

10
CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 261 OF 1996
Cuttack, this the 30th day of March, 1999


Narendra Kumar Bhuyan Applicant


Vrs.

Union of India and others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? Yes.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? NO -


(G. NARASIMHAM)
MEMBER (JUDICIAL)


(SOMNATH SOM)
VICE-CHAIRMAN 20.3.99

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.261 OF 1996

Cuttack, this the 30th day of March, 1999

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

.....

Narendra Kumar Bhuyan,
aged about 55 years,
s/o late Ghanashyam Bhuyan,
at present working as Senior Armourer,
A.R.C.Charbatia, At/PO-Charbatia,
District-Cuttack Applicant

Advocates for applicant - M/s C.A.Rao
S.K.purohit
S.K.Behera
P.K.Sahoo

Vrs.

1. Union of India, represented by the
Secretary to Government, Cabinet Secretariat,
R.K.Puram, New Delhi-110 012.
2. Director, Aviation Research Centre,
Cabinet Secretariat,
East Block-V,
R.K.Puram, New Delhi-110 012.
3. Deputy Director, ARC Charbatia,
At/PO-Charbatia, Dist.Cuttack.
4. Assistant Director (A), ARC Charbatia,
At/PO-Charbatia, Dist.Cuttack.....Respondents
Advocate for respondents - Mr.Ashok Mohanty
Sr.C.G.S.C.

O R D E R

S.Sm
SOMNATH SOM, VICE-CHAIRMAN

In this application under Section 19 of Administrative Tribunals Act, 1985, the petitioner, who is a Senior Armourer in Aviation Research Centre, Charbatia, has prayed for quashing the departmental proceedings initiated against him under Rule 14 of Central Civil Services (Classification, Control & Appeal) Rules, 1965, in the order dated 12.2.1996 at Annexure-4. On the date of admission of

the application on 2.4.1996, the stay of the departmental proceedings was granted for fifteen days and in the order dated 24.4.1996, after hearing the learned counsels of both sides, the stay was made absolute till the disposal of the Original Application.

Facts of this case fall within a very small compass and can be briefly stated.

2. The applicant had earlier filed O.A.No.625 of 1994, which is pending, seeking promotion over his juniors. In OA No. 625 of 1994 along with the Application at Annexure-3 the applicant had filed Aviation Research Centre (Ordnance) Service Rules, 1983. These Rules were marked "Secret". The departmental authorities (respondents in this case) took the view that as the above Service Rule was secret, the applicant should not have filed the Service Rule as Annexure-3 to his OA No.625/94. Explanation of the applicant was called for in letter dated 9.2.1995 (Annexure-1). The applicant in his reply dated 21.2.1995 (annexure-2) explained that he had not supplied the copy of the Service Rule to his Advocate. His Advocate was conducting a number of similar cases of other employees of the Aviation Research Centre and the Service Rule was with him and he had enclosed it in other cases also. For proper adjudication of OA No. 625/94, the Rule was enclosed. The applicant also explained that the Rule was framed under Article 309 of the Constitution and therefore, is a statutory Rule and is a public document which has been circulated amongst the staff. As such, the applicant submitted that he had not violated Rule 11 of Central Civil Services (Conduct) Rules, 1964. Respondent no.4 thereafter wrote to the concerned Advocate about the source from which the Rule was availed of by him in letter dated 30.8.1995 which is at Annexure-3. Thereafter the departmental authorities

13

in their order dated 12.2.1996 (Annexure-4) initiated the departmental proceedings under Rule 14 of CCS (CCA) Rules, 1965 against the applicant. The applicant has stated that the Advocate of the applicant obtained the copy of the Rule from ex-Senior Standing Counsel, late C.V.Murty, who was appearing in an earlier case, TA No.31/87 and thereafter this has been utilised in many other cases mentioned by the applicant. The applicant has also stated that his Advocate is no way answerable to the departmental authorities and the communications between him and his Advocate are confidential and privileged in nature. He has also stated that the Rule is a public document. On the above grounds, he has come up with the prayers referred to earlier.

3. The respondents in their counter have stated that this Rule was not marked to the applicant, and he was not expected to have the same with him. He might have come across the Rule in course of official duties, but he was not authorised to cause production of the same as Annexure-3 in OA No.625/94 and by doing so, he has violated Rule 11 of the CCS (Conduct) Rules, 1964. This Rule lays down that no Government servant shall except in accordance with any general or special order of the Government or in performance in good faith of the duties assigned to him, communicate directly or indirectly, any official document or any part thereof or information to any Government servant or any other person to whom he is not authorised to communicate such document or information. The respondents have stated that the document filed at Annexure-3 in OA No. 625/94 is a secret document. The applicant should not have kept it with him and by keeping it with him and by filing the same in OA No. 625/94 he has violated Rule 11 of the CCS(Conduct) Rules, 1964. The respondents have stated that in reply to

J. Som.

the showcase notice the applicant has mentioned that he did not supply the document in question to his Advocate. His Advocate was dealing with similar cases of other employees of A.R.C. and had this Service Rule with him and therefore, he enclosed the same to the O.A. To ascertain the correctness of the facts, the respondents spoke to the concerned Advocate. But as no reply from the concerned Advocate was received, it was felt that the applicant must have supplied the document and therefore, the charge under Rule 14 of the CCS (CCA) Rules, 1964 has been rightly initiated. The respondents have further stated that the applicant belongs to an organisation which has been incorporated as an intelligence organisation. Intelligence Organisation (Restriction of Rights) Act, 1985 has been promulgated and any circular in connection with Cadre Rules of CDS where the applicant was working is being considered classified and therefore, the Cadre Rule was considered a secret document. The respondents have denied the averment of the petitioner that the Service Rule is a public document as it has been framed under Article 309 of the Constitution. The respondents have further stated that marking of a document as "secret" by the Department cannot be questioned in a court of law and if it is accepted that this Rule did not deserve to be marked secret, even then the applicant did not have any authority to cause its production and by doing so he has violated Rule 11 of CCS (Conduct) Rules, 1964. On the above grounds, the respondents have opposed the prayer of the applicant.

S. Som.

4. We have heard Shri C.A.Rao, the learned counsel for the petitioner, and Shri Ashok Mohanty, the learned Senior Standing Counsel appearing on behalf of the respondents, and have also perused the records. We have also perused the records of OA No. 625 of 1994 and Annexure-3 thereof.

5. In this case, the departmental proceedings have been initiated against the applicant under Rule 14 of CCS (CCA) Rules, 1965 and as earlier noted, the proceedings have been stayed by the Tribunal after admission of this O.A. and the stay has been subsequently made absolute. Thus till now no final order adverse to the interest of the applicant has been passed. It is also to be noted that in the case of disciplinary proceedings the scope of interference by the Tribunal is somewhat limited and generally interference by the Tribunal is possible only after conclusion of the departmental proceedings and imposition of penalty. But that does not mean that the Tribunal has no power to interfere if a case is made out in law for such interference. The question for consideration is if in the facts and circumstances of this case, such interference is called for. This question hinges on the nature of the document at Annexure-3 in OA No.625 of 1994. At Annexure-3 is a letter dated 23.2.1984 from Assistant Director (Administration) of the Directorate General of Security, enclosing a copy of the Cabinet Secretariat Notification No.A-12018/33/81-DO-I, dated 28.12.1983 on the subject mentioned in the letter. It is mentioned there that the Service Rules may be brought to the notice of all concerned. It is this letter which is marked "secret". At the enclosure to this letter is a notification dated 28.12.1983 notifying Aviation Research ^{Centre} / (Ordnance) Service Rules, 1983. It is seen that this notification is also marked "Secret". As noted in the letter dated 23.2.1984, which was addressed to Assistant Director (A), Charbatia, this was circulated in Memo dated 30.3.1984 of Assistant Director (A), Charbatia. This this Memo to which apparently were enclosed the letter dated 23.2.1984 and its enclosure,

S. J. M.

the notification dated 28.12.1983, which is the Rule, was marked to Assistant Director (Intelligence), ARC, Charbatia; A.D.(T), ARC, Charbatia; Commandant, CSD; Workshop Superintendent, S.P.O, Accounts Officer, Administrative Officer, and N.G.O. The Assistant Director (A), in the office of Director General of Security, had directed that the Service Rule may be brought to the notice of all concerned. This direction was also communicated by Assistant Director (A) in his memo dated 30.3.1984 when he circulated the letter dated 23.2.1984. The persons concerned with this Service Rule obviously are persons who are governed by the Rules and the persons who are expected to administer the Rules and therefore, the direction in the letter dated 23.2.1984 must be understood to mean that the Rule was due to be circulated amongst all persons who are governed by the Rules and who are required to administer the Rules. Admittedly, the petitioner is a person who is governed by this Rule and therefore, following the direction, the letter at Annexure-3 should have been circulated to the applicant and all other staff who are governed by the Rule. Therefore, it cannot be held that access of the applicant to this Service Rule is unauthorised.

6. The second aspect is , even if it is taken that the Service Rule has fallen in the hands of the applicant by virtue of an order which authorised circulation of the Rule to him, whether he was right in giving a copy of this to his Advocate. On this aspect the first point to be noted is that the applicant has denied that he had given a copy of this Rule to his Advocate. On 12.2.1996 the draft charge has been issued under Rule 14 of CCS (CCA) Rules, 1965 for imposition of major penalty. The only article of charge is about production of the ARC (Ordnance) Service

J Som

Rules and the forwarding letter dated 23.2.1984 both of which, as we have already noted, were marked "Secret". Whether a document should be marked "secret" or not falls squarely within the domain of the executive Government and the Tribunal cannot have any say in the matter. As regards production of such documents before the Tribunal for just adjudication of any matter before any court or tribunal, there are provisions authorising the departmental authorities to claim privilege and there are also rules and large number of decisions as to how such claims seeking privilege with regard to production of documents are to be dealt with. These do not concern us in the present case. The point for consideration is whether the notification dated 28.12.1983 should have been marked "Secret". As we have already noted, this is a matter entirely for the departmental authorities. But even then we note that this is a Service Rule dealing with the definition, constitution of the service, its composition, authorised strength, initial constitution, seniority, maintenance, probation, disqualification, executive instructions, etc. Prima facie it does not appear that there can be any element of confidentiality attached to this Rule which in any case has been ordered to be circulated amongst all concerned meaning, as we have held, all those who are governed by the Rules and all those who are required to administer the Rules. Moreover, this Rule dated 28.12.1983 has been marked as a notification and this Rule has been issued in exercise of the powers under Article 309 of the Constitution. Normally, "notification" means a notification published in the gazette. The General Clauses Acts of a large number of States like Andhra Pradesh, Assam, Bihar, Madhya Pradesh, Punjab, etc., define "notification" as a notification published in the official gazette. In the General Clauses

J.Sm

18
Act, 1897, there is no definition of "notification". But as an usual practice, notifications are published in the Government Gazette. From Annexure-3 of OA No. 625 of 1994 it is not clear whether this Service Rule had been notified in the Gazette. If this Rule had been notified in the Gazette, then obviously it becomes a public document and the respondents cannot claim that it is a secret document and should not have been produced by the applicant, a charge which the applicant has denied in response to the notice calling for his explanation.

7. In the context of the above analysis, we note that the Rule was ordered to be circulated to all concerned. We also note that the Rule came out in the form of a notification. It is not clear from Annexure-3 if it was at all notified in the Government Gazette. If it was so notified, then no confidentiality attaches to the Rule. We also find that prima facie there is no element of confidentiality in this Service Rule. Even though we have noted this, this is a matter entirely for the executive authorities to decide. In view of the above facts, we hold that this is one of the rare cases which requires interference by the Tribunal even at a stage when the proceedings have just been initiated. In consideration of the above, we hold that the proceedings are misconceived and therefore, the same are quashed.

8. In the result, therefore, the Original Application is allowed. Annexure-4, which is the charge issued in letter dated 12.2.1996, is quashed. No costs.

(G. NARASIMHAM)

MEMBER (JUDICIAL)

(SOMNATH SOM)

VICE-CHAIRMAN