



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-10281-2020
Date of decision: 04.08.2025

ANIL GUPTAPetitioner

VERSUS

ORIENTAL INSURANCE COMPANY LIMITED AND OTHERS

.....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: - Mr. Rajesh K. Sheoran, Advocate and
Mr. Ojasvi Taak, Advocate and
Mr. Hardeep Poonia, Advocate
for the petitioner.

Mr. Ashwani Talwar, Advocate
for the respondents.

VINOD S. BHARDWAJ, J. (Oral)

1. Challenge in the present writ petition is to the Charge sheet dated 07.02.2017, the punishment order dated 03.07.2017, impugned order dated 12.02.2018 passed by the Appellate Authority, and the order dated 20.01.2020 passed by the Reviewing Authority, whereby the petitioner has been removed from service with the stipulation that such removal shall not operate as a disqualification for future employment.

2. The petitioner was served with a charge sheet dated 07.02.2017 and was ultimately awarded the penalty of removal from service on the allegation of temporary embezzlement of approximately ₹12 lakhs during



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the period from October 2015 to December 2015. It is, however, not in dispute that the said amount was deposited by the petitioner on 31.12.2015. Although the charge sheet is statedly dated May, 2016, the petitioner contends that it was actually received by him only in the year 2017 and the disciplinary proceedings commenced thereafter. The grouse of the petitioner is that the Enquiry Officer failed to provide him a fair opportunity to establish his defence and that the proceedings were conducted in breach of the principles of natural justice. Referring to the said proceedings, he has relied upon the extract reproduced here-in-below:-

“On next date of hearing on 29. 09. 2016 Mr J.J. Kalra P.O., Defence witnesses Mr. Dinesh Jain and Mr. Ashish Taluja and C.E. Mr. Anil Gupta attended the proceedings. Mr. Anil Gupta C.E. requested that he has submitted the name Mr. Sanjay Aggarwal as his Defence Assistant to the Disciplinary Authority R.O. For seeking permission to defend his case He requested to grant him 10days time and then the proceedings may be carried with or without Defence Assistant. Even in the face of objection from presenting Officer C.E.'s request was agreed and the next date was fixed for 10.10.2016.

Mr. Anil Gupta's request for permitting Mr. Sanjay Aggarwal to act as his defence assistant was rejected by Regional Manager Mr. Satish Katyal on the grounds that Mr. Sanjay Aggarwal is heading a branch and it is not in order for office to relieve him as his Defence Assistant.



On 10.10.2016 P.O. Examined PW-1 Mr. Raju Gupta, PW-2 Mr. Dinesh Jain, PW-3 Mr. Ashish Taluja.

The next hearing scheduled for 21.10.2016 was postponed to 24.10.2016 at R.O. Ambala premises due to non-availability PW-4 Mr. Chiranji Lal due to some domestic urgency.

On 24.10.2016 E.O. Ms Manraj Virk, P.O. Mr. J.J. Kalra, PW-4 Mr. Chiranji Lal presented themselves for the proceedings. But the proceedings were postponed to 02.11.2016 due to non-availability of Mr. Anil Gupta CE.

On 02.11.2016 P.O. Examined PW-4 Mr. Chiranji Lal.

Mr. Anil Gupta C.E. submitted the list of Defence witnesses.

Witness of Mr. Dinesh Jain (Sr, B.M. B.O. Karnal) at Sr. No. was allowed Witness Of Dr. Varun Jain (MBBS MD) at Sr No.2 was disallowed as the witness of Dr. Varun Jain has no relevance to the charge sheet.

Witness Of Mr. Anoop Gupta (Nephew of Mr, Anil Gupta) at Sr No.3 was disallowed as the witness of Mr. Anoop Gupta (Nephew of Mr, Anil Gupta) has no relevance to the charge sheet.

Document mentioned at Sr. No.1 Of the Defence document list i.e. 'Cutting of newspaper of Punjab Kesri was disallowed as it has no relevance to the charge sheet. Document mentioned at Sr. No.2 Of the Defence document list; "Affidavit of Sh. Prem Kumar My real



Brother"; was disallowed as it has no relevance to the charge sheet.

Next hearing was fixed for 15.11.2016 for Examination of Defence Witness Mr. Dinesh Jain (Sr. B. M. B. O. Karnal).

On 15.11.2016 P. O. Mr. J.J. Kalra reported for proceedings but the hearing was postponed due to non-availability of Mr. Anil Gupta C.E. on medical grounds.

Next date of hearing was fixed for 25.11.2016. P. O. Mr .J. J. Kalra Defence Witness Mr. Dinesh Jain reported for proceeding but again proceeding was postponed to 09.12.2016 due to non-availability of Mr. Anil Gupta on medical grounds.

On 09 12.2016 P.O. Mr. J. J. Kalra, Defence witness Mr. Dinesh Jain, C.E. Mr. Anil Gupta reported for proceedings. Mr. Anil Gupta C. E. did not ask any questions from Mr.Dinesh Jain (Sr. B. M. B. O. karnal) as defence witness.

Mr. Anil Gupta C.E. then requested for Cross-Examination Of Mr. Dinesh Jain (Sr. B. M. B. O. karnal) as Prosecution Witness at this stage. The request was declined as ample opportunity has been provided for cross-examination of Mr. Dinesh Jain PW-2 at the time of Pw-2's witness on 10.10.2016.

Then E.O. asked C.O. the mandatory question.

E.O. asked C.E. whether the defence proceedings be closed to which C.E. agreed.”



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3. Learned counsel for the petitioner contends that the Inquiry Officer not only declined the petitioner's request to engage a defence assistant but also unjustifiably refused to permit the petitioner to examine his defence witnesses or cross-examine the witnesses of the department. It is submitted that the petitioner had cited a total of three witnesses in support of his defence; however, the Inquiry Officer disallowed the examination of all three without assigning any cogent reason. Further, the Inquiry Officer also failed to consider the defence documents placed on record by the petitioner. In the cumulative, it is submitted, that the petitioner was denied a fair and reasonable opportunity to defend himself, thereby vitiating the entire enquiry process.

4. Per contra, learned counsel for the respondents submits that the petitioner was found guilty of an act amounting to notional embezzlement, and upon learning that disciplinary proceedings were likely to be initiated soon, he proceeded to deposit the entire amount in question, thereby rendering it a case of temporary embezzlement. It is further contended that the petitioner had sought permission to engage a specific individual as his defence assistant, who, being posted as a Branch Manager, could not be spared for the purpose, and accordingly, the Regional Office declined the request. Counsel asserts that a fair opportunity of defence was afforded to the petitioner, and the fact that he subsequently deposited the embezzled amount substantiates the charge against him. Due leniency has been extended to the petitioner and the order thus requires no interference.



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5. I have heard learned Counsel appearing on behalf of the respective parties and have gone through the documents appended along with the present writ petition.

6. The disciplinary proceedings of employees of the respondent-Insurance Company are governed by the Oriental Insurance Company (Conduct, discipline and appeal) Rules, 2014. Rule 25 thereof prescribes the procedure for imposing major penalties. The relevant extract of the same reads thus:-

“(6) The employee may take the assistance of any other employee of the company but may not engage a legal practitioner for the purpose. In case, the Presenting Officer appointed by the DA is a legal practitioner, the DA may also be allowed a legal practitioner as Defence Assistant. However, employees from other organizations, including PSGICs, cannot act as Defence Assistant in any disciplinary proceedings initiated against any employee of the Company.

No employee while on duty shall act as Defence Assistant in any disciplinary proceedings conducted outside the Regional Office where he is posted; nor shall he act as a Defence Assistant in more than two cases at a time. However, this rule does not apply in the cases where more than one Regional Office is situated in the same city and selection of Defence Assistant is made from the same city but from a different Regional Office within the city. An employee acting as Defence Assistant in breach of this rule shall not be



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entitled to any TA/DA in connection with the disciplinary proceeding.”

7. It is evident from a perusal of the said guidelines that an employee facing disciplinary proceedings is entitled to seek assistance from any other employee of the company. However, certain limitations have been imposed in this regard. Specifically, engagement of a legal practitioner as a defence assistant is not permissible unless the Disciplinary Authority (DA) itself is a legal practitioner. Furthermore, employees of other organizations are barred from acting as defence assistants. An additional restriction stipulates that an employee may not act as a defence assistant if the inquiry is being conducted outside the regional office where he is posted, and that no individual may serve as defence assistant in more than two cases simultaneously.

8. Undisputedly, the employee requested for by the petitioner to act as his defence assistant was posted in the same regional office and was not representing more than two cases at the relevant time. Hence, there existed no legal or valid impediment in not permitting him to act as a defence assistant in the disciplinary proceedings initiated against the petitioner and he could have lawfully represented the petitioner, in accordance with the applicable rules.

9. Furthermore, it is evident that the respondents have sought to justify their act of declining the petitioner's request for defence assistance by citing the workload of the proposed defence assistant, as determined by the



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Regional Manager. However, a perusal of the applicable rules reveals that there exists no stipulation requiring prior permission from the Regional Manager for such representation. The justification advanced by the respondents is, therefore, de hors the applicable procedure and cannot be sustained in law.

10. Counsel for the respondents has failed to draw the attention of this Court to any provision under the applicable service rules which mandates prior approval from the Regional Office for appointment of a defence assistant, or which would otherwise disentitle the person desired by the petitioner for defence, from acting in that capacity. No clause has been cited to establish that the defence assistant sought by the petitioner stood disqualified under any prescribed criteria. Accordingly, the procedure adopted by the respondents in seeking prior approval from the Regional Manager and declining the petitioner's request, is de hors the statutory framework and is without the sanction of law.

11. Learned counsel for the respondents did make a reference to the proposition that the petitioner could not have insisted upon engagement of any particular individual as his defence assistant, however, a bare perusal of the governing service rules reveals no such stipulation. The language of the applicable rule does not require the charged employee to submit a panel of prospective defence assistants, nor does it empower the Regional Manager to unilaterally nominate or select a person to act in such capacity. In the absence of any enabling provision in the statutory framework supporting the



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respondent's contention, the argument advanced cannot be sustained. Consequently, the refusal to permit the petitioner's chosen defence assistant, based on such unfounded interpretation, must be held as unjustified and contrary to the principles of natural justice.

12. It further remains undisputed that the petitioner had cited three defence witnesses, all of whom were declined by the Presenting Officer on the purported ground that their testimonies were not relevant to the charge sheet. This approach is manifestly flawed. The question of relevance of evidence must necessarily be assessed after the evidence is led, not by prematurely prejudging its significance. The act of the respondents in denying the petitioner the opportunity to examine his cited witnesses effectively deprived him of asserting a potential line of defence. It is well settled that while a particular line of defence may not directly exonerate the charged employee of the allegations, it may still hold relevance in the context of quantum of punishment to be imposed. The denial of such opportunity, therefore, constitutes a breach of the principles of natural justice and vitiates the fairness of the enquiry proceedings.

13. At this stage, learned counsel for the respondents contends that no prejudice has been caused to the petitioner as he was at liberty to seek the engagement of any other person as his defence assistant. However, the mere availability of such a privilege cannot be equated with the grant of a fair and meaningful opportunity of defence. Once a right has been conferred upon an employee to engage a defence assistant of his own choice, it is

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impermissible for the respondents to undermine or negate that choice by assuming the authority to decide who the defence assistant ought to be. The selection and engagement of a defence assistant is fundamentally a matter of faith, confidence, and trust between the employee and the person assisting him. It is an essential element of the employee's right to a fair hearing. The objectivity or discretion of the employer cannot and should not override the satisfaction or preference of the employee in this regard. The prerogative to select a defence assistant is a prerogative of and exclusive to the employee and must remain unfettered, unless expressly curtailed or regulated by statutory provisions or service rules. The employer should not exercise dominance or control over this right, as doing so would amount to a denial of natural justice and impair the fairness of the disciplinary proceedings.

14. For the foregoing reasons, this Court finds that the petitioner was not accorded a fair and adequate opportunity to defend himself against the allegations leveled. The denial of the petitioner's right to be represented by a defence assistant of his choice, coupled with the refusal to permit him to lead evidence in support of his defence or to cross-examine the witness constitutes a violation of the principles of natural justice. While the Court does not find any sufficient ground to quash the charge sheet itself, given that the non-deposit of the amount in question as per the applicable rules is undisputed, the petitioner's subsequent explanation for the delay amounts, at best, to a plea of defence which cannot be rejected without proper inquiry. The procedural infirmities noted are serious and call for remedial action.

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Accordingly, while the prayer to quash the charge sheet is dismissed, the writ petition is otherwise **partly allowed**. The impugned order of punishment as well as the inquiry report are hereby set aside. The matter is remanded to the respondent authorities with a clear direction to re-conduct the inquiry proceedings afresh, strictly adhering to the principles of natural justice and affording the petitioner full opportunity to engage his chosen defence assistant and to lead evidence in support of his case. Thereafter, a reasoned order be passed in accordance with law, based on the evidence and material produced during the fresh inquiry.

15. Let the aforesaid enquiry proceedings be concluded by the respondents within a period of six months from the receipt of certified copy of this order.

AUGUST 04, 2025*Vishal Sharma***(VINOD S. BHARDWAJ)
JUDGE**

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No