

IN THE HIGH COURT OF BOMBAY AT GOA.

(LD-VC-CW-333/2020)

Philips Edward

...Petitioner

Vs

Indian Overseas Bank, Thr. Chief
Regional Officer, Panaji and 2 ors.

...Respondents

Shri Kaif Noorani, Advocate for the petitioner.

Coram:- DAMA SESHADRI NAIDU, J.

Date:6th November 2020.

PC.

Issue notice to the respondents.

2. The petitioner is a bank employee. In January 2019, he was placed under suspension for alleged fraud and misappropriation. Then, the employer-bank initiated a departmental inquiry. In that inquiry, the petitioner wanted to be represented by a counsel. But the management rejected his request. That is his first grievance. After repeated attempts, the petitioner could secure the relevant documents from the employer. He has already submitted a reply. In that context, the Disciplinary Authority wanted to proceed with the mater on 7.11.2020—tomorrow. The petitioner wanted time.

3. The petitioner's request for time is two-fold. He is said to have written to his trade union for lending him assistance in defending himself in the departmental inquiry. Of course, that is without prejudice to his right to engage a counsel, as the petitioner's counsel puts it. But, so far, he has not heard from the Union. So he wanted time; the authorities, however, refused to grant him time. That is his second grievance.

4. According to Shri Kaif Noorani, the petitioner's counsel, there is absolutely no embargo against the petitioner's engaging an advocate. But

the management simply refused on the premise that the Competent Authority was disinclined to permit him.

5. Shri Noorani submits that the petitioner has no intention to drag the proceedings because any further delay will prejudice the petitioner's own interest. Therefore, he submits that if the respondent authorities permit the petitioner to engage an advocate, he is willing to attend the inquiry even tomorrow. He is eager to get on with the matter.

6. Prima facie, I reckon that the departmental proceedings are not legal proceedings. Nor does the nitty-gritty of judicial adjudication apply. Granted, the judicial intervention in the disciplinary proceedings—especially at the initial stages—is minimal. Indeed, the disciplinary authority's refusal to allow the delinquent employee to have a legal practitioner to represent him would not vitiate the enquiry. That said, it is not a universal principle. On the contrary, it depends on various factors, including the rules governing the departmental proceedings and the gravity of the charges the delinquent has been facing.

7. I have asked Shri Noorani whether there is any bar in the rules or the charter that governs the departmental proceedings in the respondent Bank. His answer is an emphatic no. Agreed, departmental proceedings are not judicial; they are quasi-judicial or, even, administrative. But the principles of natural justice do apply to them at all levels. And right to legal representation, unless expressly barred, is too valuable a right to be denied. Of course, it is for the employer to establish that its refusing the petitioner the assistance of a counsel does not offend the principles of natural justice and that it has been its consistent practice or that the practice stands sanctified by relevant rules. In the meanwhile, if there is no judicial intervention, the petitioner may suffer irrepealable loss and hardship. Given the gravity of the charges, the petitioner faces termination as a mode of punishment.

8. Under these circumstances, the petitioner has made out a prima facie case for this Court to stay the matter for a limited period. It is to determine the issue of the petitioner's right to representation. That adjudication essentially requires the proceedings before the Disciplinary Authority to be put to hold.

9. So, there shall be a stay of further inquiry in the departmental proceedings for four weeks.

Place the matter on 4.12.2020.

DAMA SESHADRI NAIDU, J.

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