

From the Coordination (Policy) Wing, CVC

Engagement of Defence Assistant in Disciplinary Proceedings

The disciplinary proceedings of Central Services officers are governed by Central Civil Services (Classification, Control & Appeal) Rules, 1965. Engagement of defence assistant by the Charged Officer (CO) is covered under Rule 14(8) of Central Civil Services (Classification, Control & Appeal) Rules, 1965. Rule 14(8)(a) provides that "The Government servant may take the assistance of any other Government servant posted in any office either at the headquarter or at the place where the inquiry is held, 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." Engagement of a Government servant as defence assistant is subject to the condition that a Government servant cannot be defence assistant in more than three cases at a time. The Rule also provides for engaging a Government servant posted anywhere if the inquiring authority having regard to the circumstances of the case, and for reasons to be recorded in writing, so permits. Rule 14(8)(b) provides for engagement of retired Government servant as defence assistant.

However, the Public Sector Undertakings (PSUs) of the Central Government have their own Conduct, Discipline & Appeal (CDA) Rules and therefore, engagement of defence assistant by CO would be governed by the relevant Rules of that particular PSU. In a disciplinary case against an officer of a PSU of the Central Government, the CO requested that he may be allowed to use the services of one retired officer of the Central Government as his defence assistant. The relevant CDA Rules of that PSU permitted a person in the employment of that organization alone to be appointed as defence assistant. Hence, the Disciplinary Authority rejected the request on the ground that it was in violation of the CDA Rules. The CO filed a Writ Petition under Article 226 of the Constitution of India before the High Court of Madras for issue of Writ of Mandamus directing the organization to permit the CO to have the assistance of the retired officer in the disciplinary proceeding against him.

The main contention of the petitioner was that the Rules framed by the PSU do not have statutory force and therefore, the petitioner cannot be denied fair inquiry relying on Rules which do not have statutory force. The Counsel of the PSU submitted that the petitioner has got no absolute right to have an assistance unless the statute or rules/standing orders provide for such right and the refusal to grant the assistance of the choice of the petitioner would not amount to violation of natural justice.

The High Court of Madras vide its order dated 22.1.2016 dismissed the Writ Petition on the following grounds:

- i) A delinquent has no vested or absolute right of his choice to claim assistance of a particular person unless such right has flown from the relevant statute or rules.
- ii) The CO is bound by the restrictions in law or by statute in representation before the departmental proceedings and in such cases, the charge sheeted employee cannot complain of violation of principles of natural justice.
- iii) Writ of Mandamus cannot be issued against statutory rules or regulations.