

Supreme Court of India

Director, Bcg Vaccine ... vs S. Pandian And Ors. on 24 April, 1996

Equivalent citations: 1996 (2) CTC 52, (1996) IILLJ 634 SC, (1996) 2 MLJ 63 SC, (1997) 11 SCC 346

Author: S Agrawal

Bench: S Agrawal, G Nanavati

ORDER S.C. Agrawal, J.

1. These appeals are directed against the Judgment of the Central Administrative Tribunal, Madras Bench (hereinafter referred to as 'the Tribunal') dated July 12, 1989. Disciplinary proceedings were initiated against the respondents and during the pendency of the said disciplinary proceedings the said respondents had been placed under suspension. In those disciplinary proceedings the disciplinary authority had appointed an advocate, Shri Muthappan, as the Presenting Officer in the inquiry that was being conducted by the inquiry officer. Since the Presenting Officer was a legal practitioner, the respondents submitted that they should also be permitted to be represented by a legal practitioner. The said prayer of the respondents was allowed and by order dated November 25, 1988 they were permitted the assistance of a legal practitioner, Shri K. Chandru, Advocate. Thereafter, the respondents moved the disciplinary authority for payment of remuneration of Shri K. Chandru and requested that he may be paid some remuneration and allowances as would be paid to the presenting officer who was a legal practitioner. The said request of the respondents was, however, rejected by the disciplinary authority by order dated March 16, 1989 on the ground that there is no provision for payment of remuneration or allowances to the Advocate engaged as defence assistant as per the Central Civil Services (Classification, Control and Appeal) Rules, 1965. The respondents thereupon moved the Tribunal by filing applications (O.A. Nos.224-226 & 283 of 1989). The said applications have been allowed by the Tribunal by the impugned judgment. The Tribunal has held that the Respondents are entitled to legal charges payable to their advocate assisting them in the departmental inquiry on the same rate as are payable to the presenting officer who is also a legal practitioner. Feeling aggrieved by the said judgment of the Tribunal, the appellant has filed these appeals.

2. Shri H.L. Agrawal, the learned senior counsel appearing for the appellant, has urged that merely because the respondents were permitted to be represented by a legal practitioner on account of the fact that the presenting officer was a legal practitioner does not entitle them to claim the fees for the said legal practitioner who was assisting them in the inquiry before the inquiry officer. The submission is that the relevant rules governing disciplinary proceedings do not make a provision for making of such a payment.

3. It is no doubt true that in the rules governing the disciplinary proceedings no provision is made with regard to payment of fees or remuneration to the legal practitioner who is permitted to assist the government servant in cases where the presenting officer appointed by the disciplinary authority is a legal practitioner. Explaining this right of a government servant to seek the assistance of a legal practitioner in cases where presenting officer happens to be the legal practitioner, this Court in Board of Trustees of the Port of Bombay v. Dilipkumar Ragha-vendranalh Nadkarni and Ors. 1983-I-LLJ-1 has said :

The inquiry officer combines the judge and prosecutor rolled into one. Witnesses are generally employees of the employer who directs an enquiry into misconduct. This is sufficient to raise serious apprehensions. Added to this uneven scales, is the weight of legally trained minds on behalf of the employer simultaneously denying that opportunity to delinquent employee. The weighted scales and tilted balance can only be partly restored if the delinquent is given the same legal assistance as the employer enjoys. Justice must not only be done but must seem to be done is not an euphemism for courts alone, it applies with equal vigour and rigour to all those who must be responsible for fair play in action. And a quasi judicial tribunal cannot view the matter with equanimity on inequality of representation. This Court in *M.H. Hoscot v. State of Maharashtra* , clearly ruled that in criminal trial where prosecution is in the hands of public prosecutor accused, for adequate representation, must have legal aid at State cost. This will apply *mutatis mutandis* to the present situation.

4. In that case, this Court has referred to with approval the following observation of Lord Denning in *Pet v. Greyhound Racing Association Ltd.* 1968(2)All E.R. 545.

The trend therefore is in the direction of permitting a person who is likely to suffer serious civil or pecuniary consequences as a result of an enquiry, to enable him to defend himself adequately, he may be permitted to be represented by a legal practitioner.

5. In the present case, the respondents were under suspension. They were employed as laboratory attendants, a class IV post. Since they were under suspension, they could not have the resources to bear the fees of the legal practitioner who was assisting them in the inquiry. Having regard to the aforesaid facts and circumstances, we are of the view that the Tribunal has not committed any error in giving the directions regarding payment of legal charges payable to their advocate assisting the respondents in the departmental inquiry on the same rate as were payable to the presenting officer who was also a legal practitioner. The appeals therefore, fail and are ; accordingly dismissed. No orders as to costs.