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Central Administrative Tribunal, Principal Bench, New Delhi

O.A.No.2537/2004
with
O.A.No.2547/2004

New Delhi, this the 3rd day of March, 2005

Hon'ble Mr.Justice V.S. Aggarwal, Chairman
Hon'ble Mr.S.K. Naik, Member(A)

O.A.No.2537/2004

H.D. Sharma,
S/o Shri R.S. Sharma,
R/o Flat No.3,
Bhavishya Nidhi Enclave,
New Delhi-17

....Applicant

(By Advocate: Shri U.K. Shandilya)

Versus

Union of India, through:

1. The Secretary,
Ministry of Labour,
Govt. of India,
Shram Shakti Bhawan,
New Delhi.
2. Chairman,
Central Board of Trustees,
Employees Provident Fund, and
Minister for Labour,
Govt. of India,
Shram Shakti Bhawan, Rafi Marg,
New Delhi.
3. Shri M.K. Ghosh,
CDI & Inquiring Authority,
Satarkta Bhawan, CVC,
GPO Complex,
I.N.A., New Delhi-23

4. Central Provident Fund Commissioner,
 Bhavishya Nidhi Bhawan,
 14, Bhikaji Cama Place,
 New Delhi.

5. Addl. CPFC (HR & Compliance),
 Bhikaji Cama Place,
 New Delhi-66

....Respondents

(By Advocate: Shri V.S.R. Krishna)

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 Central Board of Trustees,
 Employees Provident Fund, and
 Minister for Labour,
 Govt. of India,
 Shram Shakti Bhawan, Rafi Marg,
 New Delhi.

3. Shri Lachhman Singh,
Inquiring Authority,
E-7E, DDA Flats,
Munirka,
New Delhi-67

4. Central Provident Fund Commissioner,
Bhavishya Nidhi Bhawan,
14, Bhikaji Cama Place,
New Delhi

.... Respondents

(By Advocate: Shri V.S.R. Krishna)

Order(Oral)

Justice V.S. Aggarwal, Chairman

The applicant H.D. Sharma by virtue of the present application seeks a direction to the respondents to give the documents demanded by him for his defence. He also prays that the proceedings held so far should be quashed and de novo enquiry should be directed.

2. The applicant was a Regional Provident Fund Commissioner Grade - I. He is facing departmental proceedings. It becomes unnecessary for us to delve into the exact nature of the proceedings which is not relevant at this stage but suffice to say that the learned counsel for the applicant urged -

- (a) that the applicant should be allowed to cross-examine the witnesses who have been examined, in his defence;
- (b) the applicant had asked for certain documents which are being denied. The enquiry officer should be directed to pass a reasoned and a speaking order; and

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(c) the privilege has been claimed and, if at all, it could only be claimed by the Head of the Department/In-charge of the Documents.

3. The application is being opposed.

4. We have heard the parties counsel and have seen the relevant record.

5. Pertaining to the first question that has been raised, it goes without saying that it is for the enquiry officer to consider if the facts and circumstances permit the request of the applicant to allow him to cross-examine certain witnesses which might have been examined when he had been proceeded ex-parte. We are informed that till date no such request has been made and, therefore, it is unnecessary at this stage for this Tribunal to delve into this controversy.

6. Pertaining to the second question that reasons should be recorded, it goes without saying that when such an order is passed, it should be a reasoned order. But while disposing of this controversy, we direct that when the applicant seeks the documents, he must mention the nature of the documents and its relevancy in his application and thereupon only, the enquiry officer would pass a reasoned order if the documents are relevant and should be supplied or not.

7. As regards the last contention, indeed it is always the Head of the Department who is in custody of the documents and who has to claim privilege and it is hoped that if documents have to be supplied and

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privilege at all has to be claimed pertaining to those documents, the necessary permission of the Head of the Department/ In-charge shall be taken.

8. Resultantly, we dispose of the present applications directing:

- (a) that the applicant shall claim the documents mentioning their relevancy and thereupon the enquiry officer will pass a reasoned order in this regard;
- (b) if privilege has to be claimed, the necessary permission must be obtained of the Head of the Department/ In-charge; and
- (c) if the applicant has to make an application, he may do so within two weeks from today.

(S.K. Naik)
Member(A)

/dkm/

(V.S. Aggarwal)
Chairman

Attested
(C)
07/03/05