

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: February 03, 2021

+ W.P. (C) 5292/2020 & CM No. 19101/2020

BISWASRI MUKHERJEE

..... Petitioner

Through: Ms. Heena Ahluwalia, Adv.

versus

PUNJAB AND SIND BANK

..... Respondent

Through: Mr. Rajesh Gautam, Adv.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

1. The present petition has been filed by the petitioner seeking a direction against the respondent to allow the petitioner to engage a Legal Practitioner in the proceedings initiated against her in terms of the charge sheet dated April 24, 2020.

2. The case of the petitioner is that she was appointed on compassionate basis as Peon on March 11, 2000 after demise of her father at Zonal Office of the Punjab and Sind Bank ('Bank', in short). In the year 2012, the petitioner was transferred from Kolkata to the Head office of the Bank and posted in HRD Department, Delhi. In 2013, the petitioner was promoted to the post of Clerk and was posted in Rajendra Place branch of the Bank in New Delhi. Between 2014 and 2017, the petitioner was transferred to various branches in Delhi. At the relevant point of

time, while working as a Clerk in the branch office Punjabi Bagh, the petitioner on November 18, 2019 was suspended from the job.

3. On December 03, 2019, a show cause notice was issued to the petitioner with regard to omission and commission resulting in misappropriation of cash. The petitioner had duly replied to the said show cause notice on January 10, 2020 / January 11, 2020. On April 27, 2020, a charge sheet was served upon the petitioner to which a reply was given by the petitioner on May 28, 2020. On June 29, 2020 and July 14, 2020, a request was made by the petitioner to allow her to be represented in the enquiry proceedings through a Legal Practitioner. The said letter was followed by another letter dated July 17, 2020 to the Disciplinary Authority, Asst. General Manager to allow her to engage a Lawyer as Defence Representative as per Bipartite Settlement dated April 10, 2002. The request of the petitioner was rejected by the Disciplinary Authority on July 21, 2020. This resulted in the filing of the present petition.

4. It is the submission of the learned counsel for the petitioner that the petitioner has a statutory right to engage a Lawyer in terms of Para 12 of the said Bipartite Settlement dated April 10, 2002 and the denial of the same is illegal and arbitrary. According to the counsel, the petitioner is only 10th pass in Bengali medium and she was promoted as clerk from the post of Peon and her knowledge with regard to the technicalities and complexities involved in the matter is not at par with that of Presenting Officer, more so she is ignorant of the rules and

regulations of the bank and resultantly she would be unable to protect her interest against the allegations levelled against her. Further, the denial of the request by the Disciplinary Authority is without giving any plausible reason, which is in violation of the principles of natural justice. She has relied upon the judgments in the case of; (i) *Antonio B. Furcado vs. Chairman and Managing Director, Bank of India, Bombay and Ors., W.P. 19/1985* and (ii) *State Bank of India vs. Presiding Officer, Industrial Tribunal of the Madras High Court (2004) III LLJ 676 Mad* in support of her submission that in the facts of this case, the Disciplinary Authority should have allowed the petitioner to be represented through a Legal Practitioner / Lawyer.

5. On the other hand, Mr. Rajesh Gautam, learned counsel for the respondent would contend that the issue with regard to workmen / employees being represented by a Legal Practitioner as stipulated under the provisions of the Bipartite Settlement, it is clear that an employee does not have a right and the Disciplinary Authority has rightly rejected the request of the petitioner in that regard. According to him, the charges, which have been framed against the petitioner are primarily of misappropriation of funds by altering the vouchers. The allegations against the petitioner are not so complicated, that she cannot defend herself. He also stated, the allegations also include that substantial amount of cash deposited in her account and the account of her son, which are beyond known sources of her income and conform to the period when the petitioner is alleged to have been involved in the

activities of misappropriation. In support of his submissions, he has relied upon the following judgments:-

- (i) *M/s Brooke Bond India P. Ltd., Bangalore vs. S. Subba Ramman & Anr. 1961 (2) LLJ 417;*
- (ii) *Crescent Dyes & Chemicals Ltd. vs. Ram Naresh Tripathi 1993 (2) SCC 115;*
- (iii) *Hari Narayan Srivastava vs. United Commercial Bank & Anr 1997 (4) SCC 384;*
- (iv) *National Seeds Corporation Ltd vs. K.V. Rama Reddy 2006 (11) SCC 645;*
- (v) *D.G. Railway Protection Force & Ors vs. K. Raghuram Babu 2008 (4) SCC 406;*
- (vi) *Mrs. Subha Mukherjee vs. UCO Bank CWP No. 3818/1994 decided on May 19, 1995 by a Division Bench of this Court;*
- (vii) *S.L. Tagra vs. New India Insurance Company Ltd & Ors. 1998 (2) LLN 806.*

He seeks the dismissal of the writ petition.

6. Having heard the learned counsel for the parties, the issue which arises for consideration in this writ petition is, whether the petitioner is entitled to engage a Legal Practitioner / Lawyer to defend her in the departmental inquiry initiated against her as per charge sheet dated April 24, 2020.

7. The first submission of the learned counsel for the petitioner is that the petitioner has a statutory right to engage a Legal Practitioner / Lawyer in terms of Para 12 of the Bipartite

Settlement. In this regard, it is necessary to reproduce Para 12 of the Bipartite Settlement as under:-

"12. 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 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 a/so 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) With the Banks 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."

8. A perusal of Para 12 of the Bipartite Settlement, it is noted that with the Bank's permission, a charged employee can be represented by a Lawyer. In the case in hand, the said request of the petitioner was rejected by the Disciplinary Authority vide letter dated July 21, 2020. The reasoning given by the Disciplinary Authority in rejecting the request of the petitioner for engaging a Legal Practitioner are the following:-

(i) The Presenting / Enquiry officer is not a legally trained mind.

(ii) As per the Memorandum of Settlement on Disciplinary Action Procedure for Workmen dated April 10, 2002, an employee can take the assistance of any union representative.

In other words, the Disciplinary Authority has stated that the Presenting Officer / Enquiry officer are not trained legal minds; (ii) the petitioner is within her right to engage a union representative to represent her. In fact, during the course of hearing, a specific question was put by the Court, why cannot the petitioner engage a union representative. The answer to the said question was only that she wants to engage a Legal Practitioner / Lawyer.

9. Before I deal with the plea of the learned counsel for the petitioner for appointment of a Legal Practitioner / Lawyer, I

intend to deal with the judgments as relied upon by the learned counsel for the parties.

10. Insofar as the judgment relied upon by the learned counsel for the petitioner in the case of **Antonio B. Furcado** (*supra*) is concerned, the petitioner therein was a staff clerk in the Bank of India. A departmental inquiry was initiated against him on the allegation that he has committed gross misconduct in the discharge of his duties, inasmuch as he has misappropriated Bank to the extent of Rs.400/- by opening two accounts in his name and in the name of one Miss Elizabeth Fernandes in Velim Branch of the Bank of India and has, also fraudulently, obtained loans against the security of one of the said accounts to the tune of Rs.6,600/- and Rs.90/- by forging the signature of the joint account holder Miss Elizabeth Fernandes on the relevant security documents, including the application form. The plea of the petitioner in that case was that since the disciplinary enquiry involves complicated questions of law, he would not be in a position to defend himself without the assistance of an Advocate. It was also his case that proposed inquiry constitutes a blemish on his otherwise clean record of about 20 years and as such, he be permitted to avail himself of the services of a Lawyer to defend his case. This plea of the petitioner was rejected by the Bank on the ground that the bipartite settlement did not provide for engaging an Advocate.

11. On the writ petition filed before the Court, a Division Bench of the High Court set aside the said order of refusal and directed the respondent to consider and decide on merit, the

petitioner's application dated January 28, 1984. The representation made was rejected by the Bank on November 05, 1984 inter-alia on the ground that the matter was not requiring any expert or special skill and that no legal arguments were involved. It was further observed, in case of letter of refusal from registered trade union to which the petitioner belongs, or from the registered trade union of employees of the Bank in which he is employed, or from the State federation or all India organization to which such union is affiliated, is produced, then, the Regional Manager may permit the petitioner to be defended by any "*award staff employee of the bank*" of his choice. After this communication of the bank, the petitioner sought the assistance of the Bank of India Staff Union to represent him. However, the staff union declined to represent the petitioner and informed him about this decision. Then, the petitioner, in that case again made a representation to the Bank to permit him to engage an Advocate.

12. Two issues arose before the Court; whether the charges made against the petitioner are of very serious nature. The Court was of the view that the charges of misappropriation, fraud etc constitute criminal offences and as such, being satisfied that if such charges are ultimately proved, as a result thereof, the petitioner will undoubtedly be visited with consequences, both civil and pecuniary as his reputation may be affected and most probably also his means of livelihood. It was observed, offences of misappropriation and fraud are not so simple in nature and involve serious questions of law that require to be properly dealt

with. Therefore, adequate adjudication of the question will necessitate the help of persons, who are legally trained.

13. The second issue, which also arose before the Court was, in terms of the provisions of Para 19.2 of the Bipartite Settlement, the employee has a right to engage a Lawyer. The Court held that undisputedly under Para 19.2, 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 Organization to which such Union is affiliated or with the permission of the Bank by a Lawyer. According to the Court, it is clear that the aforesaid Bipartite Settlement, the representation of a delinquent employee by a Lawyer in departmental enquiry proceedings is permissible, though subject to prior permission of the Bank. The Court was of the view that Para 19.2 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 a Lawyer in the departmental enquiry proceedings. The Court observed that 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. The Court rejected the plea of the Bank that if such permission is granted, it will open flood gates and in each and every case, the delinquent employee will ask as of right, to be represented by a Lawyer. The court held that the rejection is unreasonable, arbitrary and violative of principles of natural justice.

14. Even the judgment in the case of *State Bank of India (supra)*, on which reliance was placed by the learned counsel for the petitioner, it is noted that the Court has held, the enquiry held against the charged employee in that case wherein the employee was denied the assistance of a Lawyer as illegal. In para 17, the Court has held as under:-

“17. On an overall consideration of the facts and circumstances of the case and the manner in which the enquiry was commenced, continued and held in quick successions, the denial of engaging a lawyer for assisting the workman and not granting the required adjournments for getting ready for the enquiry, it could only be concluded that only under inevitable circumstances, the worker was not able to cope with and it was not a deliberate act of not making use of the opportunities afforded on the part of the workman, particularly when the workman was facing a charge so serious about, which would even warrant dismissal from service, a fair opportunity afforded for the workman to engage his counsel to defend him fairly with due opportunity to cross-examine those witnesses, who have been examined in chief, even at the last moment, would have served the purpose satisfactorily and the only reason that the Enquiry Officer is not a legally trained personality, cannot altogether pave way for rejecting the request of the workman to engage a lawyer particularly when it is not proved that the workman is so well-versed with such knowledge so as to defend himself doing all the cross-examination, which requires certain amount of legal knowledge. Therefore, the workman cannot be expected to know all the implications of law and only puzzled. Under such circumstances, the second respondent/workman was not in a position to cope with the enquiry proceedings, doing the cross-examination of those witnesses examined in chief then and there, which cannot be termed as a deliberate act perpetrated on the part of the workman in not coping with the enquiry proceeding held by the Enquiry Officer. Therefore, as it

has been rightly concluded on the part of the Labour Court that it is a fit case in which the petitioner shall be given an opportunity for defending himself effectively being permitted to cross-examine all the witnesses, preferably engaging a lawyer to assist him legally and therefore this Court is not in a position to accept the contentions of the petitioner Management to the effect that it was deliberate defiance to participate in the enquiry proceeding by the workman and hence this Court is not inclined to cause interference into the decision of the Labour Court and hence the following order:

In result,

(i) the above writ petition does not merit acceptance and becomes only liable to be dismissed and is dismissed accordingly.

(ii) The order dated February 7, 1997 made in I.D. No. 77 of 1992 by the first respondent is hereby confirmed."

15. Insofar as the judgments relied upon by Mr. Gautam are concerned, in *M/s Brooke Bond India P. Ltd., Bangalore (supra)*, the Supreme Court in para 5 has made a reference to its earlier judgment in the case of *Kalindi v. Tata Locomotive and Engineering Co. Ltd.* in the following manner:-

"5. The matter is now concluded by the decision of this Court in Kalindi v. Tata Locomotive and Engineering Co. Ltd. [(1960) 3 SCR 407]. In that case it was held that-

"A workman against whom an enquiry is being held by the management has no right to be represented at such enquiry by a representative of his union, though the employer in his discretion, can and may allow him to be so represented and it cannot be said that in any enquiry against a workman natural justice demands that he should be represented by a representative of his union."

16. Similarly, in the case of ***Crescent Dyes & Chemicals Ltd.*** (*supra*), the Supreme Court in paras 17 and 18 has held as under:-

17. It is, therefore, clear from the above case-law that the 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 instant case the delinquent's right of 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 this right stood expanded on Sections 21 and 22(ii) permitting representation through an officer, staff-member or a member of the union, albeit on being authorised by the State Government. The object and purpose of such provisions is to ensure that the domestic enquiry is completed with despatch 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. Thirdly, not only would the entire proceedings be completed quickly but also inexpensively. It is, therefore, not correct to contend that the Standing Order or Section 22(ii) of the Act conflicts with the principles of natural justice. (emphasis supplied)

18. For the above reasons we are of the view that the learned Judge in the High Court was in error in holding that the proceedings before the Enquiry Officer were vitiated as violative of the principles of natural justice and in setting aside the dismissal order. We are of the opinion that the Enquiry Officer was legally justified in

refusing the workman's agent Talraja from participating in the domestic enquiry. The workman's action in withdrawing from the proceedings was ill-advised. We, therefore, allow this appeal and set aside the impugned order of the High Court. Consequently the order remanding the case to the Labour Court for disposal on merits must also be set aside and any order made by the Labour Court will be void and inoperative. If the Labour Court has not disposed of the case, it will forthwith drop the proceedings as infructuous. In the facts and circumstances of the case, there will be no order as to costs."

17. Similarly, in ***Hari Narayan Srivastava (supra)***, the Supreme Court, in paras 3, 4 and 5 held as under:-

"3. A charge-sheet has been given to the petitioner on the allegation that he sanctioned loan for non-existing fictitious persons and got disbursement of demand drafts mentioned in the charge-sheet within two days, i.e., 10-12-1990 and 11-12-1990 in favour of M/s Sudarshan Trading Co. of Bhopal for Rs 2, 80,000. On the basis thereof, the respondents imputed that the petitioner committed the misconduct. An enquiry had been initiated and is now being proceeded against him. He filed an application for permission to engage the services of an advocate. The permission was refused. In the writ petition, the petitioner contended that the chargesheet was filed against him in the criminal court for the selfsame offence. In view of the fact that the matter is pending in the criminal court, an assistance of the advocate is necessary. Since presenting officer of the bank is a law graduate, denial of the assistance of an advocate is violative of principles of natural justice. The High Court has held that since the facts are not complicated and the presenting officer of the bank is not a legally trained person, assistance of an advocate is not mandatory in the domestic enquiry. On these simple facts, he could himself or through any other employee defend the case without the assistance of an advocate. On that basis, the High Court has held that denial of

assistance of an advocate is not violative of principles of natural justice.

4. The learned counsel for the petitioner contends that since the charge-sheet has already been filed and criminal trial is pending, any enquiry conducted against the petitioner himself or any of the officer, as notified in para 19.12 of the Bipartite Settlement, would prejudicially affect the petitioner's case and therefore, the denial of the assistance of an advocate is violative of the principles of natural justice. We find no force in the contention.

5. As per Rule 19. 12 of the Bipartite Settlement, the permission to defend himself with the assistance of the advocate is one of the options to be given by the bank. We have perused the charge-sheet in the enquiry now sought to be proceeded against the petitioner. The allegations are very simple and they are not complicated. Under these circumstances, we do not think that the failure to permit the petitioner to engage an advocate is violative of the principles of natural justice." (emphasis supplied)

18. Similarly, in **National Seeds Corporation Ltd (supra)**, the Supreme Court in paras 4 to 7, 9 and 10, has held as under:-

"4. In support of the appeal learned counsel for the appellant Corporation submitted that the law relating to engagement of legal practitioner in a disciplinary proceeding is too well settled. The High Court accepted that there was no legal right to ask for engagement of a legal practitioner. Having accepted this legal position, the High Court erred in holding that disciplinary authority taking into account the factual scenario could permit engagement of legal practitioner. In fact no question of law was involved in the departmental proceedings. The allegations related to misappropriation and the factual position was within the knowledge of the respondent. It has not been explained to us as to how a legal practitioner would be in a better position to assist the delinquent officer in respect of the factual aspects.

5. *In response, learned counsel for the respondent submitted that though engagement of legal practitioner cannot be demanded as a matter of right yet a discretion is vested in the disciplinary authority to permit engagement of a legal practitioner having regard to the circumstances of the case.*

6. *The rival submissions have to be tested in the background of Rule 31 (7) of the Rules. The same reads as follows:*

"31. (7) The employee may take the assistance of any other employee working in the particular unit where the employee is working/was working at the time of happening of alleged charges to which the inquiry relates or where the inquiry is being conducted to present the case on his behalf 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."

7. *The law in this country 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, if any, regulating the conduct of disciplinary proceedings specifically recognise such a right and provide for such representation; see Kalindi v. Tata Locomotive & Engg. Co. Ltd. [(1960) 3 SCR 407 : AIR 1960 SC 914] , Dunlop Rubber Co. v. Workmen [(1965) 2 SCR 139 : AIR 1965 SC 1392] , Crescent Dyes and Chemicals Ltd. v. Ram Naresh Tripathi [(1993) 2 SCC 115 : 1993 SCC (L&S) 360] and Indian Overseas Bank v. Officers' Assn. [(2001) 9 SCC 540: 2002 SCC (L&S) 1043]*

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9. Though it is correct, as submitted by learned counsel for the respondent, that even if the presenting officer is not a legal practitioner, the disciplinary authority having regard to the circumstances of the case may permit engagement of a legal practitioner. But it would depend upon the factual scenario.

10 [Ed.: Para 10 corrected vide Official Corrigendum No. F.3/Ed.B.J./4/2007 date 18-1-2007] . Learned counsel for the appellant Corporation has brought to our notice office memorandum dated 21-11-2003 by which the prayer to engage a legal practitioner to act as a defence assistant was rejected. Reference was made to the Rules, though no specific reference has been made to the discretion available to be exercised in particular circumstances of a case. The same has to be noted in the background of the basis of prayer made for the purpose. The reasons indicated by the respondent for the purpose were: (a) amount alleged to have been misappropriated is Rs 63.67 lakhs, (b) a number of documents and number of witnesses are relied on by the respondent, and (c) the prayer for availing services of the retired employee has been rejected and the respondent is unable to get any assistance to get any other able co-worker. None of these factors are really relevant for the purpose of deciding as to whether he should be granted permission to engage the legal practitioner. As noted earlier, he had to explain the factual position with reference to the documents sought to be utilised against him. A legal practitioner would not be in a position to assist the respondent in this regard. It has not been shown as to how a legal practitioner would be in a better position to assist the respondent so far as the documents in question are concerned. As a matter of fact, he would be in a better position to explain and throw light on the question of acceptability or otherwise and the relevance of the documents in question. The High Court has not considered these aspects and has been swayed by the fact that the respondent was physically handicapped person and the amount involved is very huge. As option to be assisted by another employee is given to the respondent, he was in no way prejudiced by

the refusal to permit engagement of a legal practitioner. The High Court's order is, therefore, unsustainable and is set aside .. " (emphasis supplied)

19. Similarly, in **D.G. Railway Protection Force & Ors** (*supra*), the Supreme Court in paras 9 to 13, has held as under:-

"9. It is well settled that ordinarily in a domestic / departmental enquiry the person accused of misconduct has to conduct his own case vide N. Kalindi v. Tara Locomotive and Engg. Co. Ltd.¹ 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 Brooke Bond Indian (P) Ltd. V. Subha Raman²

10. Similarly, in Cipla Ltd. V. Riu Daman Bhanot³ it was held by this Court that representation could not be claimed as of right. This decision followed the earlier decision Bharat Petroleum Corpn. Ltd. V. Maharashtra General Jamgar Union⁴ 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 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.

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."
(emphasis supplied)

20. Similarly, this Court, in **Mrs. Subha Mukherjee (supra)** referring to the Articles of Charges framed against the petitioner was of the view that there are no complicated question of either law or fact and what has been alleged against her is her acts of negligence in not following the instructions of the Bank from time to time. Merely because there is an involvement of huge amount or there happens to be a reference to Harshad Mehta, who is involved in shares scam, it cannot be said that there are any complicated questions of fact or law. The relevant paras in the judgment being paras 5 to 13, read as under:-

"5. No doubt if the above provisions of Regulation, 7 are considered then it would be quite clear that a discretion lies with the disciplinary authority for permitting the employee to be represented by a legal practitioner having regard to the circumstances of the case. Therefore, it is necessary to see as to what is the charge against the present petitioner. The charge against the petitioner reads as under:

ARTICLES OF CHARGE

Smt. Subha Mookherjee, is hereby charged as under for committing serious irregularities in February/March, 1990 while functioning as an officer in Parliament Street Branch of the Bank:

"1. She, in a very negligent and reckless manner, and grossly violating the Bank's rules and procedures, contributed to wrongful remittance by telegraphic transfer of any enormous sum of Rs. 26,17,50,000/- in

favour of Shri Harshad S. Mehta at Hamam Street Branch against two cheques aggregating Rs. 26,17,50,000/- drawn in favour of "UCO Bank only". She allowed such remittance even though there was no authentic and acceptable instructions therefor from Power Finance Corporation Ltd., the true owner of these funds. She thus contributed to the funds of P.F. C. Ltd. to be diverted to a wrong account exposing the Bank to huge financial risk.

2. (a) She negligently, effected the remittance of such huge sum without ensuring that the relative TT transaction was duly recorded in the relative books and records of the branch on 19-2-1990.

(b) Only after a gap of 21 days i.e. on 12-3-90 she relied, prepared, signed and passed the relative debit and credit vouchers for bringing the transaction of 19-2-1990 to branch books but failed to obtain any confirmation in writing of the then Assistant General Manager of Parliament Street Branch for rectification of irregularity of such a magnitude.

(2)(c) She negligently did not recover/get recovered commission and other out of pocket expenses on 19-2-90 itself in respect of TT remittance of Rs. 26. 175 crores. She a/so failed to notice the said discrepancy even while sending the revised TT message on 20-2-90. The recovery in this respect of Rs. 2,500/- has been made on 22-2-90 by debiting the account of Harshad Mehta and crediting Working Expenses (TT).

3. Smt. Mookherjee, by acting in such negligent and irregular manner, failed to take all possible steps to ensure and protect the interest of the Bank. The above mentioned actions of Smt. Subha Mookherjee constitute misconduct in terms of Regulation, 3 read with Regulation, 24 of the UCO Bank Officer Employees (Conduct) Regulations, 1976, punishable under UCO Bank Officer Employees' (Discipline & Appeal) Regulations, 1976".

6. Keeping in view the contents of the charge it would be quite clear that there is no involvement of any complicated question of either law or fact. What has been

alleged against the present petitioner is her acts of negligence in not following the instructions issued by the Bank from time to time. Merely because there is involvement of a huge amount of Rs.26,17,50,000/- or there happens to be a reference to Shri Harshad Mehta who is involved in shares scam, it could not be said that there are any complicated questions of fact or law involved in the present case.

(7) When there is no involvement of any complicated questions of law or fact in the case in which the present petitioner is involved in the disciplinary proceedings and when the Presenting Officer is not either a legal practitioner or law officer or officer trained in law, the disciplinary authority's refusal of petitioner's prayer to allow hereto be represented by a legal practitioner could not be said to be a perverse order. It could also not be said that the order passed by the disciplinary authority is either against the principles of natural justice or in contravention of any legal rights of the petitioner. It could also not be said that by refusing the request of the petitioner the petitioner has been put in an unequal position in the said disciplinary proceedings. There are various legislations in which there is a specific provision in the Act that the parties shall not be represented by a legal practitioner as of right. For example, in the Family Courts Act, 1984 there is a specific provision under Section 13 of the said Act that a party shall not be represented by an advocate. The validity of the said section was challenged before the Supreme Court in CW.1124/87 titled Kanpur Bar Association Vs. Union of India decided on 4.1.1988. The Supreme Court upheld the validity of Section 13 of the act and it has been held that no party as of right can claim to be represented by a legal practitioner. A similar provision was also there in Maharashtra Restoration of Lands to Scheduled Tribes Act (14 of 1975) and that provision was challenged before the Supreme Court in the case of Lingappa Puchhanna Appealwar Vs. State of Maharashtra and Another . In the said case it has been laid down by the Apex Court as under:- "NOW it is well settled that apart

from the provisions of Article 22(1) of the Constitution, no litigant has a fundamental right to be represented by a lawyer in any Court. The only fundamental right recognised by the Constitution is that under Article 22(1) by which an accused who is arrested and detained in custody is entitled to consult and be defended by a legal practitioner of his choice. In all other matters i.e. in suits or other proceedings in Which the accused is not arrested and detained on a criminal charge, the litigant has no fundamental right to be represented by a legal practitioner."

(8) Learned counsel for the petitioner has cited before us the cases of Board of Trustees, Board of Bombay Vs. Dilip Kumar, Rajender Nath & Ors.; J.K. Aggarwal Vs. Haryana Seeds Development Corporation Limited ; and Alakendu Sarkar Vs. State of West Bengal & Others [1981 (2) Slr 33]. If the facts of all these three cases are seen then it would be quite clear that they are not applicable to the case before us. In the case of Board of Trustees, Port of Bombay Vs. Dilip Kumar (Supra) the employer was represented by a legal officer and, consequently, the rejection of the request of the employee to be presented by lawyer has been held as a denial of reasonable opportunity of hearing to the- employee. That would be quite clear from the facts stated in para 3 of Page 110" "BEFORE the enquiry opened, the first respondent submitted a request seeking permission to engage a legal practitioner for his defense. The Chairman of the appellant rejected this request and simultaneously appointed two officers, namely, Shri R.K. Shetty and Shri A.B. Chaudhary, Legal Adviser and Junior Assistant Legal Adviser respectively of the appellant as Presenting Officers before the Enquiry Officer."

IN the aforesaid case the Supreme Court also considered and followed its earlier decision in C.L.Subramaniam vs. Collector of Customs . In C.L. Subramaniam Vs. Collector of Customs (Supra) the employer was represented by a trained prosecutor and the employee

was denied the opportunity to engage a legal practitioner to defend him.

(9) In the case of J.K. Aggarwal Vs. Haryana Seeds Development Corporation Limited [Supra] it was found by the apex court that the employee was pitted against a Presenting Officer who was trained in law and, therefore, it was held that where the Presenting Officer, was a person with legal attainment and experience and the employee had no legal background, refusal of services of a lawyer to the delinquent officer resulted in denial of natural justice.

(10) In the case of Alakendu Sarkar Vs. State of West Bengal & Ors. .(supra), as per the provisions of West Bengal Rules there was no provision saying that the employee may not be represented by a legal practitioner in a departmental enquiry and it was also found that there was involvement of complicated questions of law as well as fact and, therefore, rejection of the prayer of the employee to be represented by an advocate was held to be improper rejection and the matter was remanded with a direction: to give the employee the assistance of a lawyer.

(11) Thus, all these three cases are not applicable to the facts before us. In the instant case the Presenting Officer is not a legal practitioner. There is nothing on record to show that he has undergone any legal training. The Presenting Officer is a graduate in Pharmacy. Petitioner is also a graduate in arts. The Presenting Officer is comparatively a junior officer. He joined the bank in the year 1977 as per the Additional Affidavit filed by the petitioner herself No doubt at present he is working since about one year prior to the filing of the petition as an Assistant Chief Officer in the Vigilance Department of Enquiry Cell of the Uco Bank Zonal Officer, New Delhi. But merely because he is working in the said Vigilance Department he could not be said to be a legally trained person. There is nothing on record to show that he was deputed to undergo any legal training. It must be

remembered that petitioner is not denied the right of being represented by another employee of the Bank. It has been mentioned in the counter affidavit of the respondent that in another proceedings pending against the petitioner she is represented by another employee Shri Asim Paul who is B.Sc.(Engg.) CAIIB-II who has vast experience of working in senior posts in the bank in various departments. The documents produced Along with the counter affidavit also show that the said Shri Asim Paul has acted as a representative for not only the petitioner but for other delinquent officers in 1991 and 1992.

(12) It is not the case that the petitioner is not permitted to be represented by another employee of the bank and to take assistance of her colleague as the disciplinary authority is assisted by an employee of the bank. Therefore, the denial of her request to be represented by a legal practitioner could not be said to be putting her in an unequal position and thereby acting against the principles of natural justice.

(13) Therefore, in view of the material on record it is quite clear that the discretion used by the disciplinary authority could not be said to be resulting into any denial of fundamental right of the petitioner. It could also not be said to be against the principles of natural justice."

(emphasis supplied)

21. Similarly, in **S.L. Tagra** (*supra*), the Court in paras 19 and 20, held as under:-

"19. Having considered the decisions, which have been relied upon by learned counsel for the parties, we are of the view that the question involved in this case stands concluded by decision of Supreme Court in Crescent Dyes and Chemicals, Ltd. case [1993 (I) L.L.N. 761] (vide supra). After due consideration of the decisions of English Courts and leading decisions relatable to the law in India, it was held that right to be represented by counsel or an agent of one's own choice under the

decisions of English Courts is not an absolute right and can be controlled, restricted or regulated by law, rules or regulations. However, if the charge is of a serious and complex nature, the delinquent's request to be represented through counselor agent could be considered. But so far as the law applicable in India is concerned, there is no right to representation as such unless the company but its Standing Orders recognizes such a right. It was held that right to be represented through counsel or agent can be restricted, controlled or regulated by statutes, rules, regulations or Standing Orders. A delinquent has no right to be represented through counsel or agent unless the law specifically conferred such a right. The requirement of rules of natural justice, in so far as the delinquent right of hearing is concerned, cannot and does not extend to a right to be represented through counsel or agent.

(emphasis supplied)

20. In view of the aforementioned decision, when the service rules applicable to the petitioner does not entitle him to engage a legal practitioner by way of assistance out only enables him to have assistance of any other employee it cannot be said that the said right is discriminatory or violative of principles of natural justice. The petitioner has no right to be represented by a legal practitioner either under service regulation or otherwise, even in a case where the presenting officer may be a C.B.I. Officer. In *Crescent Dyes and Chemicals, Ltd.* [1993 (1) L.L.N. 761] (vide supra), the object and purpose of similar service rule, which is impugned in this case has been considered that denial of right to be represented by counsel is to ensure that domestic enquiry is completed with dispatch and is not prolonged endlessly. 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 be able to render satisfactory service to the delinquent and that the entire proceedings would not only be completed quickly but also inexpensively. ”

22. From the above position of law, it is clear that mere allegation of misappropriation or involving enormous sum would not make the charges framed against an employee complicated, which require the assistance of an Advocate.

23. In this case as well, the charges, which have been framed against the petitioner are the following:-

“1. She has misappropriated the funds to the tune of Rs. 51,84,949/- deposited by Guru Harkrishan Public School, Punjabi Bagh. As 41 counterfoils (Annex-1) of cash deposit slips provided by GHPS have revealed that these vouchers /receipts were not entered in finacle. All the 41 counterfoils provided by the GHPS, bear Cash Receipt stamp of the Branch and as per forensic report (Annex-2), the amount was received in her handwriting.

2. She had entered the amount of 31 vouchers (Counterfoils of which have been provided by GHPS) with less amount by altering the vouchers, in the account of GHPS in finacle. Out of these 31 vouchers, 30 vouchers are not available in the branch record and have been intentionally removed by her. In these 30 entries (Annex-3), a sum of Rs. 65,61,136/- entered by her in finacle while the counterfoils of RS.85, 10,134/- had been given to GHPS duly signed by her. Thus the funds to the tune of Rs. 19,48,998/- had not been deposited in the account of GHPS and misappropriated by her for her personal gain.

3. She tempered with the voucher dated 14.12.2018 to alter the amount to Rs. 2,00,297/- (Annex-4). The counterfoil of the same voucher in the custody of GHPS, shows the amount as Rs. 2,70,297/- and bears Cash Receipt stamp of the branch and amount was received in her handwriting. Thus an amount of Rs. 70,000/- was pocketed by her.

4. *Guru Harkrishan Public School, Punjabi Bagh, vide their mail dated 4.9.2019 pointed out that they had deposited an amount of Rs. 1,84,129/- with the branch on 23.8.2019 but the account statement reflected the amount as Rs. 1,34,129/- showing a difference of Rs. 50,000/-. She did it malaficently to pocket Rs. 50,000/- but later made good the shortage when the school authorities brought this to the notice of branch on 4.9.2019.*

5. *Following cash deposits of substantial amount are observed in her account as well as in A/c of her son, which are beyond known source of her income and conform to her period when she was indulging in aforesaid malafide acts to embezzle the funds pertaining to Guru Harkrishan Public School, Punjabi Bagh. This is a clear indication that these funds were deposited by her in the aid Ales. Moreover she failed to submit any justification to these deposits. Account wise detail of total amount found deposited in her and her son's accounts during the period under question is as under:-*

<i>Name of A/c holder</i>	<i>Account No. (other than Salary)</i>	<i>Cash Deposited</i>	<i>Credited by transfer</i>
<i>Biswasri Mukherjee</i>	<i>08821300633759 (salary account)</i>	<i>2,85,030/-</i>	<i>8,22,527/- (Annex-5)</i>
<i>Biswasri Mukherjee</i>	<i>08821000635432</i>	<i>2,44,600/-</i>	<i>1,19,000/- (Annex-6)</i>
<i>Biswasri Mukherjee</i>	<i>08661000920926</i>	<i>11,41,370/-</i>	<i>6,40,330.50 (Annex-7)</i>

24. I find that similar charges were framed against the respondent in the case of ***National Seeds Corporation Ltd (supra)***, still the Supreme Court has not allowed the employee to be represented by a Lawyer by holding, the number of documents; the amount involved are not relevant factors for the purpose of deciding as to whether an employee be granted permission to engage a Lawyer. The charged employee has to only explain the factual position with reference to the documents

sought to be relied upon against him (against the petitioner in this case) and the Lawyer would not be in a position to assist the employee in this regard.

25. Similar position is here, where the petitioner has to explain the factual position with regard to the documents sought to be relied against the petitioner. The petitioner has not stated how the Legal Practitioner would be in a better position to assist her, insofar as the documents in question are concerned.

26. The question, which falls for consideration is squarely covered by the judgment of the Supreme Court in the case of *National Seeds Corporation Ltd (supra)*.

27. In fact, I find that in *Hari Narayan Srivastava (supra)*, the Supreme Court was concerned with Para 19.12 of the Bipartite Settlement (old) and has held that the allegation of sanctioning loan to non-existing / fictitious persons are allegation, which are simple and are not complicated and denied the permission to engage an Advocate.

28. A plea has been taken by the Ld. Counsel for the petitioner that, the petitioner being a native of Bengal does not understand Hindi. I am unable to agree with that submission, for the simple reason that the petitioner has been posted in Delhi in the year 2012 and since then she continues to be posted in Delhi and during her posting she was dealing with public in furtherance of her duties.

29. The plea of the counsel that EO / PO are legal minds, and as such, the petitioner should be given the assistance of Lawyer is also not appealing. As per the respondent Bank both EO/PO

have no qualifications in Law and have never conducted any enquiry as EO/PO.

30. In view of my discussion above, I do not see any merit in the petition. The respondent Bank is justified in rejecting the request of the petitioner for engagement of a Legal Practitioner / Lawyer. The writ petition is dismissed. No costs.

CM No. 19101/2020

Dismissed as infructuous.

V. KAMESWAR RAO, J

FEBRUARY 03, 2021/ak/jg



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