Supreme Court of India

J.K. Aggarwal vs Haryana Seeds Development ... on 5 September, 1990

Equivalent citations: 1991 AIR 1221, 1990 SCR Supl. (3) 13

Author: M Venkatachalliah

Bench: Venkatachalliah, M.N. (J)

PETITIONER:

J.K. AGGARWAL

Vs.

RESPONDENT:

HARYANA SEEDS DEVELOPMENT CORPORATION LTD.AND ORS.

DATE OF JUDGMENT05/09/1990

BENCH:

VENKATACHALLIAH, M.N. (J)

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SAIKIA, K.N. (J)

CITATION:

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1991 SCC (2) 283 JT 1991 (5) 191

1991 SCALE (1)488

ACT:

Haryana Civil Services (Punishment and Appeal) Rules, 1952-Rule 7(5)--Charges likely to result in dismissal of delinquent Government servant in inquiry--Representation by counsel whether permitted in the disciplinary proceeding.

Civil Service--Disciplinary proceeding--Presenting Officer trained in law--Denial of representation by counsel to delinquent Government servant--Violates natural justice. Words and Phrases--`Legal Adviser', 'Lawyer'--Construction of.

HEADNOTE:

A disciplinary inquiry was initiated against the appellant, who was the Company Secretary of the Corporation on certain charges which if established might lead to his dismissal from service.

Inquiry-Authority, rejected the appellant's prayer made at the initial stage of the inquiry for permission to engage the services of a lawyer.

Before the High Court, appellant challenged the inquiry proceedings on grounds of denial of natural justice.
The High Court dismissed the Writ-Petition in-limine against which this appeal was filed.
Allowing the appeal, this Court,

HELD: 1. The right of representation by a lawyer may not in all cases be held to be a part of naturaljustice. No general principle valid in all cases can be enunciated. [15C-D]

In the present case, the matter is guided by the Provisions of Rule 7(5) of the Civil Services (Punishment & Appeal) Rules, 1952. [17C]

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The Rule itself recognises that where the charges are so serious as to entail a dismissal from service, the inquiry-authority may permit the services of a lawyer. Thisrule vests a discretion. In the matter on exercise of this discretion one of the relevant factors is whether there is likelihood of the combat being unequal entailing a miscar-

riage or failure of justice and a denial of a real and reasonable opportunity for defence by reason of the appellant being pitted against a presenting officer, who is trained in law. [17G-H, 18A]

In the inquiry, the Respondent-Corporation was represented by its Personnel and Administration Manager, who is stated to be a man of law. Moreover, appellant, it is claimed, has had no legal background. The refusal of the service of a lawyer, in the facts of this case, results in denim of natural justice. [17G, 18G]

Pett v. Grehound Raling Association Ltd., [1969] 1 QB 125; Pett's case No. 2, 1970(1) QB 46: Enderby Town Football Club Ltd. v. Football Association Ltd., [1971] Chancery Div. 591; C.L. Subrahmaniam v. Collector of Customs, Cochin, [1972] 3 SCR 485, referred.

Board of Trustees of the Port of Bombay v. Dilip Kumar, [1983] 1 SCR 828, followed.

2. Legal Adviser and a lawyer are for this purpose somewhat liberally construed and must include "whoever assists or advises on facts and in law must he deemed to he in the position of a legal adviser." [18A-B]

JUDGMENT: