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FOOD CORPORATION OF INDIA

v.

BANT SINGH AND ANR.

JULY 7, 1997

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[K. RAMASWAMY AND D.P. WADHWA, JJ.]

*Service Law:*

C *Food Corporation of India Staff Regulations—Rule 58(8)—Departmental enquiry—Defence Assistance—Legal Practitioner prohibited—Employee can defend either in person or through an employee of the Corporation or of the Central Government or State Government—High Court directing to allow the assistance of a retired employee, though he is not a legal practitioner—On appeal held, it really amounts to permitting the retired employee to have regular practice—High Court committed error in giving such a direction—However, since the said assistance already given and the enquiry completed, the enquiry need not be reopened—Hence, the High Court's direction not interfered with.*

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E CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4432 of 1997.

From the Judgment and Order dated 19.12.96 of the Punjab and Haryana High Court in C.W.P. No.18180 of 1996.

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Y.P. Rao for the Appellant.

Pradeep Gupta and K.K. Gupta for the Respondents.

The following Order of the Court was delivered :

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Leave granted. We have heard learned counsel for the parties.

This appeal by special leave arises from the judgment and order of the High Court of Punjab & Haryana dated 19.12.1996 made in CWP No. 18180 of 1996.

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The admitted position is that pursuant to the charge-sheet dated

1.6.1996 issued to the respondent, on 20.11.1996, the Enquiry officer rejected permission to the respondent to engage Shri Kamal Kumar, a retired employee, as a defence assistant in the enquiry. The respondent was asked to appear either in person or through an employee of the Corporation or a Central Government or the State Government employee to defend himself. The respondent did not appear. On the other hand, he filed a writ petition in the High Court contending that he is entitled to the assistance of a retired employee of the Food Corporation of India. The High Court allowed the writ petition with direction to the corporation to allow the respondent to engage the retired employee as defence assistance. The question is: whether the High Court is right in giving the direction? It is true that in an enquiry conducted by the Department, the delinquent is entitled to a reasonable opportunity to defend himself including the assistance of the employee of the Corporation or of the Central Government or the State Government employee. Rule 58(8) of the Food Corporation of India Staff Regulations, which postulates as under:

"58(8) The employee may take the assistance of any other employee of the Corporation or any State or Central Government employee to present the case on his behalf, but may not engage a legal practitioner for the purpose unless the Presenting Officer appointed by the Disciplinary authority is a legal practitioner, or, the disciplinary authority, having regard to the circumstances of the case, so permits."

A reading thereof would clearly indicate that an employee is entitled to an opportunity to defend himself either in person or through an employee of the Corporation or of the Central Government or the State Government employee, in the departmental enquiry conducted against the delinquent. A legal practitioner is prohibited to appear before the Disciplinary Authority. Under these circumstances, a direction given by the High Court to allow the respondent to take the assistance of a retired employee, though he is not a legal practitioner who is prohibited to appear and assist the delinquent, in reality amounts to permitting the retired employee to have regular practice. The High Court has committed an error in giving such a direction.

However, It is stated that pursuant to the direction given by the High

A Court, the assistance of a retired employee was already given and the enquiry was completed. If that is so, the enquiry need not be reopened. In the above facts and circumstances of the case, we do not want to interfere with the directions given by the High Court.

The appeal is accordingly allowed. No costs.

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G.N.

Appeal allowed.