

The Rajasthan Marudhara Gramin Bank (RMGB) & Anr. Vs. Ramesh Chandra Meena & Anr.

Civil Appeal No. 7451 of 2021
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Full judgment text

The Rajasthan Marudhara Gramin Bank (RMGB) & Anr. Vs. Ramesh Chandra Meena & Anr.

[Civil Appeal No. 7451 of 2021]

M. R. Shah, J.

1.0. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 07.07.2021 passed by the High Court of Judicature for Rajasthan at Jodhpur in D.B. Special Appeal Writ No.311 of 2021, by which, the Division Bench of the High Court has dismissed the said Appeal and has confirmed the judgment and order dated 28.01.2021 passed by the learned Single Judge, by which, the learned Single Judge allowed the writ petition preferred by the respondent herein (hereinafter referred to as the "original writ petitioner") and directed the appellant Bank to allow the original writ petitioner to be represented by a retired employee of the Bank in the departmental inquiry, the Appellant Bank has preferred the present appeal.

2.0. The facts leading to the present appeal in nutshell are as under:

2.1. That the respondent herein - original writ petitioner was working as Cashier - cum Clerk (office Assistant). While working as a Branch Manager is alleged to have committed certain irregularities amounting to misconduct. A show cause notice was issued by the Bank dated 24.4.2019 whereby it was stated that while working at Rawastar Branch, he had committed irregularities while granting loans to farmers / villagers under the loan scheme and he did not take adequate precautions and without written mandates of borrowers, he transferred the loan amount in favour of another person and had thus committed misconduct.

One another similar show cause notice was issued on dated 24.6.2019. Departmental Inquiry was initiated against him. A chargesheet dated 1.11.2019 was served upon the original writ petitioner by the Bank in terms of Rajasthan Marudhara Gramin Bank (Officers and Employees) Service Regulation, 2010 (hereinafter referred to as the "Regulation, 2010"). A written reply was submitted by the original writ petitioner to the chargesheet issued. He denied the charges leveled against him. Not satisfied with the reply, the Bank initiated departmental inquiry. One Shri K.C. Gupta was appointed as an Enquirer Officer.

An opportunity was afforded to the original writ petitioner to take assistance of a defence representative (hereinafter referred to as "DR") in accordance with Regulation, 2010 as also in accordance with guidelines issued by the Bank. However, the original writ petitioner informed the Enquiry Officer that he may be allowed to defend himself in the inquiry through a legal practitioner. Keeping in view the restrictions under Regulation 44 of the Regulation, 2010 on engagement of legal practitioner during the inquiry, vide communication dated 17.3.2020, his request permitting him to defend himself through a legal practitioner came to be declined by the Enquiry Officer.

A request was made to the Disciplinary Authority by the original writ petitioner permitting him to engage a legal practitioner as his DR. Having considered that no complicated legal question has been involved in the matter and the Presenting Officer appointed by the Disciplinary Authority is neither Law Officer nor a legal practitioner and keeping in mind the Regulation 44 of Regulation, 2010 on engagement of legal practitioner during the inquiry, the request to permit him to represent through legal practitioner came to be declined by the Disciplinary Authority, which was communicated to him vide communication dated 27.5.2020.

Again a request was made by the original writ petitioner to permit him to engage a legal practitioner as his DR in the inquiry proceedings, which again came to be rejected. During the inquiry proceedings on 11.08.2020, the original writ petitioner submitted a consent letter of one Shri Mahesh Kumar Atal to be engaged as his DR. The said request was turned down. Again a request was made to permit him to engage any legal practitioner or any retired officer from the Bank as his DR, which again came to be turned down by the Disciplinary Authority.

Aggrieved by the order passed by the Disciplinary Authority dated 19.08.2020, the original writ petitioner approached the High Court by way of SB Civil Writ Petition No.8363 of 2020 inter alia, praying that he may be permitted to engage any legal practitioner or retired officer of the Bank as his DR. The said writ petition was opposed by the Bank. Regulation 44 of Regulation, 2010 and the Circular dated 31.01.2014 as also the guidelines issued by the Bank in respect of disciplinary proceeding that no outsider, not associated with the Bank can be permitted to act as a DR were pressed into service.

That by judgment and order dated 28.1.2021, the learned Single Judge allowed the said writ petition and directed the Bank to permit the original writ petitioner to be represented through retired officer of the Bank in the disciplinary proceedings. Feeling aggrieved and dissatisfied with the judgment and order passed by the learned Single Judge, the Bank preferred appeal before the Division Bench of the High Court. By impugned judgment and order, the Division Bench of the High Court has dismissed the said appeal mainly on the ground that since circular dated 31.1.2014 and the Regulation 8.2 did not prohibit the utilization of the services of exemployee of the Bank, therefore, judgment and order passed by the learned Single Judge is not to be interfered with.

2.2. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court directing the Bank to permit the original petitioner to be represented through retired officer of the Bank in the disciplinary proceedings, the Bank has preferred present appeal.

3.0. Shri Rishabh Sancheti, learned counsel appearing for the appellant has vehemently submitted that in the facts and circumstances of the case, the High Court has committed a grave error in directing the appellant Bank to permit the respondent original writ petitioner to be represented through retired officer of the Bank in the disciplinary proceedings.

3.1. It is submitted that the High Court has not at all adverted to Regulation 8.2 of the Handbook of Vigilance Administration & Disciplinary Action (hereinafter referred to as the "Handbook Procedure") which has been duly approved by the Board of the Bank and applicable to all kind of matters.

3.2. It is vehemently submitted that Regulation 8.2 of the Handbook Procedure specifically provides that the defence representative should be serving official / employee from the Bank. It is submitted that the provisions of Handbook Procedure are binding on all the employees and applicable to all kind of matters. It is submitted that even there was no challenge to Regulation 8 of the Handbook Procedure by the original writ petitioner.

3.3. It is further submitted that High Court has not properly appreciated the fact that provisions of Regulation, 2010 are to be read with Handbook provisions in a harmonious manner.

3.4. It is further submitted that High Court has erred in construing Regulation 44 as permitting outsiders into a disciplinary inquiry. It is submitted that in fact Regulation 44 restricts legal practitioner to be DR without prior permission. It is submitted that Regulation 44 can in no manner can be construed to mean that it permits all outsiders except lawyers. It is submitted that this is so, since the basic principle is that an employee has no right to representation in the departmental proceedings by another person or a lawyer unless the Service Rules specifically provides for the same.

It is submitted that right to representation is available only to the extent specifically provided for in the Rules. Reliance is placed on the decisions of this Court in the case of P. Raghava Kurup & Anr. v. V. Ananthakumari & Anr. reported in (2007) 9 SCC 179; N. Kalindi & Ors. v. Tata Locomotive & Engg. Co. Ltd reported in (1960) 3 SCR 407; National Seeds Corporation Limited vs. K.V. Rama Reddy reported in (2006) 11 SCC 645 and Bharat Petroleum Corporation Limited v. Maharashtra General Kamgar Union & Ors. reported in (1999) 1 SCC 626.

3.5. It is submitted that right to representation in the inquiry can be restricted, controlled or regulated by the Statute, Service Rules, Regulations or Standing Orders and the extent of representation in any enquiry has to be in accordance with the Statute, Service Rules, Regulations or Standing Orders etc. In support of above submission, reliance is placed on the decision of this Court in the case of Cipla Limited & Ors v. Ripu Daman Bahnot & Anr. reported in (1999) 4 SCC 188; in the case of Crescent Dyes & Chemicals Limited v. Ram Naresh Tripathi reported in (1993) 2 SCC 115 and in the case of Indian Overseas Bank vs. Indian Overseas Bank Officer's Association and Another reported in (2001) 9 SCC 540.

3.6. It is further submitted that as held by this Court in the case of Bharat Petroleum Corporation Limited (supra) there should be minimum intervention of any outsider / legal practitioner in departmental

proceedings and the choice, if granted by the Statute, Service Rules, Regulations or Standing Orders, cannot be allowed to travel beyond the Statutes / Service Rules/ Regulations/ Standing Orders.

3.7. It is submitted that in the present case the service conditions of the employee of the bank are governed by Regulation, 2010, which do not contain any provision enabling the Candidate under the enquiry to have any defence representative outside the employees of the Bank. It is submitted that the object and purpose of Regulation 44 was to keep a check on frivolous and unnecessary request made for legal practitioner if the facts and situation do not demand so. It is submitted that Handbook Procedure issued by the Vigilance Department of the Bank which was duly approved by the Board also do not allow the employee to choose any outsider or a legal practitioner as his defence representative and the same is expressly provided under Clause 8 of Chapter VIII of the Handbook Procedure.

3.8. It is submitted that the impugned judgment and order has created an anomalous situation where:

I. Exemployees who themselves may have been subject of a disciplinary enquiry/ chargesheeted / dismissed from service are also enabled to act as Defence Representatives.

II. Exemployees who were part of Vigilance or Audit Sections who come across a lot of information of confidential nature are enabled to act as Defence Representatives, which would result in grave injustice.

III. The solemn nature of proceedings is taken away and would result in issues of orderliness as well as decorum when a disgruntled exemployee is enabled to act as a Defence Representative. CVC Circular no.19.9.2021 dated 6.10.2021 prescribes the time limit for completion of departmental enquiry within 6 months and the same has adopted in the Vigilance Handbook page no.55 para 7.2. If an outsider gets permitted completion of departmental inquiry within prescribed time limit shall be a problem.

IV. It is a matter of record that presently in almost all the pending Disciplinary enquiries, most of the Employees under enquiry are now asking for retired officials to act as Drs.

3.9. It is submitted that aforesaid aspect has not at all been considered by the High Court while permitting the respondent employee to allow exemployee as his DR. Making the above submissions, it is prayed to allow the present appeal.

4.0. Learned counsel appearing for the respondent has submitted that Regulation 44 of the Regulation 2020 do not bar engagement of retired employee of the Bank to act as a DR. It is submitted that the only bar under the Rules and the Regulation is with regard to appointment of legal practitioner as a DR without permission of the Bank. It is submitted that therefore, the High Court has rightly directed the Bank to permit the respondent employee to avail service of the retired employee of the Bank as defence representative.

4.1. It is submitted that Handbook of Vigilance Administration and Disciplinary Action dated 15.3.2019 are not binding rules or guidelines and are merely directory in nature.

4.2. It is submitted that on conjoint reading of Clause 7.2 and Clause 8.2 of Handbook Procedure would mean that only officer who is junior to the presenting officer and Enquiry Officer can be appointed as DR. It is submitted that this would result in gross miscarriage of justice and in violation of principles of natural justice.

4.3. It is submitted that judgments cited by the learned counsel for the appellant shall not be applicable to the facts of the present case as every bank has its own Rules and Regulations. It is submitted that in the present case there is no specific bar in the service regulation in engaging retired employee of the Bank as defence representative. It is submitted that therefore, in absence of any specific bar and considering the Regulation 44, the High Court has not committed any error.

4.4. It is submitted that similar question came up for determination before the High Court of Allahabad in the case of Rakesh Singh vs. Chairman and Disciplinary Authority and Another in Writ Appeal No. 64711 of 2013 wherein the High Court has held that in absence of any specific bar in the Regulation, the denial of the right to engage a retired employee of the Bank as defence representative is not justified. It is submitted that said judgment of the Allahabad High Court has been affirmed by this Court and the SLP against the said judgment and order has been dismissed. Making the above submissions and relying upon the above decisions, it is prayed to dismiss the present appeal.

5.0. Heard the learned counsel for the respective parties at length. By the impugned judgment and order, the High Court has permitted the respondent employee who is facing disciplinary proceedings to represent

through exemployee of the Bank. While permitting the respondent employee, the High Court while construing Regulation 44 of Regulation, 2010 has observed that the Regulation 44 only restricts representation by a legal practitioner, and even that too is permissible of course with the leave to the competent authority, and there is no complete or absolute bar even on engaging a lawyer, the employee cannot be restrained from availing services of retired employee of a Bank.

However, it was the specific case on behalf of the Bank that in view of circular dated 31.01.2014 and clause 8.2 of the Handbook Procedure, the DR should be a serving official / employee from the Bank. Therefore, the short question which is posed for consideration of this Court is whether the respondent employee, as a matter of right is entitled to avail the services of an Exemployee of the Bank as his DR in the departmental proceedings?

6.0. 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.

6.1. In the case of Kalindi and Ors (supra), 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 the enquiries into a chargesheet 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 Page 16 of 27 assistance. The dictum of this decision has been subsequently elucidated.

6.2. In the case of the Dunlop Rubber Co. (India) Ltd v. Workmen reported in (1965) 2 SCR 139, after considering its earlier decision in the case of Kalindri and ors (supra), it is observed and held that there is no per se right to representation in the departmental proceedings through a representative through own union unless the company by its Standing Order recognized 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.

6.3. In the case of Cipla Ltd. and Ors (supra), 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 Company vs. Workmen, 1965 (2) SCR 139 = AIR 1965 SC 1392 = 1965 (1) LLJ 426, it was laid down that an employee has no right to be represented in the disciplinary proceedings by another person unless the Service Rules specifically provided for the same.

A Three Judge Bench of this Court in Crescent Dyes and Chemicals Ltd. vs. Ram Naresh Tripathi, (1993) 2 SCC 115 = 1992 Suppl. (3) SCR 559, laid down that the right to be represented in the departmental proceedings initiated against a delinquent employee can be regulated or restricted by the Management or by the Service Rules. It was held that the right to be represented by an advocate in the departmental proceedings can be restricted and regulated by statutes or by the Service Rules including the Standing Orders, applicable to the employee concerned.

The whole case law was reviewed by this Court in Bharat Petroleum Corporation Ltd. vs. Maharashtra Genl. Kamgar Union & Ors., (1999) 1 SCC 626, and it was held that a delinquent employee has no right to be represented by an advocate in the departmental proceedings and that if a right to be represented by a coworkman is given to him, the departmental proceedings would not be bad only for the reason that the assistance of an advocate was not provided to him."

6.4. In the case of Crescent Dyes and Chemicals Ltd. (supra), 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, staffmember 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 are 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. In the present case also clause 8 permits representation through serving officials / employee from the Bank.

6.5. A similar view has been expressed by this Court in the case of Bharat Petroleum Corporation Limited (supra) as well as in the case of National Sees Corporation Limited (supra).

6.6. In the case of Indian Overseas Bank (supra), 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 recognize such a right and provide for such representation.

7.0. Applying law laid down by this Court in the aforesaid decisions to the facts of the case on hand, the respondent employee / respondent delinquent has no absolute right to avail the services by exemployee of the Bank as his DR in the departmental proceedings. It is true that Regulation 44 puts specific restriction on engagement of a legal practitioner and it provides that for the purpose of an enquiry under Regulation, 2010, the Officer or Employee shall not engage a legal practitioner without prior permission of the competent authority.

Therefore, even availing the services of legal practitioner is permissible with the leave of the competent authority. However, Regulation does not specifically provides that an employee can avail the services of any outsider and / or exemployee of the Bank as DR. Therefore, Regulation, 2010 neither restricts nor permits availing the services of any outsider and / or exemployee of the Bank as DR and to that extent Regulation is silent. If the reasoning of the High Court is considered, the High Court is of the opinion that as there is no complete or absolute bar even on engaging a lawyer, it is difficult to accept that a retired employee of the Bank cannot be engaged to represent a delinquent officer in the departmental inquiry. However, the High Court has not appreciated the effect of the Handbook.

As per Clause 8 of the Handbook Procedure which has been approved by the Board of Directors and it is applicable to all the employees of the Bank and Clause 8 is with respect to the defence representative, it specifically provides that DR should be serving official / employee from the Bank. The said Handbook Procedure which has been approved by the Board of Directors of the Bank is binding to all the employees of the Bank. The High Court has considered Regulation 44 of the Regulation, 2010, however has not considered clause 8 of the Handbook Procedure on the ground that the same cannot be said to be supplementary. However, we are of the opinion that Handbook Procedure can be said to be supplementary.

The same cannot be said to be in conflict with the Regulation 44 of Regulation, 2010. As observed herein above, neither Regulation 44 permits nor restricts engagement of an exemployee of the Bank to be DR. Therefore, Clause 8.2 cannot be said to be in conflict with the provisions of Regulation, 2010. Provisions of Regulation, 2010 and the provisions of Handbook Procedure are required to be read harmoniously, the result can be achieved without any violation of any of the provisions of Regulation, 2010 and the Handbook Procedure.

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

8.0. As per the Bank there is a justification also to permit the delinquent officer to be represented in the departmental proceedings through serving official / employee from the Bank only. The Bank has justified its

action of not permitting exemployee of the Bank as DR and according to the Bank, the exemployee who themselves may have been subject of a disciplinary enquiry/ chargesheet / dismissed from service; the exemployee might be a part of vigilance or audit sections who come across a lot of information of confidential nature and therefore, if they are allowed to be DR in the departmental proceedings, which would result in grave injustice; the solemn nature of proceedings is taken away and would result in issues of orderliness as well as decorum when a disgruntled exemployee is enabled to act as defence representative; they may adopt delay tactics in departmental enquiry and may not permit completion of department enquiry within six months as mandated by the CVC Circular and as per Vigilance Handbook adopted by the Bank.

For all the aforesaid reasons not permitting the delinquent officer to be represented through exemployee of the Bank in the departmental enquiry cannot be said to be in any way in breach of principles of natural justice and / or it violates any of the rights of the delinquent officer. As per settled proposition of law and as observed herein above, in decisions referred to herein above, the only requirement is that delinquent officer must be given fair opportunity to represent his case and that there is no absolute right in his favour to be represented through the agent of his choice.

However, at the same time, if the charge is severe and complex nature, then request to be represented through a counsel can be considered keeping in mind Regulation 44 of Regulation, 2010 and if in a particular case, the same is denied, that can be ground to challenge the ultimate outcome of the departmental enquiry. However, as a matter of right in each and every case, irrespective of whether charges is severe and complex nature or not, the employee as a matter of right cannot pray that he may be permitted to represent through the agent of his choice.

9.0. Now so far as reliance placed upon the decision of the Allahabad High Court in the case of Rakesh Singh (supra) by the learned counsel for the respondent is concerned, it is required to be noted that at the time when the High Court decided the matter no such Clause 8 of the Handbook Procedure was in force. Handbook Procedure has been adopted by the Board of Directors in its meeting held on 15.3.2019. Therefore, the said decision shall not be applicable to the facts of the case on hand.

10. In view of the above and for the reasons stated above, the High Court has committed an error in permitting respondent delinquent officer to be represented in the departmental enquiry through exemployee of the Bank. The view taken by the learned Single Judge confirmed by the Division Bench is unsustainable. Accordingly, present appeal is allowed and the impugned judgment and order passed by the learned Single Judge confirmed by the Division Bench permitting the respondent delinquent officer to be represented in the departmental proceedings through exemployee of the Bank is hereby quashed and set aside. Present appeal is accordingly allowed. In the facts and circumstances of the case, there shall be no order as to costs.

Source disclosure: Complete sanitized public judgment text retained for research. Official-primary replacement and later-history closure remain pending.

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