal issue involved in the departmental proceedings, thus, competent authority has rightly rejected request of the petitioner to engage an advocate. The petitioner is relying upon Clause 12 of the Memorandum of Settlement executed between Bank and employees. The Clause 12 does not create a right to engage an advocate and it is discretion of the Bank to permit or decline to engage an advocate.

Learned counsel for the respondent-Bank in support of his contention relies upon Division Bench judgment of Madras High Court in '***V. Mathivanan Vs. State Bank of India, rep. by Assistant General Manager (Administration)/Disciplinary Authority (D.A), Disciplinary Proceeding Section, Zonal Office, Network-2, Administration Unit, madurai-2' 2012 (1) CWC 910***, judgment of Hon'ble Supreme Court in ***'The Rajasthan Marudhara Gramin Bank (RMGB) and another Vs. Ramesh Chandra Meena and another' 2022 (3) SCC 44.***

5. I have heard the arguments of both sides and with the able assistance of learned counsels perused the record.

6. From the perusal of record, it comes out that Clause 12 of the Memorandum of Settlement permits a delinquent employee to engage an advocate, however, subject to permission of the Bank. Clause 12 reads as:

> "12. The procedure in such cases shall be as follows :-
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> (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 date, 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) <u>with the Bank's permission, by a lawyer.</u>

He shall also be given a hearing as regards the nature of the proposed punishment in case any charge is established against him.

[Emphasis Supplied]

7. It is settled proposition of law that every authority vested with power is supposed to exercise power in judicious manner. No authority has right to exercise power in an arbitrary or whimsical manner. Recording of reason is heart beat of every order. An order is bad in the eye of law if reasons are not recorded. Representation by an advocate is

neither an absolute nor vested right, however, it may be a right if created by the rules or standing order. The Bank has every right to decline request of a delinquent employee to engage an advocate, however, competent authority is supposed to apply its mind while recording the reasons and reasons should be germane to the issue involved. Power cannot be exercised in a mechanical and whimsical manner.

8. The respondent is relying upon para 19-21 of the judgment of Madras High Court in ***V. Mathivanan*** (supra) which are reproduced as below:

> “19. In D.G., Railway Protection Force and others v. K.Raghuram Babu reported in AIR 2008 SUPREME COURT 1958, the Apex Court reiterated the principles following the earlier decisions. In paragraphs 10 and 11, it is held as follows:
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> > "10. 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 someone, 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.
> >
> > 11. 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."

20. Thus, the law laid down by the Honourable Apex Court shows that the doctrine of principles of natural justice in the matter of a domestic enquiry has to be understood in the context of the specific provisions contained in the rule or regulation. Ordinarily, a delinquent officer has to conduct his case on his own in a domestic/departmental enquiry as the same is not a criminal trial or a suit where a party has the right to be represented by an Advocate. In D.G., Railway Protection Force and others v.K.Raghuram Babu reported in 2008(4) SCC 406, the Apex Court pointed out that there is no absolute or vested right in any charge-sheeted employee to make representation either through a Counsel or through any person unless the Statutes or the rules provided for the same. Thus, even if such a right is granted, it can be a controlled/restricted right reserving the discretion with the employer to consider the said request. The Honourable Apex Court clarified this by further saying that if the charge is serious and complex nature, the delinquent's request to be represented through a counsel or agent could be conceded. The Apex Court referred to the decisions of the House of Lords, particularly, Lord Denning who held that "in a domestic enquiry, justice can often be done in them better by a good layman than by a bad lawyer".

21. In the context of these decisions of the Honourable Apex Court and this Court, it is clear that no such absolute right has been given under the Memorandum of Settlement for a delinquent officer to have a representation through a lawyer. Where the regulations provide for a representation through a representative of a Registered Trade Union granting permission for engaging a lawyer, thus left to the

discretion of the employer, we do not find any violation of principles of natural justice."

9. From the perusal of above quoted judgment, it comes out that Madras High Court has reiterated the opinion expressed by Supreme Court in different judgments. Supreme Court, in all the judgments as noticed in the aforesaid judgment, has concluded that right to engage an advocate in departmental proceedings is neither an absolute or vested right. In the absence of specific provision, an employee cannot engage an advocate and in such circumstances denial to engage an advocate does not amount to violation of principles of natural justice. In case a rule or standing order permits to engage an advocate subject to permission by competent authority, it is discretion of the authority to permit or deny to engage an advocate. The Court has not held that competent authority is not supposed to record reasons or not to pass a speaking order or competent authority can deny request in every case.

10. The respondent-Bank has further relied upon judgment of Supreme Court in ***The Rajasthan Marudhara Gramin Bank (RMGB) and another*** (supra). Learned counsel has pointed out paras 6.3 to 7.0 of the aforesaid judgment which are reproduced as below:

> "6.3. In the case of Cipla Ltd. and Ors (supra), it is observed and held as under:
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> "13. In N. Kalindi v. Tata Locomotive & Engg. Co Ltd, it was held that a workman against whom a departmental enquiry is held by the Management has no right to be represented at such enquiry by an outsider, not even by a representative of his Union though the Management may in its discretion allow the employee to avail of such assistance. So also in Dunlop Rubber Company vs. Workmen, 1965 (2) SCR 139 = AIR 1965 SC 1392 = 1965 (1) LLJ 426, it was laid down that an

employee has no right to be represented in the disciplinary proceedings by another person unless the Service Rules specifically provided for the same. A Three Judge Bench of this Court in Crescent Dyes and Chemicals Ltd. vs. Ram Naresh Tripathi, (1993) 2 SCC 115 = 1992 Suppl. (3) SCR 559, laid down that the right to be represented in the departmental proceedings initiated against a delinquent employee can be regulated or restricted by the Management or by the Service Rules. It was held that the right to be represented by an advocate in the departmental proceedings can be restricted and regulated by statutes or by the Service Rules including the Standing Orders, applicable to the employee concerned. The whole case law was reviewed by this Court in Bharat Petroleum Corporation Ltd. vs. Maharashtra Genl. Kamgar Union & Ors., (1999) 1 SCC 626, and it was held that a delinquent employee has no right to be represented by an advocate in the departmental proceedings and that if a right to be represented by a coworkman is given to him, the departmental proceedings would not be bad only for the reason that the assistance of an advocate was not provided to him."

xxxx xxxx xxxx

7.0. Applying law laid down by this Court in the aforesaid decisions to the facts of the case on hand, the respondent employee / respondent delinquent has no absolute right to avail the services by exemployee of the Bank as his DR in the departmental proceedings. It is true that Regulation 44 puts specific restriction on engagement of a legal practitioner and it provides that for the purpose of an enquiry under Regulation, 2010, the Officer or Employee shall not engage a legal practitioner without prior permission of the competent authority. Therefore, even availing the services of legal practitioner is permissible with the leave of the competent authority. However, Regulation does not specifically provides that an employee can avail the services of any outsider and / or ex employee of the Bank as DR. Therefore, Regulation, 2010 neither restricts nor permits availing the services of any outsider and / or exemployee of the Bank as DR and to that extent Regulation is silent. If the reasoning of the High Court is considered, the High Court is of the opinion that as there is no complete or absolute bar even on engaging a lawyer, it is difficult to accept that a retired employee of the Bank cannot be engaged to represent a delinquent officer in the departmental inquiry. However, the High Court has not appreciated the effect of the Handbook. As per Clause 8 of the Handbook Procedure which has been approved by the Board of Directors and it is applicable to all the employees of the Bank and Clause 8 is with respect to the defence representative, it specifically provides that DR should be serving official / employee from the Bank. The said Handbook Procedure which has been approved by the Board of Directors of the Bank is binding to all the employees of the Bank. The High Court has considered Regulation 44 of the Regulation, 2010, however has not considered clause 8 of the Handbook Procedure on the ground that the same cannot be said to be supplementary. However, we are of the opinion that Handbook Procedure can be said to be supplementary. The same cannot be said to be in conflict with the Regulation 44 of Regulation, 2010. As observed herein above, neither Regulation 44 permits nor restricts engagement of an exemployee of the Bank to be DR. Therefore, Clause 8.2 cannot be said to be in conflict with the provisions of Regulation, 2010. Provisions of Regulation, 2010 and the provisions of Handbook Procedure are required to be read harmoniously, the result can be achieved without any violation of any of the provisions of Regulation, 2010 and the Handbook

> Procedure. The objects of Regulation 44 of Regulation, 2010 and Clause 8 of the Handbook Procedure seem to be to avoid any outsider including legal representative and / or even exemployee of the Bank. At the cost of repetition, it is observed that there is no absolute right in favour of the delinquent officer's to be represented in the departmental proceedings through the agent of his choice and the same can be restricted by the employer."

11. From the perusal of above quoted paragraphs of the judgment, it comes out that Hon'ble Court has not held that a delinquent employee cannot be represented through a legal practitioner if there is specific rule or standing order permitting to engage an advocate. The Hon'ble Court has reiterated its earlier opinion to the effect that in the absence of specific provision, denial to engage an advocate does not amount to violation of principles of natural justice. An employees carries neither absolute nor vested right to engage an advocate in the departmental proceedings.

12. The petitioner has relied upon judgment of Division Bench of Bombay High Court in ***'Antonio B. Furtado*** (supra) where similar provision has been considered and Court has held that request of a delinquent employee cannot be rejected in an arbitrary or whimsical manner. The Disciplinary Authority is required to apply its mind. The Court has even rejected contention of the Bank that permission to engage an advocate would open flood gates. The relevant extracts of the judgment read as:

> "Undisputably, under the said Para. 19.12, a delinquent employee can be represented in a domestic enquiry either by a representative of a registered trade union of bank employees, or by a representative of the State federation or all India organisation to which such union

is affiliated, or with the permission of the bank by a lawyer. It is thus clear that under the aforesaid agreement, the representation of a delinquent employee by a lawyer in departmental inquiry proceedings is permissible, though subject to the prior permission of the bank. It appears that ordinarily, such representation should be by a representative of the trade union, but there is nothing in the said Para. 19.12 as to imply that only when the representative of the union is not available, the representation by lawyer can be permitted. It is clear to us that the said Para. 19.12 leaves the question open and it is for the bank in its discretion to grant, in any given case, permission to a delinquent employee to be represented by lawyer in the departmental inquiry proceedings. Hence, the question that arises is whether this discretion can be used according to the whims of the bank management. Manifestly, the answer is in the negative, for while dealing with an application of a delinquent employee seeking such permission, the bank management should not act arbitrarily, but should on the contrary, be reasonable and fair. Apparently, however, this approach did not find favour with the respondents. We say so, because in the course of his arguments, Sri P. Mulgaokar, the learned counsel representing respondents 1 to 5, while making a feeble attempt to justify the rejection of the petitioner's request, merely contended that if such permission is granted, it will open the "floodgates" and so, in each and every case delinquent employees will ask as of right for permission to be represented by lawyers. Obviously, there is no merit in this submission of the learned counsel, for if discretion is properly used and permission is given in deserving cases, the question of opening the "floodgates" does not at all arise. But such submission is an eye opener and we may point out that in the present case it is apparent that

> the respondents were bent to refuse the petitioner's request for that reason only and no other."

12.1 The petitioner has further relied judgment of Calcutta High Court in ***'Khitish Chandra Rabidas*** (supra). The relevant extracts of the judgment read as:

> "16. The decision of the bank does not show the reasons why it decided not to permit the petitioner to be defended by a lawyer. Clause 12 of the settlement provides that in the situations specified the employee proceeded against shall be permitted to be defended by a lawyer. It appears from the provision that granting permission would rather be the rule, and refusal an exception. When the provision does not specify the cases fit for permission, or the grounds on which permission is to be refused, the disciplinary authority cannot refuse it in the absence of compelling reasons for refusal. The fact situation of the petitioner's case warranted a liberal consideration, of his prayer. The bank, however, proceeded casually. Hence I am of the view that the disciplinary authority should consider afresh the petitioner's prayer for engaging a lawyer in the enquiry to defend him."

This Court in ***Anil Bamania*** (supra) while dealing with same provision has permitted the petitioner therein to engage an advocate. The relevant extracts of the judgment read as:

> "10. 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.
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> 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."

13. From the conspectum of impugned order dated 23.07.2018 (Annexure P-2) followed by order dated 01.09.2018 (Annexure P-1), it can be gleaned that neither original authority nor Appellate Authority had recorded reasons while rejecting request of the petitioner to engage an advocate. The impugned orders are liable to be set aside on the sole ground that respondents have passed order without recording reasons. It appears that discretionary power has been exercised in a casual rather than judicious manner. The authorities were bound to apply their mind and record the reasons. As the impugned orders have been passed without

recording reasons, this Court is of the considered opinion that impugned orders deserve to be quashed and accordingly quashed.

15. The petitioner is at liberty to move fresh application which would be decided by respondent in accordance with law.

16. Pending Misc. application(s), if any, shall stand dispose of.

(JAGMOHAN BANSAL)
JUDGE

05.10.2023
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Whether speaking/reasoned	Yes/No
Whether Reportable	*Yes/No*