

A D.G. RAILWAY PROTECTION FORCE & ORS.

v.

K. RAGHURAM BABU
(Civil Appeal No. 3964 of 2002)

MARCH 3, 2008

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[H.K. SEMA AND MARKANDEY KATJU, JJ.]

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Railway Protection Force Rules, 1987 – r. 153(8) – Assistance to charge sheeted employee by agent-friend under r. 158(8) – However, friend not allowed to address Inquiry Officer nor cross-examine witnesses – Constitutional validity of – Held: Rule 153(8) grants restricted right of representation – Even if right of assistance is not granted by the Rule, there would be no illegality – Thus, Rule 153(8) is constitutionally valid.

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The respondent-employee was placed under suspension for committing misconduct. Departmental proceeding was initiated against the respondent. He was given opportunity of hearing in which he sought to engage a friend to defend his case. In terms of Rule 153(8) of the Railway Protection Force Rules, 1987 such friend was not allowed to address the Inquiry Officer nor cross-examine the witness. Respondent challenged the constitutionality of Rule 153(8). The Full Bench of High Court held that the Rule 153(8) was unconstitutional, and struck it down. Hence the present appeal.

Allowing the appeal, the Court

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HELD: 1.1 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 some one, even if granted by the rules, can be granted as a

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restricted or controlled right. Refusal to grant representation through an agent does not violate the principles of natural justice. (Para 10) [756-A, B] A

1.2 Rule 153(8) of the Railway Protection Force Rules, 1987 only provides for assistance to a charge-sheeted employee by an agent. Such friend is not allowed to address the Inquiry Officer nor to cross-examine the witnesses. 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. It cannot be said that when a restricted right is granted, the said restricted right is unconstitutional. Therefore, the Rule 153(8) is constitutionally valid. The view taken by the Full Bench of the High Court in the impugned judgment is not correct and is set aside. (Paras 5, 7, 11, 12 and 13) [755-A, D; 756-C, D, E] B C D

Cipla Ltd. and others vs. Ripu Daman Bhanot and another 1999(4) SCC 188 – relied on

N.K. Kalindi and others vs. M/s. Tata Locomotive and Engineering Co.Ltd. AIR 1960 SC 914; *Brook Bond India vs. Subba Raman* 1961 (11) LLJ 417; *Bharat Petroleum Corporation Ltd. s. Maharashtra General Kamgar Union* 1999(1) SCC 626 – referred to. E

CIVILAPPELLATE JURISDICTION : Civil Appeal No. 3964 of 2002 F

From the Order dated 7.9.2001 of the High Court of Andhra Pradesh at Hyderabad in W.A. No. 1397/1998.

Dr. R.G. Padia, Shipra Ghose, B.K. Prasad and Anil Katiyar for the Appellants. G

The Judgment of the Court was delivered by

MARKANDEY KATJU, J. 1. This appeal by special leave has been filed against the judgment and order dated 7.9.2001 H

A of the Andhra Pradesh High Court in Writ Appeal No. 139 of 1998.

B 2. The respondent was an Inspector of the Railway Protection Force. He was placed under suspension on 18.9.1995 on the allegation that he made excess delivery of scrap worth about Rs.10,000/-. A departmental proceeding was initiated against him in which he was given opportunity of hearing in which he sought to engage a friend to defend his case.

C 3. A writ petition was filed before the Learned Single Judge of the Andhra Pradesh High Court which was dismissed. Against that judgment a Writ Appeal was filed, and the matter was referred to a Full Bench of the High Court for deciding the constitutionality of Rule 153(8) of the Railway Protection Force Rules, 1987 (hereinafter referred to as the Rules), which have been made under the Railway Protection Force Act, 1957.

D 4. The Full Bench held that Rule 153(8) is unreasonable and hence un-constitutional and accordingly it struck down Rule 153(8). Against that judgment of the Full Bench this appeal has been filed.

E Rule 153(8) of the Rules states:

F "153.8 – The enrolled member charged shall not be allowed to bring in a legal practitioner at the proceedings but he may be allowed to take the assistance of any other member of the Force (hereinafter referred to as "friend") where in the opinion of the Inquiry Officer may, at the request of the party charged, put his defence properly. Such "friend" must be a serving member of the Force of or below the rank of Sub-Inspector for the time being posted in the same division or the battalion where the proceedings are pending and not acting as a "friend" in any other proceedings pending anywhere. Such "friend" shall, however, not be allowed to address the Inquiry Officer nor to cross-examine the witnesses".

H (emphasis supplied)

5. The last sentence of Rule 153.8 (which has been underlined above) was challenged as being arbitrary and unconstitutional. The said sentence states that a friend shall not be allowed to address the Inquiry Officer nor to cross-examine the witnesses. Thus the friend of the charge-sheeted employee can only assist him in preparing his case and even during the hearing, but the charge-sheeted employee himself has to address the Inquiry Officer and cross examine the witnesses, if he so desires.

6. It may be stated that Rule 153.10 (b) states that if the evidence is oral, the charge-sheeted employee shall be allowed to cross-examine the witnesses. Thus, it is not that no right of cross-examination has been granted at all in the Inquiry. However, this cross-examination must be done by the charge-sheeted employee himself and not by his friend. Similarly, arguments before the Inquiry Officer can only be advanced by the charge-sheeted employee and not by his friend.

7. We are of the opinion that the view taken by the Full Bench of the High Court in the impugned judgment is not correct.

8. It is well settled that ordinarily in a domestic/departmental inquiry the person accused of misconduct has to conduct his own case vide **N. Kalindi and others vs. M/s. Tata Locomotive and Engineering Co. Ltd** AIR 1960 SC 914. 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 **Brook Bond India vs. Subba Raman** 1961 (11) LLJ 417.

9. Similarly, in **Cipla Ltd. and others vs. Ripu Daman Bhanot and another** 1999 (4) SCC 188 it was held by this Court that representation could not be claimed as of right. This decision followed the earlier decision **Bharat Petroleum Corporation Ltd. vs Maharashtra General Kamgar Union** 1999(1) SCC 626 in which the whole case law has been reviewed by this Court.

A 10. 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 some one, 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.

C 11. 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 ?

D 12. 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.

E 13. In view of the above, the appeal stands allowed. The impugned judgment of the High Court is set aside. There shall be no order as to costs.

N.J.

Appeal allowed.