

CENTRAL ADMINISTRATIVE TRIBUNAL- PRINCIPAL BENCH

Original Application No. 84 of 2002

and

Original Application No. 85 of 2002

New Delhi, this the 25th day of October, 2002

HON'BLE MR. KULDIP SINGH, MEMBER (JUDL)

OA 84/2002

Shri S.L. Ridla
S/o Late Shri G.R. Ridla
R/o 10-A/69, W.E.A.,
Karol Bagh, New Delhi.

-APPLICANTS

OA 85/2002

Shri D.V.S. Dagar
S/o Late Shri Daryao Singh
R/o 24-A, Ayodhya Enclave,
Sector-13, Rohini,
Delhi-110 085.

--Applicant

(By Advocate: Shri S.K. Gupta)

Versus

1. Lt. Governor
Government of NCT of Delhi,
Raj Niwas,
Delhi.
2. The Chief Secretary,
Government of NCT of Delhi,
Delhi Secretariat,
I.G. Stadium, I.P. Estate,
New Delhi-110 002.
3. Director,
Directorate of Education,
Old Secretariat,
Delhi.

-RESPONDENTS

(By Advocate: Shri Mohit Madan, proxy counsel for
Mrs. Avinish Ahlawat, Counsel)

O R D E R (ORAL)

By Hon'ble Mr. Kuldip Singh, Member (Judl)

By this common order I will decided two OAs
bearing OA No.84/2002 and OA No. 85/2002.

2. The facts as alleged by the applicants in both
the OAs are that the applicants were functioning as

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Assistant Sales Tax officer in Ward No.50 during the year 1995. On 13.11.1995 a CBI team lead by Inspector conducted a general surprise check in presence of independent witnesses in Ward No.50. During the course of said check they contacted certain persons who were having their cases pending in Ward No.50 including these two officers who are the applicants in these two OAs. During the said check it was found by the CBI that officers were indulging in taking bribe and had also observed that from Rs.50/- to Rs.2000/- were being regularly asked to be paid as bribe for assessment of cases and both these officers were also involved. So on the basis of the said report a memorandum was issued to both the applicants and ultimately vide impugned order dated 7.12.2000 punishment was awarded for withholding promotion for a period of three years in both the cases.

3. The applicants have challenged the same. The appeal against the said order was also rejected by the Lt. Governor. The applicant has also challenged the order passed by the disciplinary authority as well as the order passed by the appellate authority.

4. In the grounds to assail the order the applicants have pleaded that immediately on receipt of the charge-sheet, the applicant has asked for certain documents and statements recorded by the CBI authorities on the basis of which CBI authorities had drawn a conclusion that there was mass corruption going on in the sales tax department particularly in ward No.50 and one has to shell out some money to get the cases assessed but



no reply to the application of the applicants for demanding inspection of certain documents was received as such the same has been denied to the applicants.

5. Applicant in OA 84/2002 even while making a demand for supply of copies of certain documents had also asked for that a regular enquiry should be held under Rule 16(1) of the CCS (CC) Rules. But none of the documents were supplied nor any order was passed on the request for holding a regular enquiry. In case of applicant in OA 85/2002 he had also asked for certain documents. He was also not supplied with the copies of the same. But ultimately the applicant had to make a reply to the charge-sheet since juniors were getting promotion and in reply the applicant again reserved his right to file a detailed reply to the documents, if supplied. But nothing was done to supply the documents and the disciplinary authority on considering the reply submitted by the applicant passed the impugned order holding the applicant guilty and imposing a penalty of withholding promotion for a period of 3 years.

6. The disciplinary authority remained silent over the non-supply of documents. The appellate authority did observe that the applicants had asked for supply of documents which were necessary for defence but the appellate authority did not make any observation about the non-supply of documents or its effect and simply upheld the order of disciplinary authority withholding the promotion of the applicants for a period of 3 years.

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7. The learned counsel for the applicants submitted that this non-supply of documents has caused prejudice to them as no effective representation could be made by the applicants and in case of applicant in OA 84/2002 even no order under Rule 16(1) rejecting the request for holding a regular enquiry has been passed which has also caused prejudice to the applicants since the applicant has been deprived of his right to make proper defence. Had a regular enquiry been conducted then the applicant would have been in a better position to make defence in a more proper and effective manner.

8. As against this Shri Mohit Madan appearing for the respondents submitted that since there is no rule which provides, hence it was not necessary for supply of any documents, if asked for. Moreover it has not caused any prejudice to the applicant. This plea of the respondents contradicts their own stand particularly in para 4.6 the department itself had made a requisition when the documents were demanded from CBI/Sales Tax department by the Directorate but before the same could be received in full the representation dated 20.9.2000 was received in this Directorate. Therefore, the case of the applicant was processed so the documents as asked were not supplied.

9. It appears that the department did realise that these documents were relevant and that is why they had asked the concerned department for supply of the same. They have taken shelter under the plea that since the representation dated 20.9.2000 has been received so they processed the case for finalisation. However, the



department did not again apply their mind on the representation in which the applicants had reserved their rights with regard to the documents which were demanded by them so on that score the department instead of processing the case for finalisation of enquiry have not taken care of the right reserved by the applicants.

10. The plea that under Rule 16(1) documents are not required to be supplied in this regard I may mention that in Swamy's compilation of CCS (CC) Rules in its 26th Edition at page 79 there are Government of India instructions and instruction No.2 specifically deals with the Inspection of Documents may be permitted. The Government instructions also mentions that though it is not incumbent upon the disciplinary authority that it should give the accused official an opportunity to inspect the relevant records but it further states that if, however, an accused officer makes a request for permitting him to inspect the relevant records to enable him to submit his defence, the disciplinary authority may grant the necessary permission. This means that though the disciplinary authority has a right to withhold the inspection of documents but it requires detailed reasons and special orders even for withholding of certain documents. That too was not done in this case.

11. Shri Mohit Madan also submitted that no prejudice has been caused to the applicants for non-supply of the statements recorded by the CBI authorities.

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12. From the perusal of the charge-sheet issued to both the applicants it is evident that entire charge-sheet is based on proceedings conducted by the CBI check team when they did record statement of some of the assesses who were present in Ward No.50 and it was based on that statement and general impression that these charge-sheets were issued. When the basis of the charge-sheet is the statements recorded by the CBI and if the documents were not to be supplied then at least detailed order was to be passed why the same were not supplied or the inspection should have been allowed to the applicants.


13. In these circumstances I find that the department cannot take the plea that no prejudice has been caused to the applicants.

14. In case of applicant in OA 84/2002 since he has demanded a detailed enquiry under Rule 16(1) of the CCS (CCA) Rules, the Government of India instructions at page 78 of the Swamy's Book (Supra) it has been clearly mentioned that the implication of this order that on receipt of representation of the Government servant concerned on the imputations of misconduct or misbehaviour communicated to him, the disciplinary authority should apply its mind to all facts and circumstances and the reasons urged in the representation for holding a detailed inquiry and form an opinion whether an inquiry is necessary or not. So the disciplinary authority should naturally apply its mind on the request and should not have rejected their request solely on the ground that an inquiry is not mandatory and

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since in this case no such order has been passed which has also caused prejudice to the applicant and has also violated the Government of India instructions.

15. In this back ground of the facts I am of the considered opinion that the impugned orders in these cases cannot be sustained and the same are hereby quashed. However, the department is at liberty to proceed afresh for conducting the proceedings under Rule 16(1) of the CCS (CCA) Rules as per the Rules and instructions on the subject. Further, in case the department chooses to conduct the proceedings afresh then the same shall be completed within a period of 4 months from the date of receipt of a copy of this order. However, if the enquiry is not completed with a period of 4 months then the applicants shall be at liberty to approach the Tribunal for abatement of proceedings No costs.


(KULDIP SINGH)
MEMBER (JUDICIAL)

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for MR