

(2013) 12 CAL CK 0028

Calcutta High Court

Case No: W.P. 33583 (W) of 2013

Vivek Bhardwaj

APPELLANT

Vs

Indian Railway Catering and
Tourism Corporation

RESPONDENT

Date of Decision: Dec. 2, 2013

Citation: (2014) 2 CALLT 88

Hon'ble Judges: Dipankar Datta, J

Bench: Single Bench

Final Decision: Disposed Off

Judgement

Dipankar Datta, J.

The petitioner, facing disciplinary proceedings on the charge of embezzlement, seeks interference of this Court with an order dated October 23, 2013 passed by his disciplinary authority refusing his prayer for lawyer's assistance at the enquiry which has commenced pursuant to the chargesheet dated February 27, 2013. This is the second round of litigation between the parties in connection with the disciplinary proceedings. The first round of litigation stood terminated by an order dated September 23, 2013 passed by me. I have been informed at the hearing that the grievance of the petitioner with regard to supply of documents has been attended to and that he has no further reason to complain on such score. However, the petitioner in course of this writ petition has persisted with his grievance that he has not been able to locate a co-employee or a retired employee to assist him at the enquiry and, therefore, the order refusing lawyer's assistance would have the effect of denying him reasonable opportunity to defend the charges.

2. It appears that availing of the opportunity granted by the order dated September 23, 2013, the petitioner had submitted a representation on the following day before the disciplinary authority raising, inter alia, the following:

2. That as per the IRCTC (Disciplinary and Appeal) Rules, 2003 for engagement of defence helper firstly I have approached to my known colleagues of my zone of service for giving me assistance in the disciplinary proceeding, but even after approaching them no one has come forward to stand beside me as my defence helper in the proceeding, as nobody has such an experience in the matter involving law and facts. More so, no one is interested to stand against the organization in my support.
3. That finding no other choice I tried to find out any retired employee of the Corporation as may defence helper, but I did not find out any such person. I have no known retired person, to whom I can approach for rendering me assistance in the disciplinary proceeding in my support, who has requisite knowledge and legal expertise in conducting disciplinary proceedings.
4. That one person I have found earlier as my defence helper. Accordingly I prayed for engaging him as my defence helper, but my said prayer has not been allowed as the said person is not a retired employee of IRCTC.
5. That in this circumstances I am unable to find out any other person as my defence helper as per our said rule.
6. That the said rule provides for engagement of a legal practitioner for my assistance in the disciplinary proceeding if the disciplinary authority permits so.
7. That in this present case I do not find any employee from my service zone or any retired person as per the said rule. Accordingly I am defence less in the disciplinary proceeding inasmuch as no one is here for my assistance and I have no knowledge and idea of conducting disciplinary proceeding, which involves complicated matters of law and fact like the present one.

3. The order impugned records as follows:

I have meticulously examined your above representation once again. The Major Penalty charge sheet was served on you in conformity with the IRCTC (D & A) Rules, 2003 & I find that there is no legal complications in the matter as pointed out by you. IRCTC/EZ is having more than 450 staff, More so, a good number of employees who were working as deemed deputationist from railways and retired from service are available. Therefore, your contention that you could not find any such employee for engagement as defence helper is not acceptable to me. Hence, the decision conveyed in my earlier letter dated 03.10.2013 needs no revision.

4. I have heard the learned advocates appearing for the parties and examined the Discipline and Appeal Rules (hereafter the Rules) of the respondent No. 1.
5. While a delinquent in terms of the Rules is entitled to take assistance of a co-employee or a retired employee of the respondent No. 1 as of right, he is entitled to lawyer's assistance if the disciplinary authority having regard to the

circumstances of the case so permits. In the context of such Rules, the delinquent can claim no right to be represented by a lawyer and it is in the discretion of the disciplinary authority whether or not to grant the prayer for lawyer's assistance. The assistance of a lawyer to a delinquent employee, therefore, could be granted in exceptional circumstances. There cannot be any exhaustive enumeration of exceptional circumstances where such a prayer could be granted; however, such prayer could be conceded if the charge(s) is/are of serious and complex nature, or where the delinquent satisfies the disciplinary authority that despite sincere efforts made by him to locate a co-employee or a retired employee who could assist him, he had failed in his pursuit or there is a distinct possibility of an unequal combat arising out of a presenting officer being appointed, who is trained in law, entailing denial of a real and reasonable opportunity for defence and a consequent miscarriage of justice. Bearing in mind the above principles, it would require examination as to whether the petitioner did in fact set up any exceptional circumstance in his representation dated September 24, 2013.

6. It is not the case of the petitioner that he is pitted against a presenting officer, who is trained in law. Assistance of a lawyer to him cannot, therefore, be granted to him as a rule.

7. As is evident from the aforesaid extract from his representation, the petitioner has not named any employee who refused to assist him in the enquiry. Omission to name anyone has to be taken with a pinch of salt. It is suggestive of a general plea that was raised to attract the sympathy of the disciplinary authority. By not treating the petitioner's claim as exceptional on this point, the disciplinary authority does not appear to have acted unreasonably or without justification in the exercise of his discretion.

8. Similar is the case with regard to the other point. Apart from a bare statement that the disciplinary proceeding involves complicated matters of law and fact, the petitioner did not endeavour to persuade the disciplinary authority to grant his prayer by allowing him assistance of a lawyer by indicating the complexities that might arise in course of enquiry which, he being a layman, may not be able to encounter. The petitioner is an Assistant Supervisor and is not so uneducated that he would be left high and dry in the absence of assistance of a lawyer in a case of the present nature.

9. The disciplinary authority in his fairness has again granted opportunity to the petitioner to represent his case before the enquiry officer taking the assistance of a co-employee/retired employee. The petitioner cannot really complain that the disciplinary authority is bent on denying him reasonable opportunity of defence.

10. The decision reported in [C.L. Subramaniam Vs. Collector of Customs, Cochin](#), cited by Mr. Basu has been considered. It has been ruled therein that since a government servant by and large has no legal training and faced with a threat to his

livelihood he is not likely to be in a position to present his case as best as he would have liked, therefore, in appropriate cases only legal representation should be allowed.

11. There cannot be any dispute with regard to this proposition of law. Every delinquent is entitled to receive a fair hearing and a reasonable opportunity of putting forth his defence, more so when he is proceeded against for imposition of major penalty that might affect his livelihood. However, merely because proceedings for initiation of major penalty have been initiated cannot tilt the scale in favour of the delinquent. He is entitled to claim to any and everything permitted by the governing rules. A decision on the prayer or lawyer's assistance has to be reached on a case to case basis on the situational particularities and the special requirements of justice of the case.

12. Considering the case set up by the petitioner in his representation dated September 24, 2013, I do not see reason to hold that his disciplinary authority abused the discretion vested in him and thereby made his order liable to interference. Dismissal of the writ petition is the obvious result but considering that the petitioner might have omitted to name the co-employee(s)/retired employee(s) of the respondent No. 1 who he had approached for assisting him at the enquiry, I am inclined to grant one final opportunity to him to name those who declined to assist him. It shall be open to him to make a further representation in this behalf within 3 days from date. The disciplinary authority shall be at liberty to verify the correctness of the petitioner's claim and if indeed what the petitioner claims is found to be true, he shall allow him the assistance of a lawyer. In the event the petitioner does not avail the opportunity granted by this order, or his claim that none agreed to assist him in the enquiry falls through, the disciplinary proceedings shall be taken to its logical conclusion in accordance with law.

13. The order impugned shall remain in abeyance and the disciplinary authority shall direct the enquiry officer to defer further enquiry for such time that is necessary for effecting compliance of this order. The writ petition stands disposed of, without order for costs.

Urgent photostat certified copy of this order, if applied for, shall be furnished to the applicant at an early date.