

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
N E W D E L H I

(A)

O.A. No. 2674/90
T.A. No.

199

DATE OF DECISION 25.1.91

<u>Shri Inder Jit Kumar</u>	Petitioner
<u>Shri G.K. Aggarwal</u>	Advocate for the Petitioner(s)
Versus	
<u>Union of India</u>	Respondent
<u>Shri P.P. Khurana</u>	Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. P.C. Jain, Member (A)

The Hon'ble Mr. J.P. Sharma, Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

JUDGMENT

(Judgment of the Bench delivered by
 Hon'ble Mr. J.P. Sharma, Member (J))

The applicant, Scientist-G, DRDO filed an application under Sec.19 of the Administrative Tribunal Act, 1985 aggrieved by the order dated 6-12-1990 (Annex.A-1). By this confidential memo on the subject of handing over charge by the applicant of Director S.A.G., Delhi he was asked to explain within 15 days regarding the circumstances under which the laid down security instructions with regard to maintenance of classified documents were not followed.

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The applicant in the O.A. claimed the relief that the order dated 6-12-1990 (Annex.A-1) be quashed and that his application be entertained in relaxation of the time limit prescribed in Sec.20(1) of the A.T. Act, 1985.

The facts of the case are that the applicant was Director, S.A.G. in Defence Research Development Organisation (in short D.R.D.O.) since 1973. He was transferred from the post of Director, S.A.G. to be Officer on Special Duty vide letter dated 5.7.1990 (Annex.A-2) and Dr. C.R.Chakravarty was appointed as Director, S.A.G. vide order dated 5.7.1990 (Annex.A-3); the applicant challenged both these orders (Annex. A-2 & A-3) in another O.A. 1336/90 before the Tribunal. It is stated by the applicant that soon after his transfer vide order dated 5-7-1990, the applicant was asked to hand over charge as Director, S.A.G. to Dr.Chakravarty. Since Dr.Chakravarty failed to produce special security clearance required of the incumbent of the office of Director, S.A.G., applicant expressed his inability to hand over the charge to him in absence of such special security clearance.

In O.A. No.1336/90 the applicant got an interim stay on 9.7.1990 and operation of both the orders dated 5.7.1990 (Annex.A-2 and Annex.A-3) was stayed. However by the order dated 16.7.1990 the interim stay was vacated. In the meantime on 10.7.1990 a letter was sent to the applicant in which it was stated that the premises used by the applicant as Director, S.A.G. were broken open and classified.

material scattered all over was found, in absence of the applicant. The applicant was also asked to hand over the keys etc. of the Almirah and cupboards. To this letter the applicant replied vide letter dated 12.7.1990 (Annex.A-5) and also lodged F.I.R. at Police Station regarding information given to him that the classified material was scattered all over in the room used by him as Director, S.A.G. The applicant was again asked by the letter dated 30.8.1990 advising him to hand over keys of Almirah and the cupboards to Director, Security D.R.D.O. by 5-9-1990 failing which the Hd. Qrs. will be constrained to take necessary action in accordance with the rule. Ultimately the applicant under the direction of the Tribunal in M.P.No.2118/90 handed over the keys on 6-9-1990 in the office of D.R.D.O. By the order dated 6-9-1990 (Annex.A-8) a Board was constituted with Director, ASG as Chairman and Director, Security R&D and Director, AC&SA as Members to open the Almirahs & cupboards in the office of S.A.G. on 7-9-1990, at 10.00 hrs. to prepare inventory of all the relevant materials and the applicant was directed to be present at that time. On applicant's request the date was postponed to 10.9.1990. The Board opened the Almirahs & cupboards but the applicant was not present at that time because ^{alleged by the applicant} ^{to} ^{cause as} the Board's proceedings were aimed at ^{to} cover up the respondents' acts of omission and commission and a further attempt to falsely implicate the applicant. The applicant received the inventory prepared by the

Board by the letter dated 9.11.1990 (Annex.A-9)

After this, impugned order dated 6-12-1990 (Annex.A-1) was issued to the applicant alleging incorrect maintenance of the records and the explanation of the applicant was called for within 15 days.

The impugned order dated 6-12-1990 is reproduced below:-

"CONFIDENTIAL"

REGISTERED

No.RD/Pers-7/61/SG
Government of India
Ministry of Defence
Defence R&D Organisation
'B' Wing, Sena Bhavan
New Delhi-110011

06 December, 1990

To

The I.J.Kumar
B-3/11, Paschim Vihar
New Delhi-110063

Subject: HANDING OVER CHARGE OF DIRECTOR,
SAG,DELHI

As you are aware, a Board was constituted vide this HQrs letter No.13736/SAG/RD/Pers-5 dated 6-9-90 to prepare an inventory of the relevant materials - confidential, sensitive and otherwise - in the locked almirahs and cupboards held in the Office of Director,SAG. The Board had assembled on 10 Sep 90. Despite the fact that you had been directed to be present at the time of opening of almirahs and cup-boards

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you had failed to do so. The Board, therefore, opened all the locked almirahs and cup-boards lying in the Office of Director, SAG in your absence. The Board has, inter-alia, made the following observations:

- a) None of the almirahs nor the filing cabinet had any inventory list for comparing with the contents.
- b) No 'List of Classified Files', 'List of Files' register to record receipt/despatch of classified mail, whether SECRET or TOP SECRET, was found. Two very old registers, documenting some earlier classified mail were found, but there was no source of information to tell the Board what the contents of the almirahs/filing cabinet should be, what the contents of the files/folders should be, how many TOP SECRET or SECRET letters/documents, messages, tapes should there be etc.
- c) Classified letters were not properly filed; most of these were kept loosely in or out of the folders and, in most cases, there was no minuting or indexing of these documents.
- d) There were multiple Part Cases created to the same Main File; none of these were linked together nor were these linked to the Main Files being referred to.
- e) There were a large number of photocopies of classified documents and letters, including

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TLP SECRET. No register containing record of material photocopied was found.

- f) A large number of classified drafts, typed as well as hand-written mostly unsigned were found kept loose or in unmarked folders. A number of such letters spanning the last 15 years were lying loose, in some cases, without even a folder.
- g) Many envelopes containing classified messages and tapes sent by users for analysis were found kept haphazardly; almirah No.6 was full of these. A very large number of these were unopened/sealed.
- h) A large number of classified letters were kept in folders loosely, not even tagged to the files.
- i) No accounting of classified documents seems to have been resorted to.
- k) A large number of multiple copies of documents/letters/minutes etc. were found lying in different folders.
- l) Many single folders contained letters/documents that were not at all related.
- m) Minutes of CPCs were contained in several folders; there was no single folder which had a record of all CPC meetings. Further, there was no single location or shelf where all the separately marked folders related to CPC were co-located.

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- n) No weeding out of classified letters/documents seems to have been undertaken for the past 10-15 years; there are scores of papers which need to be screened for shredding/burning.
- o) Procedural norms for handling mail, even TOP SECRET and SECRET mail, have not been followed.
- p) Classified mail has been kept in folders without proper labelling of the folders; in many cases the folders gave no indication of the file number, subject or classification of the documents/papers inside; folders with no classification marked on top contained classified, in some cases TOP SECRET documents inside.

2. You are hereby required to please explain within 15 days of the receipt of this communication the circumstances under which the laid down Security Instructions with regard to maintenance of classified documents were not followed. In case no reply is received within the stipulated time limit, it will be assumed that you have nothing to say in this regard and further action will be taken as per rules.

3. Please acknowledge receipt.

Sd/-Dr.A.K.Datta
Director of Personnel
for DIRECTOR GENERAL RESEARCH & DEVELOPMENT"

The applicant as an interim relief requested for extension of time for filing the reply to the show cause notice (Annex.A-1) and the time was extended till 7.1.1991.

The applicant filed the reply on 28.12.1990 to the show cause notice dated 6-12-1990 which is on page 36 to 42 of the O.A.

The Respondents filed the reply to the O.A. on 17.1.1991 stating therein that the O.A. has become infructuous as a reply has already been filed by the applicant. It has also been stated that the applicant was transferred by the order dated 5-7-1990 but he went away locking the room as well as the almirahs and cupboards and since Dr.Chakarvarty had to join in place of the applicant so the room was got opened. It is further stated that the keys of the almirahs and cupboards were handed over by the applicant on 6-9-1990 and these keys were kept in sealed cover in the presence of the applicant and a Board was constituted for opening the almirahs and cupboards to prepare inventory of all the relevant material to be found inside. The applicant did not present himself on 7-9-1990 for the preparation of the inventory of the articles and he took time which was granted till 10.9.1990. Applicant did not present himself on that day and he sent a message that the Board might go ahead with the opening of the almirahs and cupboards etc. The Board assembled at the scheduled time on 10.9.1990 to open the almirahs and prepared inventory of all items. A copy of the inventory was made available to the applicant also. A number of security lapses were observed by the Board. As a result of this the applicant vide letter dated 6-12-1990 was asked to explain the circumstances under which the laid down security instructions with regard to the maintenance of classified documents were not followed by him. This was

simple communication to the applicant to which the applicant also replied.

In the rejoinder the applicant admitted having filed the reply dated 28.12.1990, to show cause notice dated 6-12-1990.

We have heard the learned counsel of the parties at length. Both the parties have agreed that this O.A. be disposed of at the admission stage itself. The learned counsel for the applicant argued that since the rooms, almirahs & cupboards were broken open and the material thrown scattered all over the rooms in absence of the applicant on 7-7-1990 so there is no question of any lapses of security on the part of the applicant. In fact the Board in this case consisted of three members and in the rejoinder filed by the applicant he has not alleged animus against any of them. In fact the applicant was asked to be present at the time of preparation of inventory by the Board but the applicant himself avoided without any reasonable cause. But contention of the learned counsel that the locks of almirahs and cupboards were broken in his absence much earlier ~ on 7-9-1990 is not supported by any substantial fact. In fact what is stated therein by the respondents is that Dr.Chakravarty took charge on 6-7-1990 and the room was got opened, there is no mention of breaking open of the lock of the almirahs or of the cupboards. As such the applicant could not show that the Almirahs or cupboards were opened before 10.9.1990.

It is argued by the learned counsel for the applicant that because already C.A.No.1336/90 was filed so there developed adverse relationship between the parties but merely making an officer as respondent

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would nor lead to any such inference.

It is further argued by the learned counsel for the applicant that the show cause notice has been given only to discourage the applicant in prosecuting his application filed earlier before the Tribunal. But we find no substance in this contention.

It has been further contended by the learned counsel of the applicant that the jurisdiction to issue show cause notice vests with the President of India alone and show cause notice dated 6-12-1990 is illegal and signed by an authorised person. In fact the letter dated 6-12-1990 is only a letter simply communicating to the applicant security lapses found in not keeping the documents etc. under the laid down security rules. It is not a step in aid of disciplinary action against the applicant. Thus show cause notice dated 6-12-1990 cannot be said as not signed by a legally authorised person.

The applicant has already submitted a reply to the show cause notice and in view of this matter also, the present application has become infructuous.

The U.A. is dismissed as devoid of merits and also as infructuous leaving the parties to bear their own costs.

J.P.Sharma

J.P.Sharma 25/1/91
Member (J)

25/1/91
P.C.Jain,
Member (A)