

26

Central Administrative Tribunal
Principal Bench
New Delhi

O.A. No. 1657/98

Decided on 28.6.99

Sh. Bhim Singh Dahiya..... Applicant

(By Advocate: Shri P.P. Khurana)

Versus

UDI & Ors. Respondents

(By Advocate: Shri V.P. Uppal)

CORAM

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)

HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)

1. To be referred to the Reporter or Not? YES

2. Whether to be circulated to other outlying
benches of the Tribunal or not? No.

Adige
(S.R. ADIGE)
VICE CHAIRMAN (A)

Central Administrative Tribunal
Principal Bench

O.A. No. 1657 of 1998
M.A. No. 743 of 1999

New Delhi, dated this 28 JUNE 1999

27

Hon'ble Mr. S.R. Adige, Vice Chairman (A)
Hon'ble Mrs. Lakshmi Swaminathan, Member (J)

Shri Bhim Singh Dahiya,
S/o Shri C.R. Dahiya,
R/o House No. 127, Sector 14,
Sonepat-131001,
Haryana. ... Applicant

(By Advocate: Shri P.P. Khurana)

Versus

1. Union of India through
the Secretary,
Ministry of Finance,
Dept. of Revenue, North Block,
New Delhi.
2. Central Board of Direct Taxes,
through its Chairman,
North Block, New Delhi.
3. Central Vigilance Commission,
Jam Nagar House, New Delhi.
4. Sarvesh Kumar,
Commissioner for Departmental Inquiry,
Jam Nagar House, New Delhi. ... Respondents

(By Advocate: Shri V.P. Uppal)

O R D E R

BY HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)

Applicant impugns respondents' orders dated 17.7.98 (Ann. A-11) and dated 4.8.98 (Ann. A-1) declining to supply him copies of two documents dated Sl. Nos. 29-E-2 and 29-E-3 appearing in the list of documents dated 17.7.98 in connection with a Departmental proceeding instituted against him.

2. The case of the applicant who is a 1963 IRS (IT) batch officer and who retired as Chief Commissioner of Income Tax, Ahmedabad on 31.3.98 is

that on 17.12.93 he was issued a Memo calling upon him to explain certain alleged irregularities. When he asked for inspection of copies of the documents mentioned in the Memo, the same was turned down on 17.1.94 on flimsy grounds. He submitted his reply to the aforesaid Memo on 30.3.94 which were supplemented by further replies on 27.4.94 and 4.10.94. Applicant contends that after going through his replies, the Disciplinary Authority was of the view that no charge lay against applicant, and he should have closed the matter but he chose to refer ^{it} to CVC on 16.11.94, who reiterated his earlier *ex parte* advice. Thereupon R-1 acting on this advice issued Charge Memo dated 18/20.4.95 (Ann. A-2). Applicant states that thereupon he filed his defence statement on 27.6.95 under protest for non-supply of documents sought for by him. Applicant states that in September, 1995 his case was again examined by respondents who gave a finding that he was not chargeable on any account and this finding was even confirmed by the then Prime Minister, but instead of withdrawing the Charge Memo the matter was again referred to CVC, even though it was for the Disciplinary Authority alone to decide on the issuance/withdrawal of the Charge Memo. Thereupon applicant challenged the D.E. vide O.A. No. 152/98 which was dismissed by order dated 4.5.98 (Ann. A-8). After the enquiry got under way, applicant states that he submitted a list of documents required for his defence on 17.7.98 in regard to which orders were passed on 17.7.98 that

"all the documents except Sl. Nos. 29-E-2 and 29-E-3 which are not relevant to the charge sheet are permitted" to be supplied (Ann. A-11). (29)

Applicant states that upon his request on 24.7.98 for supply of the aforesaid two documents to the same was rejected by letter dated 4.8.98 against which this O.A. has been filed.

3. Applicant asserts that the relevance of the documents has to be seen from the point of view of the charged officer and cannot be based on the ipse dixit of the Disciplinary Authority. Attention is invited to Rule 14(12) CCS (CCA) Rules. He asserts that his case all along has been that Respondents No.1 & 2 succumbed to pressure exerted by R-3 (CVC), to establish which it is very necessary to produce the aforesaid documents in the background of various Hon'ble Supreme Court's rulings. Applicant asserts that in the absence of those documents, it will be practically impossible for him to defend himself properly.

4. Respondents in their reply challenge the O.A. They assert that denial of documents 29-E-2 and 29-E-3 is correct and in accordance with Rule 14(12) CCS (CCA) Rules as not being relevant to establish the truth or falsehood of the charge. It is contended that the Disciplinary Authority alone is competent to decide what is relevant and what is not, and it is within his competence to deny access to those documents, if in his opinion those documents are not relevant.

30

5. Applicant has filed rejoinder in which he has broadly reiterated the contents of the O.A.

6. We have heard applicant's counsel Shri Khurana and respondents' counsel Shri Uppal. Both sides have broadly reaffirmed the stand taken in their pleadings and summarised above. While Shri Uppal has relied upon the rulings in 1997 (3) SCC 387 and 1996 (5) SCC 474 to emphasise that applicant is entitled access only to relevant documents, Shri Khurana has relied upon 1994 (28) ATC 646 and 1993 (1) SCC 13 in support of his contentions.

7. We have considered the matter carefully. Respondents have denied applicant access to documents at Sl. Nos. 29-E-2 and 29-E-3 on the ground that they are not relevant for the purpose of the D.E.

8. A perusal of the list of documents at Ann. A-10 reveals that document No. 29-E-2 is the Department's letter dated 16.11.94 asking CVC to reconsider his opinion as there was no charge against the officer while documents No. 29-E-3 are department's letter to CVC dated November, 1995 and 8.3.96 containing findings of Revenue Secretary and Finance Minister that no charge lay against the officer and asking CVC to reconsider his opinion.

(3)

9. We have considered the matter carefully.

Respondents have not denied the existence of their letters but have denied applicant access to the same, claiming that they are not relevant to determine the truth or falsehood of the charge against him. In this connection it has been asserted by respondents' counsel that the decision to issue the above charge sheet to applicant was taken after the above correspondence ^{was taken into} ~~and took~~ ^{it} into account.

10. Rule 14(12) CCS (CCA) Rules permits the inquiry authority for reasons to be recorded in writing to refuse access to such documents as are in its opinion not relevant to the case. However Rule 14 (GOI Instruction 23 Para 2) lays down that

"The right of access to official records is not unlimited and it is open to the Govt. to deny such access if in its opinion such records are not relevant to the case or not desirable in the public interest in the public interest to allow such access. The power to refuse access to official records should, however, be very sparingly exercised. The question of relevancy should be looked at from the point of view of the defence and if there is any possible line of defence to which the document may, in some way, be relevant, though the relevance is not clear to the Disciplinary Authority at the time that the request is made, the request for access should not be rejected. The power to deny access on the ground of public interest should be exercised only when there are reasonable and sufficient grounds to believe that public interest will clearly suffer. Cases of the latter type are likely to be very few and normally occasion for refusal to access on the ground that it is not in public interest should not arise if the document is intended to be used in proof of the charge and if it is proposed to produce such a

(A)

document before the Inquiry Officer, if an enquiry comes to be held. It has to be remembered that serious difficulties arise when the Courts do not accept as correct the refusal by the Disciplinary Authority, of access to documents. In any case, where it is decided to refuse access, reasons for refusal should be cogent and substantial and should invariably be recorded in writing." 32

11. In the present case no reasons have been given by the I.O. to deny applicant access to the aforesaid two documents beyond stating that they are not relevant to the chargesheet why they are not relevant has not been mentioned.

12. Applying the aforesaid rule to the facts of the present case and in particular that position of the rule which is underlined above, we hold that applicant is entitled to access to the two documents as it cannot be said that the same are not relevant or pertinent to this case.

13. Accordingly this O.A. succeeds and is allowed. ^{The impugned order are quashed and it stands} Respondents are directed to provide applicant copies of the aforesaid two documents within one month from the date of receipt of a copy of this order. Under the circumstances no orders are separately required on M.A. No. 743/99 pressed by applicant for production of those two documents. No costs.

Lakshmi Swaminathan
(Mrs. Lakshmi Swaminathan)
Member (J)

S.R. Adige
(S.R. Adige)
Vice Chairman (A)

/GK/