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INDIAN OVERSEAS BANK

v.

INDIAN OVERSEAS BANK OFFICERS' ASSOCIATION AND ANR.

OCTOBER 4, 2001

B

[S. RAJENDRA BABU AND DORAISWAMY RAJU, JJ.]

Service Law :

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Banks—Regulations regarding conduct, discipline and appeal—Disciplinary proceedings—Appointment of defence officer—Provision enabling an officer/employee to take the assistance of any other officer-employee to defend him in any disciplinary proceedings—Regulation amended by Circular—Employee not to take assistance of any other employee who has two pending disciplinary cases on hand in which he has to give assistance—Held, constitutionally valid—Constitution of India, 1950, Article 14.

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Domestic enquiry—Employee—Right of representation—Denial of—Would not vitiate enquiry unless regulation recognises such a right—Administrative law—Principles of Natural Justice.

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Banks have their own regulations in respect of the conduct, discipline and appeal pertaining to their officers and staff. The regulation enabling an officer-employee to take the assistance of any other officer-employee to defend him in any disciplinary proceedings was amended by a Circular on the suggestion emanating from the Government of India in consultation with the Reserve Bank of India. It stated that the officer employee shall not take the assistance of any other employee who has two pending disciplinary cases on hand in which he has to give assistance. Respondents challenged the amendment in a writ petition and the High Court held the amendment violative of Article 14 of the Constitution. Hence the present appeals.

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Allowing the appeal, the Court

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HELD : 1. The Regulation amended by a Circular which provided that an officer/employee shall not take the assistance of any other employee who has two pending disciplinary cases on hand in which he has to give assistance, is constitutionally valid. [556-F; G]

2. The serious fallacy underlying the reasoning adopted by the High Court seems to be the assumption that an omission to correspondingly fix a ceiling in respect of the engagement of the presenting officers confer any right as such in the management to flout the said norm or standard when it comes to them and have its own way in nominating the presenting officers who even held more than two pending disciplinary cases in their hands. In the process of such assumption the High Court seems to have overlooked the realities of the fact situation specifically noticed by the Government of India of one defence officer holding brief in 50 pending matters, which necessarily called for such specific ceiling vis-a-vis the defence officer for the reason that the selection and choice of which is inevitably with the officer-employee concerned and that in the absence of such a stipulation, the management would suffer a serious handicap in observing such a rule or principle to so regulate to the surprise of the officer-employees both facing enquiries and those to be drafted for defence. [558-F; G; 559-A-C]

3. A stipulation of the nature under consideration, apart from paving way for expeditious culmination of the disciplinary proceedings by avoiding unnecessary delays on the part of a defence officer holding too many engagements on his hand finding difficult to coordinate his appearance in various proceedings, would equally go a long way to ensure that no monopoly is created in a chosen law for such purposes and that the services of the proposed defence officers are equally available in proper measure to the institutions which employ them in greater public interest. [559-E; F]

4.1. 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 of 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. [558-C; D]

4.2. Irrespective of the desirability or otherwise of giving the employees facing charges of misconduct in a disciplinary proceeding to ensure that his defence does not get debilitated due to inexperience or personal embarrassments it cannot be claimed as a matter of right and that too as constituting an element of principle of natural justice to assert that a denial thereof would vitiate the enquiry itself. [558-E]

A *N. Kalindi & Ors. v. M/s. Tata Locomotive & Engineering Co. Ltd., Jamshedpur, AIR (1960) SC 914; Dunlop Rubber Co. (India) Ltd. v. Their Workmen, AIR (1965) SC 1392; Crescent Dyes and Chemicals Ltd. v. Ram Naresh Tripathi, [1993] 2 SCC 115 and Bharat Petroleum Corporation Ltd. v. Maharashtra General Kamgar Union & Ors., [1999] 1 SCC 626, referred to.*

B CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2597 of 1998.

From the Judgment and Order dated 4.12.97 of the Karnataka High Court in W.P. No. 7771 of 1986.

C WITH

C.A. No. 2598/98, 2599 of 1998.

P.P. Rao, T.V. Ratnam and M. Goswami for the Appellant.

D The Judgment of the Court was delivered by

RAJU, J. The above appeals have been filed against the common judgment of a Division Bench of the Karnataka High Court dated 4.12.97 in Writ Petition Nos. 7771 of 1986, 321 of 1987 and 19366 of 1985 and they are by M/s Indian Overseas Bank, Canara Bank and Vijaya Bank respectively.

E The respective Banks had their own regulations for regulating the conduct, discipline and appeals pertaining to their officers and employees. Those Regulations contained a provision enabling an officer/employee to take the assistance of any other officer-employee to defend him in any disciplinary proceedings. This was sought to be amended by a circular order providing for the addition of a note to the relevant regulation in the following terms:

F Note: The officer employee shall not take the assistance of any other employee who has two pending disciplinary cases on hand in which he has to give assistance.

G This move was said to have been triggered by the communication of the Government of India dated 5.12.84, issued from the Ministry of Finance, Department of Economic Affairs (Banking Division), on the basis of the suggestion emanating from the Central Vigilance Commission and in consultation with the Reserve Bank of India.

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The challenge to the said amendment based on the alleged violation of Article 14 of the Constitution of India, at the instance of the association of the officers of the respective Banks, came to be upheld under the judgment which are the subject-matter of these appeals. In purporting to follow an earlier Division Bench judgment of the Karnataka High Court dated 31.8.95 in W.A. Nos. 2074 and 2075 of 1991 relating to a similar provision pertaining to the Karnataka Handloom Development Corporation, the High Court held that when there is no similar restriction *vis-a-vis* the managements to employ a presenting officer having more than two pending disciplinary cases on hand the stipulation so made in respect of defence officers for employees alone is discriminatory and does not really and may not also serve the purpose of avoiding delay in finalisation of the disciplinary proceedings. The further reason, which weighed with the High Court, was that there may be only a few qualified officers in the organization to defend the officers charged with allegations of misconduct and with such a stipulation many such employees may not be available in every organization to be chosen by the concerned employees facing charges, to represent them and consequently it results in deprivation, to the officer-employee, of an effective opportunity to get proper assistance from his colleagues for his defence.

The respondents, despite being served with notice of appeals, have not chosen to enter appearance to contest the appeals and remained *ex-parte*. The learned senior counsel for the appellants, Shri P.P. Rao, strenuously contended that the impugned amendment to the Regulations is not only just and reasonable but had a laudable purpose and commendable public interest to be served and can also by no means be stated to be discriminatory or perpetuating any invidious discrimination, as assumed, warranting it to be struck down and consequently the judgment under appeals is liable to be set aside. The further submission by the learned counsel is that whatever may be the need or justification to deal with an individual case arising out of an extraordinary circumstance appropriately in the background of any grievance substantiated that the officer-employee concerned in a case has been denied of an effective opportunity to defend himself, the challenge to the amendment made ought not to have been countenanced at all and that too for such reasons as are assigned in the judgment. Our attention has been drawn to the communication of the Government of India, which elaborated the actual facts noticed in practice and the compelling reasons to issue the directions and the orders of the bank carrying out the suggestions of the Central Government by

A introducing the amendment as well as the relevant portions of the judgment under appeal.

B We have carefully considered the submissions made as above. The issue ought to have been considered on the basis of the nature and character or the extent of rights, if any, of an officer-employee to have, in a domestic-disciplinary enquiry, the assistance of someone else to represent him for his defence in contesting the charges of misconduct. This aspect has been the subject matter of consideration by this Court on several occasions and it has been categorically held that 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 recognize such a right and provide for such representation. *N. Kalindi & Ors. v. M/s Tata Locomotive & Engineering Co. Ltd., Jamshedpur*, AIR (1960) SC 914; *Dunlop Rubber Co. (India) Ltd. v. Their Workmen*, AIR (1965) SC 1392; *Crescent Dyes and Chemicals Ltd. v. Ram Nuresh Tripathi*, [1993] 2 SCC 115 and *Bharat Petroleum Corporation Ltd. v. Maharashtra General Kamgar Union & Ors.*, [1999] 1 SCC 626. Irrespective of the desirability or otherwise of giving the employees facing charges of misconduct in a disciplinary proceeding to ensure that his defence does not get debilitated due to inexperience or personal embarrassments, it cannot be claimed as a matter of right and that too as constituting an element of principle of natural justice to assert that a denial thereof would vitiate the enquiry itself.

F In our view, the serious fallacy underlying the reasoning adopted by the learned Judges in the High Court seems to be the assumption that an omission to correspondingly fix such a ceiling in respect of the engagement of the presenting officers confer any right as such in the management to flout the said norm or standard when it comes to them and have its own way in nominating the presenting officers who even held more than two pending disciplinary cases in their hands. It is on such an assumption only that the laudable object of averting inordinate delay in completion and ensuring an expeditious finalisation of the disciplinary proceedings, which really motivated the cause for amendment under challenge, came to be viewed with a suspicion and not capable of being really achieved. The grievance entertained with reference to the invidious nature of an alleged and assumed discrimination also proceeded on such a

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surmise based on the fact that the ceiling imposed was only in respect of the appointment of a defence officer leaving otherwise a free hand to the management in the appointment of a presenting officer. In the process of such assumption the High Court seems to have overlooked the realities of the fact situation specifically noticed by the Government of India of one defence officer holding brief in 50 pending matters, which necessarily called for such specific ceiling *vis-a-vis* the defence officer for the reason that the selection and choice of which is inevitably with the officer-employee concerned and that in the absence of such a stipulation, the management would suffer a serious handicap in observing such a rule or principle to so regulate to the surprise of the officers employees both facing enquiries and those to be drafted for defence. So far as the management is concerned, it can always observe the same while considering the need for choosing a presenting officer in an individual case even in the absence of a stipulation therefor. The mere possibility or otherwise of any action which may result in differential standard or norm being adopted in a given case, cannot be assumed to provide sufficient ground or reason to undermine the right of the management to make a regulation or standing order of the nature in question or militate against the reasonableness or justness of the said provision, whatever may be the scope available for ventilating otherwise a grievance in an individual case of any adoption of differential standards or norms to the detriment of the officer-employee concerned. Further, we are also of the view that a stipulation of the nature under consideration, apart from paving way for expeditious culmination of the disciplinary proceedings by avoiding unnecessary delays on the part of a defence officer holding too many engagements on his hand finding difficult to coordinate his appearance in various proceedings, would equally go a long way to ensure that no monopoly is created in a chosen few for such purposes and that the services of the proposed defence officers are equally available in proper measure to the Institutions which employ them in greater public interest. The Banks in question, being Nationalised Banks with a wide network of units at national level there could be no concrete basis for an assumption that many employees, who are well-versed in the administrative procedures and conversant with the functioning of the Board and the rules, bye-laws and regulations would not be available to be chosen for defending the officers employees facing enquiries and consequently there is no reason or justification whatsoever to erase the amendment from the Rule book on a mere apprehension that, otherwise, it is likely prejudice and adversely affect the officers facing charges in effectively defending themselves.

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In our view, the circumstances, which necessitated the amendment on the suggestion emanating from the Government of India in consultation with the Reserve Bank of India, appear to be not only genuine and reasonable but the amendment made is also just, proper and necessary in public interest. Consequently, we are unable to agree with the view taken by the High Court that the amendment suffers the vice of Article 14 of the Constitution of India. The judgment of the High Court is hereby set aside. The appeals shall stand allowed and the Writ Petitions filed in the High Court shall stand dismissed. No costs.

N.J.

Appeal allowed.