

IN THE HIGH COURT OF BOMBAY AT GOA**LD-VC-CW-333-2020**

Philips Edward
Son of P. Edward,
Aged about 39 years,
Presently residing at
A/25, Block C, Janata Flat,
Sunshine Apartments,
Sector 99 Gautam Buddha Nagar,
Noida, Uttar Pradesh, 201 301. Petitioner

V e r s u s

Indian Overseas Bank,
Thr. Chief Regional Officer,
Regional Office,
Personnel Administration Dept.,
Salgaonkar Centre,
Rue De Ourem,
Panaji and 2 others. Respondents

Mr Kaif Noorani, Advocate for the Petitioner.
Mr Ajay Kumar, Standing Counsel for the Respondent – Bank.

CORAM: DAMA SESHADRI NAIDU, J.
DATE: 15th December 2020.

ORDER:

The petitioner joined the respondent-bank in 2006 as a part-time sweeper. He had his services confirmed in April 2008, as a messenger. Later, he was granted special promotion as a clerk. That was in 2017. On his request, in November 2017, the petitioner was transferred to a Branch in Goa.

2. In the third week of January 2019, the petitioner left Goa for Meerut on the ground that his mother was unwell. On 5/2/2019, when he

was in Meerut, he received communication that he had been suspended from service. Then, he spoke to the local representative of the Trade Union to which he belonged and came to know that even an FIR had been registered against him. So, he secured anticipatory bail in February 2019.

3. Thereafter, as the respondent-bank had not paid sustenance allowance to the petitioner, he filed Writ Petition No.978/2019. Then, the respondent-bank informed the Court that it would not only pay the sustenance allowance but also file the charge sheet in the next four weeks. Recording the Bank's undertaking, in December 2019 the Court disposed of the Writ Petition. Thereafter, as undertaken, the Bank filed the charge sheet, which was served on the petitioner in the next four days. Immediately, the petitioner filed his reply.

4. In January 2020, the third respondent informed the petitioner that the second respondent had been appointed as the Inquiry Officer and another official as the Presenting Officer. Since the petitioner too should have a representative to defend him, he wrote to the Trade Union on 17/1/2020; he is said to have sent that letter through speed post. But he received no reply. In the meanwhile, in March 2020, the respondent-bank filed the second charge sheet, to which, in the same month, the petitioner filed an additional reply. Though there has been some controversy about the respondent-bank not supplying the material documents to the petitioner, it was eventually resolved.

5. And now the petitioner has reported that he has been supplied with all the material documents. Despite the petitioner's request, the Trade Union did not respond to the petitioner's plea for assistance in the domestic inquiry. So the petitioner wrote another letter on 31/10/2020. Given the Bank's doubt whether the petitioner wrote the first letter, he could not produce any proof about whether he had, in fact, sent the first letter. But regarding the second letter, he did place on record the proof that he had sent the communication through registered post. And the Trade Union received it. Again, the Trade Union does not seem to come forward to provide any assistance to the petitioner in the domestic inquiry. At least, that is the contention the petitioner has advanced before me.

6. Under these circumstances, the petitioner requested the Bank to permit him to take the services of an advocate in the domestic inquiry. But, through its communication dated 27/10/2020, the Bank denied permission. Then, the very next day, the petitioner wrote another letter to the second respondent protesting against the denial and, later, filed this Writ Petition.

7. Shri Kaif Noorani, the learned counsel for the petitioner, submits that the petitioner faces a grave charge of misappropriation, which is to be treated as gross misconduct; it may entail the delinquent's dismissal from service. Therefore, the Bank ought not to have refused the petitioner permission to engage the services of an advocate. Besides, Shri Noorani has also submitted that the Bank will not be prejudiced in any manner if the petitioner has professional assistance. And in that event, only the truth will

come out, and substantial ends of justice will stand served. To support his contentions, Shri Noorani has relied on *A. Kandasamy v. Indian Overseas Bank* (WP No.4530 of 2017) of the Madras High Court.

8. In this context, Shri Noorani has also taken me to the terms of the Bipartite Settlement, especially Clause 12-A. According to him, the Bank does have discretion either to allow the delinquent to have the assistance of an advocate or to refuse it. But that refusal must be informed by reasons. That is, any discretion exercised by the employer in disciplinary proceedings must not be arbitrary. Therefore, he has urged this Court to allow the Writ Petition so that the petitioner could have the assistance of an advocate in the domestic inquiry. At any rate, Shri Noorani points out that the Bank's initial letter addressed to the petitioner conveyed no reason why it had denied the counsel's assistance to the petitioner. But later, on the petitioner's protest, the Bank did supply reasons. But those reasons could not be sustained.

9. In the end, Shri Noorani has also taken an alternative plea. According to him, in this Writ Petition, the second respondent has filed the counter Affidavit for the Bank. In that counter-affidavit, he has already concluded as if the petitioner had been guilty of the charges. That said, being the inquiry officer, he is supposed to be neutral. Now the counter reveals the bias he has been suffering from. Therefore, Shri Noorani insists that the neutrality expected of the Enquiry Officer has been severely breached. And if he continues to be the inquiry officer, the petitioner will

not be mistaken for concluding that from that Enquiry Officer, he would not get a fair hearing. Therefore, he has urged the Court to ensure that the inquiry officer is changed.

10. In response, Shri Ajay Kumar, the learned Standing Counsel for the Bank, has submitted that the disciplinary authority, the Inquiry Officer and the Presenting Officer—none of them—have been initiated into legal nuances and procedural niceties. For they, too, are laypersons.

11. That apart, the petitioner has never complained, to begin with, that he has been prejudiced in any manner because he has been denied the assistance of a lawyer. His only grievance then was that the Trade Union has not come forward to assist him. In this context, Shri Kumar stresses that the petitioner may not have been pursuing the issue with the Trade Union diligently. That is, the petitioner has not placed before this Court any proof that he did communicate his request for assistance to the Trade Union.

12. Shri Kumar has also taken me through the by Bipartite Settlement and has submitted that the Bank has exercised its discretion in a judicious manner. And this Court, in its judicial review, may not upset that exercise of the Bank's discretion, as it does not suffer from any perversity. To support his contentions, he has relied on *V. Mathivanan v. State Bank of India*, (2012) 1 CWC 910, of the Madras High Court.

13. As to the allegation that the second respondent's neutrality has been breached, Shri Kumar strenuously denies it. According to him, the

petitioner has pleaded his case elaborately; and, in response, the second respondent pleading for the Bank has only denied those allegations. It cannot be, then, taken as if the second respondent had been prejudiced and prejudged the petitioner's guilt. Nevertheless, on instructions, Shri Kumar has submitted that if at all the petitioner believes the second respondent has been biased, the Bank is more than willing to change the Inquiry Officer, so that the controversy can be put paid to.

14. Heard Shri Kaif Noorani, the learned counsel for the petitioner, and Shri Ajay Kumar, the learned Standing Counsel for the Bank.

15. As we have noted above, the second issue—that is, the alleged bias the second respondent has been suffering from—now stands redressed, as the Bank has agreed to change the inquiry officer.

16. Now, we have been left with the core issue: Should the petitioner be allowed to have the assistance of an advocate in the domestic inquiry? In other words, has the Bank properly exercised its discretion and denied professional assistance to the petitioner?

17. To cut short the entire discussion, I may, to the extent relevant, refer to Clause 12 of the Bipartite Settlement. It reads:

18. 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 for the circumstances appearing against him and a date shall be fixed for inquiry, 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 inquiry, 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.

(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 inquiry.*

(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

(i) at the request to the said Union by a representative of the state federation of all: India Organization to which such union is affiliated. OR

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

....

(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.”

(italics supplied)

19. As Shri Noorani has fairly agreed that the petitioner has no indefeasible right to insist on legal assistance. That said, he has contended that the Bank has not supplied any cogent reason for its denying the legal assistance to the petitioner. Nor has it explained how the legal assistance to the petitioner prejudices its interest.

20. It is well established by a canon of common law that any discretion must be exercised judiciously and should always remain informed by reasons. There cannot be any arbitrary exercise of discretion. Here, the petitioner, as the delinquent officer can conduct disciplinary proceedings *pro se* or have the assistance from the Trade Union. Under certain

circumstances, he may as well take the services of a professional advocate, but that depends on the employer's discretion.

21. Here, the question is whether the employer has exercised that direction properly. In its reply, the Bank has informed the petitioner that the entire inquiry involves no professional—the Disciplinary Authority, the Inquiry Officer, and the Presenting Officer, too, are uninitiated into the legal intricacies; they, too, are laypersons. Besides, the charge the petitioner faces does not involve any complicated or convoluted question of law or disputed facts. Under these circumstances, the Bank insists that the petitioner may as well have the assistance of the Trade Union or himself carry on with the inquiry.

22. Persuasive as *V. Mathivanan* is, in that case, too, the facts are identical. The respondent employer rejected the employee's plea to engage an advocate in the course of the enquiry proceedings. The petitioner's writ petition dismissed, he reached the Division Bench in an intra-court appeal. Then, the learned Division Bench had to interpret the same clause of the Bipartite Settlement as is before me.

23. In the above factual backdrop, *V. Mathivanan*, first, took to its aid a Supreme Court judgment in *DG Railway Protection Force v. K. Raghuram Babu*, AIR 2008 SC 1958, to underline the well-entrenched proposition in departmental proceedings: 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.

24. Second, *V. Mathivanan* has observed that the Memorandum of Settlement specifically dealing with the disciplinary proceedings provides for representation through a defence representative in the enquiry proceedings. There is no denial of the fact that as per clause 12 of the Memorandum of Settlement, the delinquent employee can have the defence representation through the Registered Trade Union of Bank Employees of which the delinquent officer is a member. Even if he is not a member of any Trade Union, he is still entitled to have the assistance of a Trade Union representative. The only area where the Bank has the discretion is in the matter of considering the request of a delinquent employee to have the assistance of a lawyer. “In so providing such a discretion, we do not find any violation of either constitutional right or principles of natural justice”, rules *V. Mathivanan*.

25. Third, as to the justification for the Bank to deny the delinquent the assistance of a lawyer, *V. Mathivanan* points out that no other participant in the domestic inquiry—the enquiry officer, the representative of the Bank, and the Management personnel—is legally trained. On the admitted facts, the Settlement does not provide for engaging a lawyer as a matter of right;

the Bank itself has not appointed a lawyer as an enquiry officer, nor is the representative of the Management a legally qualified person. Precisely that is the reason here, too, the Bank has supplied.

26. On the other hand, in *A. Kandasamy*, relied on by the petitioner, a learned Single Judge of the same High Court, has allowed the delinquent employee to have the assistance of a lawyer. But that judgment does not provide any reasons why the delinquent should have the legal assistance. It has, however, stated that earlier, too, the Court allowed, in another case, the delinquent to have legal assistance. I am afraid, a Judgment that has not set out any reasons will neither bind nor persuade, as the latter is the case here.

27. All said and done, I must note that departmental proceedings are not judicial proceedings. And the employer enjoys wide powers, among other things, to set its house in order. More so are the financial institutions. Judicial intervention cannot paralyze the administration. In fact, Courts must be slow in interfering with the managerial decision in domestic inquiries; for that, perversity must have been writ large of the face of the proceedings.

28. Here, I reckon the Bank has provided sufficient reasons why it is not inclined to allow the petitioner to have legal assistance. I do not wish to interfere with that discretion.

29. That said, true, the petitioner could not place on record any proof about his requesting the Trade Union in January 2020 for assistance. But his

second communication, dated 31.10.2020, has been sent to the Trade Union. But it seems the petitioner secured no response. Under these circumstances, it is only fair for the Court to provide some more time to the petitioner either to secure the assistance from the Trade Union of which he is a member or to get on with the matter on his own.

30. I, therefore, allow the petitioner to persuade the Trade Union once again to assist him in the domestic inquiry. He should secure, if possible, that assistance in the next 45 days. Thereafter, either with the Trade Union's assistance or without, the petitioner must proceed with the matter in the domestic inquiry.

With these observations, I dispose of the Writ Petition.

DAMA SESHADRI NAIDU, J.

AP/-