



2025:DHC:6111-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 10179/2025, CM APPLs. 42272/2025, 42273/2025 &
42274/2025

VIJENDER KUMAR

.....Petitioner

Through: Mr. Nishaank Mattoo, Ms.
Sanjivani Pattjoshi, Mr. Rishabh Munjal and
Mr. Devrishi Tyagi, Advs.

versus

DELHI METRO RAIL CORPORATION
& ORS.

.....Respondents

Through: Mr. Ankur Chhibber, Adv. for
DMRC

Ms. Ekta Choudhary, Mr. Ayush Kumar and
Ms. Kanika Kalra, Advs. for R-2

Mr. Gaurav Dhingra and Mr. Shashank
Singh, Advs. for GNCTD/R-3

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE AJAY DIGPAUL

JUDGMENT (ORAL)

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18.07.2025

C. HARI SHANKAR, J.

1. This writ petition under Article 226 of the Constitution of India assails judgment dated 1 July 2025, passed by the Central Administrative Tribunal¹ in OA 2347/2024². By the impugned judgment, the Tribunal has dismissed the OA. Aggrieved thereby,

¹ "the Tribunal", hereinafter

² **Vijender Kumar v DMRC and Ors.**



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Vijender Kumar, the applicant in the OA, has petitioned this Court.

2. We have heard Mr. Nishaank Mattoo, learned Counsel for the petitioner and Mr. Ankur Chhibber, learned Counsel for Respondent 1 at length.

3. Several prayers were made before the Tribunal, and stand reiterated before this Court. However, only two prayers have substantially been urged, both before the Tribunal as well as before us. The first is a challenge to Rule 42(6) of the Delhi Metro Rail Corporation (Conduct, Discipline and Appeal) Rules, 2021³. The second is for a stay of further disciplinary proceedings against the petitioner, following the issuance of Memorandum dated 4 September 2023⁴, till the conclusion of the criminal case pending against him before the learned Additional Chief Metropolitan Magistrate, South District, Saket Courts, New Delhi.

4. Of these two prayers, too, the essential challenge is to Rule 42(6) of the 2021 Rules.

Facts

5. Inasmuch as the challenge is purely legal, no detailed reference to facts is necessary. A brief allusion thereto would, therefore, suffice.

6. While he was working as Junior Engineer in the Delhi Metro

³ “2021 Rules”, hereinafter

⁴ “the chargesheet”, hereinafter



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Rail Corporation⁵, an FIR was registered against the petitioner under Sections 420/102B/34 of the Indian Penal Code, 1860⁶ at the Ghitorni Police Station, Delhi, on 3 January 2023. The allegation against the petitioner was that he had stolen a TOM⁷, including its Central Processing Unit, Card Reader and Crypto from the premises of the DMRC and had installed them at his residence in Greater Noida, from where he was issuing illegally recharged smart cards, which were thereafter sold by one Mohit Gupta, a co-accused, for personal gain. In the process, it was alleged that the DMRC had suffered a loss of ₹ 28 lakhs.

7. Following the registration of the aforesaid FIR on 3 January 2023, the petitioner and Mohit Gupta were arrested on 4 January 2023.

8. While the criminal proceedings, following the registration of the aforesaid FIR, were in progress, a Memorandum dated 4 September 2023 was issued to the petitioner, under Rule 42 of the 2021 Rules, proposing to institute disciplinary proceedings against him for major penalty. Given the nature of the challenge laid by the petitioner both before the Tribunal as well as before this Court, it is not necessary for us to set out, in detail, the allegations against the petitioner in the aforesaid chargesheet. Suffice it to state that they were substantially similar to the charges which form subject matter of the FIR dated 3 January 2023 and the criminal proceedings which followed thereupon.

⁵ DMRC

⁶ IPC

⁷ Ticket Office Machine



9. The petitioner submitted his reply to the chargesheet on 3 October 2023. On 15 April 2024, he sought permission to engage an advocate as his defence assistant in the disciplinary proceedings. The request was rejected by the DMRC, quoting Rule 42(6) of the 2021 Rules. It is this decision of the DMRC which has provoked the petitioner to challenge the said Rule 42(6) itself. For ready reference Rule 42(6) of the 2021 Rules may be reproduced thus:

“6. The employee may take the assistance of any other public servant/retired public servant but may not engage a legal Practitioner for the purpose unless the Presenting Officer appointed by the disciplinary authority is a legal practitioner, or the disciplinary authority, having regard to the circumstances of the case, so permits.”

Trajectory of proceedings

10. The petitioner initially approached this Court by way of WP (C) 6267/2024⁸ which was withdrawn by him on 22 May 2024 with liberty to approach the Tribunal. The order dated 22 May 2024 read thus:

“W.P.(C) 6267/2024, CM APPLs. 26090/2024 & 30747/2024

1. After some submissions, Mr. Madhav Khurana, learned counsel appearing for the petitioner, seeks to withdraw the writ petition to enable the petitioner approach the Central Administrative Tribunal which has the jurisdiction in respect of service matters pertaining to Delhi Metro Rail Corporation. The writ petition and connected applications are dismissed as withdrawn.

2. Suffice to state that we have not expressed any opinion on the issue which has been raised in this writ petition.”

⁸ **Vijender Kumar v DMRC & Ors.**



11. It was in these circumstances that the petitioner approached the Tribunal by way of OA 2347/2024. Before the Tribunal, the petitioner sought the following reliefs:

“a) pass an order, direction declaring Rule 42(6) of DMRC Conduct, Discipline and Appeal Rules, 2021 ultra-vires of, inter-alia, Article 20(3) and Article 21 of Constitution of India and consequently quash/set aside the same;

and

b) pass an order, direction quashing disciplinary proceedings instituted against the Applicant vide Memorandum No. DMRC/O&EM /Tele / D&AR /Major/ 5844/2023 /02 dated 04.09.2023;

and

c) pass an order, direction quashing the cross-examination of witnesses conducted by the Applicant on 16.04.2024:

d) pass an order, direction directing to Respondent No.1 to drop Sh. Mohit Gupta from the list of witnesses in Memorandum No.DMRC/O&EM/Tele/D&AR/Major/5844/2023/02 DATED 04.09.2023;

and

e) pass an order, direction, directing Respondent No.1 to form a panel of legal counsel/eligible personal for the purposes of offering defense assistance to tis employee facing disciplinary proceedings;

and

f) pass an order, direction, directing stay of proceedings in Memorandum No.DMRC/O&EM/Tele/D&AR/Major/5844/2023/02 DATED 04.09.2023 instituted against the Applicant herein;

and

g) pass an order, direction quashing the notification bearing S.O. 2824(E) dated 01.12.2008 of the Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pension

and

h) pass any other order(s) which this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the case in favour of



the Applicant and against the Respondents.”

12. In support of his challenge to Rule 42(6) of the 2021 Rules, the petitioner urged the following grounds before the Tribunal:

(i) Section 30⁹ of the Advocates Act, 1961 entitled any Advocate, registered with the Bar Council of India, to appear and practise before any Court, any Tribunal or any person, who was legally authorized to take evidence. The proceedings following the chargesheet dated 4 September 2023 being quasi-judicial in nature, and the Inquiry Officer¹⁰ appointed to hold the inquiry being a person legally authorized to take evidence, it was submitted that the denial, to the petitioner, of the right to engage an advocate as his defence assistant infringed Section 30 of the Advocates Act. Rule 42(6) of the 2021 Rules, being a piece of subordinate legislation, had to cede place to Section 30 of the Advocates Act.

(ii) Denial, to the petitioner, of the right to engage an advocate as his defence assistant also violated the principles of natural justice.

(iii) Communications between the petitioner and his advocate constituted privileged communication within the meaning of

⁹ **30. Right of advocates to practise.** – Subject to the provisions of this Act, every advocate whose name is entered in the State roll shall be entitled as of right to practise throughout the territories to which this Act extends,—

- (i) in all courts including the Supreme Court;
- (ii) before any tribunal or person legally authorised to take evidence; and
- (iii) before any other authority or person before whom such advocate is by or under any law for the time being in force entitled to practise.

¹⁰ IO



Section 129¹¹ of the Indian Evidence Act, 1872¹². It could not, therefore, be used in the criminal proceedings against him. As against this, communication between the petitioner and his defence assistant, if the defence assistant was not a legal practitioner, would not constitute privilege communication and the petitioner could be compelled to disclose the said communication, or its contents, in the criminal proceedings, in which they could be used against the petitioner.

(iv) This would also violate the right of silence guaranteed to an accused in a criminal trial by Article 20(3)¹³ of the Constitution of India, which also protected an accused from giving evidence against himself.

13. The prayer for stay of the disciplinary proceedings, pending conclusion of the criminal trial, was predicated on the premise that the allegations against the petitioner in both the proceedings were identical, and that the proceedings involved the same evidence. As such, compelling the petitioner to participate in the disciplinary proceedings even while the criminal trial was pending would result in compromising his defence in the criminal proceedings, as the petitioner would be compelled to disclose his defence in the disciplinary proceedings. This, according to the petitioner, constituted sufficient ground to justify stay of the disciplinary proceedings,

¹¹ **129. Confidential communications with legal advisers.** – No one shall be compelled to disclose to the Court any confidential communication which has taken place between him and his legal professional adviser, unless he offers himself as a witness, in which case he may be compelled to disclose any such communications as may appear to the Court necessary to be known in order to explain any evidence which he has given, but no others.

¹² Evidence Act

¹³ (3) No person accused of any offence shall be compelled to be a witness against himself.



pending conclusion of the criminal trial.

14. As already noted, the Tribunal, by the judgment under challenge rejected the contentions of the petitioner and dismissed the OA. We need not enter into the reasoning of the Tribunal, as we have independently assessed the aforesaid grounds, with assistance of learned Counsel. Suffice it, however, to state that, in rejecting the challenge, by the petitioner, to Rule 42(6) of the 2021 Rules, the Tribunal placed reliance on the judgment of the Supreme Court in *Cipla Ltd. v Ripu Daman Bhanot*¹⁴.

15. Aggrieved by the decision of the Tribunal, the petitioner has approached us.

Rival Contentions

16. Before us, Mr. Mattoo once again stressed on his challenge to Rule 42(6) of the 2021 Rules. He reiterated the submission that denial, to him, of the services of an advocate as his defence assistant in the disciplinary proceedings amounted to an infraction of his right against self-incrimination, guaranteed by Article 20(3) of the Constitution of India. He further submitted that, in view of the fact that communications between a client and his Counsel are privileged communications under Section 129 of the Evidence Act, the petitioner would not feel much more comfortable, while discussing the matter with his lawyer, than he would, if he were to engage a defence assistant who was not a lawyer.

¹⁴ (1999) 4 SCC 188



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17. With respect to his prayer for staying of the disciplinary proceedings pending conclusion of the criminal trial against the petitioner, Mr. Mattoo again stresses on the fact that the evidence in both the cases was the same and the allegations against the petitioner were also identical.

18. Responding to the submissions of Mr. Mattoo, Mr. Chhibber essentially points out that the issue of right to engage a legal practitioner as his defence assistant stands concluded against the petitioner by the judgment of the Supreme Court in *Cipla*. In any event, submits Mr. Chhibber, the petitioner cannot be heard to ventilate this grievance. As on 16 April 2024, the petitioner had specifically stated before the IO that he would defend his case himself. Further when asked as to whether he had any evidence to cite in his defence, the petitioner answered in the negative. We may, in this context, reproduce the Daily Order Sheet dated 16 April 2024, as drawn up by the IO:

“DMRC/Mgr/Ops/L-1/inquiry/2024/08

Dated: 16 April, 2024

DAILY ORDER SHEET-8

Sub: Departmental Inquiry against Sh. Vijender Kumar, ASE/Tele.
Employee No:5844

Present:

1. Sh. Rajan Kumar, SE/Tele/L3A84, Emp.No-9016-Presenting Officer (PO)
- 2 Sh. Vijender Kumar, ASE/Tele. Emp No: 5844- Charged Officer (CO)
3. Sh. P. S. Rathore. JGM/Ops, Emp No: 471-Witness
4. Sh. Sudhir Mittal, GM/Tele. Emp No: 271-Witness
5. Sh. Ashish Kumar Maurya. AM/Tele. Emp No: 12537-Witness
6. Sh. Jagjit Singh Sangwan, Asstt.Sec.Comm.. Emp No: 4266-Witness

Absent:



1. Sh. Mohit Gupta, NCES staff. Emp.No: 116247

DOS Details:-

1. Hearing held as scheduled.
2. CO has given a written request to engage a Legal Counsel to present his case. PO has quoted the rule no.42.6 of DMRC D&AR that legal practitioner may be decided by DA. In earlier hearings CO was given chance to take support of Defence Assistance under the rule but CO submitted he couldn't get it and he will defence his case himself, accordingly the proceedings started. PO submitted that asking Legal Counsel at this point is a try to delay proceedings. The request has been taken & marked to DA and further decision may be taken the DA.
3. It was informed by PO that 1st Witness Sh. Mohit Gupta, NCES staff, Emp.No: 116247 not turned up for the hearing. PO also informed that the letters sent to Sh. Mohit Gupta are undelivered & his phone number is also not reachable.
4. All the other witnesses Sh. P. S. Rathore. Sh. Sudhir Mittal, Sh. Ashish Kumar Maurya. Sh. Jagjit Singh Sangwan were examined by PO & cross examined by CO. The records of this proceedings duly signed by the witness, CO & PO are attached with this DOS.
5. CO was asked whether he is having any witness from his side in response to that CO submitted that "No"
6. The next date of hearing will be 19.04.2024 at 15:00. 0/0 Mgr/Ops/L-1. First floor OCC building, Shastri Park Metro Station, Delhi-110053."

Analysis

19. Having heard learned counsel for the parties, it is clear that the petitioner has no case whatsoever and has, in fact, used the Tribunal and now this Court to impede progress in the disciplinary proceedings against him. We may note that, during the pendency of the OA before the Tribunal, the disciplinary proceedings remained stayed.

20. Re. challenge to Rule 42(6) of the 2021 Rules



20.1 We find force in the submission of Mr. Chhibber that, having stated before the IO on 16 April 2024 that he would defend the case himself, the petitioner cannot be heard to complain about the fact that he cannot be permitted to engage a legal counsel. In fact, the petitioner was also given an opportunity to cite evidence in his defence but refused to do so.

20.2 That apart, the issue of whether a charged officer in disciplinary proceedings is entitled to engage a legal counsel is settled by several decisions of the Supreme Court. Apart from *Cipla*, on which the learned Tribunal has correctly relied, one may cite the judgment of the Supreme Court in *Chairman, State Bank of India v M.J. James*¹⁵, *Rajasthan Marudhara Gramine Bank v Ramesh Chandra Meena*¹⁶. The relevant paragraphs from the decision in *Cipla*, *M.J. James* and *Rajasthan Marudhara Gramine Bank* may be reproduced thus :

From *Cipla*

13. In *N. Kalindi v Tata Locomotive & Engg. Co. Ltd.*¹⁷ 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 Co. (India) Ltd. v Workmen*¹⁸ 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. v Ram Naresh Tripathi*¹⁹ laid down that the right to be represented in the departmental proceedings initiated against a

¹⁵ (2022) 2 SCC 301

¹⁶ (2022) 3 SCC 44

¹⁷ AIR 1960 SC 914

¹⁸ AIR 1965 SC 1392

¹⁹ (1993) 2 SCC 115



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 Corpn. Ltd. v Maharashtra General Kamgar Union***²⁰ 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 co-workman 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.”

From ***M.J. James***

“23. Now, we need to advert our attention on the aspect of the choice of representation in domestic inquiry. Both sides rely on the dictum of this Court in ***Crescent Dyes & Chemicals Ltd. v Ram Naresh Tripathi*** and ***National Seeds Corpn. Ltd. v K.V. Rama Reddy***²¹ which hold that the right to be represented by a third person in domestic inquiries/tribunals is based upon the precept that it is not desirable to restrict right of representation by a counsel or agent of one's choice. *The ratio does not tantamount to acceptance of the proposition that such a right is an element of principles of natural justice*, and its denial would immediately invalidate the inquiry. Representations are often restricted by a law, such as under Section 36 of the Industrial Disputes Act, 1947, as also by Certified Standing Orders.

24. The aforementioned two decisions ascribe to catena of decisions, including English case law on this subject, which accept that the right to be legally represented depends on how the rules govern such representation. Further, *if the rules are silent, the party has no absolute right to be legally represented. However, the entitlement of a fair hearing is not to be dispensed with*. What fairness requires would depend upon the nature of the investigation and the consequences it may have on the persons affected by it.”

(Emphasis supplied)

From ***Rajasthan Marudhara Gramin Bank***

16. While considering the aforesaid issue, few decisions of this Court on the right of the employee to make representation in the departmental proceedings are required to be referred to:

²⁰ (1999) 1 SCC 626

²¹ (2006) 11 SCC 645



16.1. In **Kalindi**, it is observed and held that ordinarily in inquiries before domestic tribunals the person accused of any misconduct conducts his own case and therefore, it is not possible to accept the argument that natural justice *ex facie* demands that in the case of enquiries into a charge-sheet of misconduct against a workman he should be represented by a member of his Union; though of course an employer in his discretion can and may allow his employee to avail himself of such assistance. The dictum of this decision has been subsequently elucidated.

16.2. In **Dunlop Rubber Co. (India) Ltd. v Workmen**, after considering its earlier decision in **Kalindi**, it is observed and held that there is no *per se* right to representation in the departmental proceedings through a representative through his own union unless the company by its Standing Order recognised such a right. It is observed that refusal to allow representation by any Union unless the Standing Orders confer that right does not vitiate the proceedings. It is further observed that in holding domestic enquiries, reasonable opportunity should be given to the delinquent employees to meet the charge framed against them and it is desirable that at such an enquiry the employee should be given liberty to represent their case by persons of their choice, if there is no Standing Order against such a course being adopted and if there is nothing otherwise objectionable in the said request. It is further observed that denial of such an opportunity cannot be said to be in violation of principles of natural justice.

16.3. In **Cipla**, it is observed and held as under:

“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 Co. (India) Ltd. v Workmen**, 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. v Ram Naresh Tripathi**, 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 Corpn. Ltd. v Maharashtra General Kamgar Union²², 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 co-workman 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.”

16.4. In ***Crescent Dyes and Chemicals***, it is observed and held that in the departmental proceedings right to be represented through counsel or agent can be restricted, controlled or regulated by statute, rules, regulations or Standing Orders. A delinquent has no right to be represented through counsel or agent unless the law specifically confers such a right. The requirement of the rule of natural justice insofar as the delinquent's right of hearing is concerned, cannot and does not extend to a right to be represented through counsel or agent. In the case before this Court, the delinquent's right to representation was regulated by the Standing Orders which permitted a clerk or a workman working with him in the same department to represent him and said right stood expanded permitting representation through an officer, staff member or a member of the Union, on being authorised by the State Government. Holding that the same is permissible and cannot be said to be in violation of principles of natural justice, it is observed that the object and purpose of such provisions is to ensure that the domestic enquiry is completed with dispatch and is not prolonged endlessly; secondly, when the person defending the delinquent is from the department or establishment in which the delinquent is working he would be well conversant with the working of that department and the relevant rules and would, therefore, be able to render satisfactory service to the delinquent. In the present case also Clause 8 permits representation through serving officials/employee from the Bank.

16.5. A similar view has been expressed by this Court in ***Bharat Petroleum Corpn.*** as well as in ***National Seeds Corpn.***

16.6. In ***Indian Overseas Bank v Indian Overseas Bank Officers' Assn.***²³, it is observed and held that law does not concede an absolute right of representation to an employee in domestic enquiries as part of his right to be heard and that there is no right to representation by somebody else unless the rules or regulation and Standing Orders, specifically recognise such a right and provide for such representation.

17. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand, the respondent

²² (1999) 1 SCC 626

²³ (2001) 9 SCC 540



employee/respondent delinquent has no absolute right to avail the services by ex-employee 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 the 2010 Regulations, 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, the 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, the 2010 Regulations neither restricts nor permits availing the services of any outsider and/or ex-employee of the Bank as DR and to that extent the Regulation is silent.”

20.3 Thus, there is no absolute right with a charged officer to be represented by a legal professional. Rule 42(6), moreover, does not engraft any absolute proscription in that regard. If the DMRC is represented, in the proceedings, by a lawyer, a corresponding right would vest in the charged officer. To our mind, this is wholesome and in the interests of ensuring speedy conclusion of disciplinary proceedings, which is in the interests of establishment and employee alike.

20.4 It is not the case of the petitioner that DMRC was represented by counsel or by a person who was legally trained. The right to representation by a legal practitioner in disciplinary proceedings ordinarily arises only where the management or establishment is also represented by a legal practitioner or a person who has considerable legal training. Inasmuch as the Presenting Officer of the DMRC, in the inquiry proceedings was not a legal practitioner, the petitioner could not seek, as of right, representation by an advocate or a legal practitioner.



20.5 We also do not see how the denial of the right to be represented by an advocate, would infract the right to self- incrimination or Article 20(3) of the Constitution of India. It is for the petitioner to choose the stand that he adopts before the disciplinary proceedings and in a criminal case. Rule 42(6) of the 2021 Rules cannot in any manner be read as compelling the petitioner to incriminate himself in the criminal proceedings.

20.6 Indeed, if the stand of the petitioner were to be accepted, it would lead to a position in which every person facing disciplinary proceedings would insist on being represented by a legal practitioner in violation of the extant rules, merely because a criminal case on the same charges is pending against him.

20.7 Nor can the validity of Rule 42(6) be tested on the grounds urged by the petitioner. Rule 42(6) applies across the Board. Its application cannot be different in a case where the charged officer is facing criminal trial and, in a case, where the charged officer is not facing criminal trial.

20.8 What Mr. Mattoo essentially exhorts us to do is to create in Rule 42(6), an exception in a situation in which the charged officer is also facing a criminal trial. This Court is not empowered to read, into a statutory rule, any exception not found in the rule itself. Nor can we read down Section 42(6) as inapplicable in a case in which a person is also facing a criminal trial. Indeed, were we to do so, it would result in invidious discrimination between persons facing disciplinary proceedings who are also facing criminal trials and those who are not



facing criminal trials, with a right to engage a legal practitioner being allowed to the former and denied to the latter. Such a view, were we to adopt it, which would in fact be arbitrary and violative of the Article 14 of the Constitution of India.

20.9 The submission that the petitioner would not be comfortable dealing with a defence assistant who is not a legal practitioner is, needless to say, merely to be stated to be rejected. As the learned Tribunal has correctly observed, there is a wide swathe of persons including civil servants of considerable experience who could have been engaged by the petitioner as his defence assistant. Many of them are well grounded even in legal principles. This Court cannot, therefore, accept the petitioner's submission that he would be comfortable in dealing only with a lawyer and not with a defence assistant who is not a legal practitioner.

20.10 Though Mr. Mattoo did not argue Section 30 of the Advocates Act before us, we may deal with this aspect of the matter, as well. The reliance by the petitioner on Section 30 of the Advocates Act, as advanced before the Tribunal, is also completely misguided. Section 30 of the Advocates Act deals with a right of an advocate and not with a right of the client. It entitles an advocate to practice before any authority, who is competent to take evidence. It cannot, however, empower an advocate to represent a person who, according to the prevalent law, is not entitled to be presented by a legal practitioner. The right of the client to be represented by the legal practitioner cannot, therefore, be conflated or confused with the right of an advocate under Section 30 of the Advocates Act to practice before any



judicial or quasi judicial authority. An advocate acquires a right to represent a client only if the client is entitled to be represented by an advocate. The right of the advocate to practice before the Court is dependent on his being engaged by his client to do so. An advocate cannot walk into any judicial or quasi judicial proceedings and insist on being heard, unless he has been engaged by a client who desires to be represented by him in the said proceedings. If therefore there is a valid legal proscription against the client engaging legal counsel, the advocate cannot insist on representing such a client, citing Section 30 of the Advocates Act.

20.11 In any event, we are not dealing with a challenge laid by an advocate to Rule 42(6) of the 2021 Rules. The challenge is by a charged officer. The charged officer can hardly cite Section 30 of the Advocates Act as a ground to entitle him to engage an advocate as his defence assistant.

20.12 We, therefore, are in agreement with the Tribunal with the challenge by the petitioner to Rule 42(6) of the 2021 Rules is completely without substance. Indeed, we are of the opinion which we reiterate that this challenge was only a means of protracting the disciplinary proceedings. We deprecate this effort.

21. The prayer for stay of the disciplinary proceedings pending conclusion of the criminal case is equally without substance. The law in this regard has been examined by us recently in our decision in



Dushyant Yadav v UOI²⁴, after tracing the precedential history on the point, through ***Stanzen Toytetsu India (P) Ltd v Girish GV***²⁵ (which takes into consideration the oft-cited decision in ***Capt. M. Paul Anthony v Bharat Gold Mines Ltd***²⁶, ***SBI v Neelam Nag***²⁷ and ***SBI v P. Zandenga***²⁸. We may reproduce in this context the following passages from the said decision:

“7. From a reading of the aforesaid judgments, the principles that emerge are the following:

- (i) Stay of the disciplinary proceedings pending criminal trial is not automatic or a matter of course but can only be granted for a reasonable period of time depending on the circumstances of each case.
- (ii) The gravity of the charge is itself not enough for stay, unless there is a complicated question of law involved or if the continuance of the disciplinary proceedings would prejudice the applicant’s case before the criminal court.
- (iii) A balance needs to be drawn between the need for a fair trial and the expeditious completion of the proceedings.

8. Thus, it is clear that there is no sacrosanct principle of law that, merely because the disciplinary proceedings and the criminal proceedings are based on the same set of facts, and involve the same allegations, the concerned officer or employee has an inflexible right to stay of the disciplinary proceedings pending conclusion of the criminal proceedings.

9. The decisions cited *supra* also note the concern expressed by the employee that, if the disciplinary proceedings are allowed to continue, it may result in the employee having to disclose his defence, which may prejudice his case in the criminal proceedings. Despite this, the Supreme Court has held that courts should not, merely on this consideration, stay disciplinary proceedings, especially whether the charge involved is grave, in which case the interests of justice require that the proceedings are brought to an end expeditiously.

²⁴ Judgement dated 26 March 2025 in WP (C) 3531/2025

²⁵ (2012) 1 SCC 42

²⁶ (1999) 3 SCC 679

²⁷ (2016) 9 SCC 491

²⁸ (2023) 10 SCC 675



10. Ergo, the Supreme Court has included, among the considerations which should guide courts in that regard, the issue of whether the charges are grave, and whether the case involves complex issues of fact and law, as would be required to be appropriately decided by the Court.”

22. The charge against the petitioner is unquestionably grave. Mr. Mattoo has not sought to contend, much less sought to demonstrate, that it involves complex questions of fact and law, as could not be decided in a disciplinary proceeding. It is the petitioner’s own case that the officers of the DMRC, conducting the inquiry, are persons of vast experience, over several years. Ironically, the petitioner, who seeks to urge this plea, himself declined to produce any evidence in his favour, on being called up to do so.

23. No case for staying the disciplinary proceedings against the petitioner, pending conclusion of the criminal trial, therefore, exists.

24. We may note, before concluding, that Mr. Mattoo also drew our attention to the fact that he had challenged the Notification dated 1 December 2008 issued under Section 14(2) of the Administrative Tribunals Act, 1985 whereby the DMRC was included in the list of organisations which were subject to the jurisdiction of the Tribunal. Besides the fact that we do not see how such a challenge could at all be maintainable, the aspect of inclusion of institutions within the jurisdiction of the Tribunal being essentially an administrative and ministerial act, the petitioner, in any event, would be estopped from raising such a challenge, having himself withdrawn WP (C) 6267/2024, which was preferred before this Court with liberty to



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approach the Tribunal, as recorded in the order dated 22 May 2024 (*supra*). Having thus acquiesced to the jurisdiction of the Tribunal, the petitioner cannot seek to lay any challenge thereto.

Conclusion

25. Clearly, therefore, the attempt of the petitioner, from the very beginning, culminating in the filing of the present petition, is only to stultify the disciplinary proceedings against him, without allowing them to continue to fruition.

26. We, accordingly, dismiss this writ petition with costs of ₹ 25,000/- to be paid to the National Defence Fund within a period of four weeks. Let the costs be paid online, through the NDF portal, and proof thereof be filed with the Registry of this Court immediately thereupon.

C. HARI SHANKAR, J.

AJAY DIGPAUL, J.

JULY 18, 2025/aky