

**Central Administrative Tribunal
Principal Bench, New Delhi**

OA No. 07 /2014

This the 22nd day of December, 2015

**Hon'ble Shri A.K. Bhardwaj, Member (J)
Hon'ble Shri K.N. Shrivastava, Member(A)**

Sh. D. Rajamani
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Employed as:

Dy. Legal Advisor
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... Applicant

(By Advocate: Mr. D.S. Chaudhary).

VERSUS

1. Union of India
Through the Secretary,
Ministry of Personnel, Public Grievances & Pensions
Dept. Of Personnel & Training,
Central Secretariat, North Block,
New Delhi-110 001

2. The Director
Central Bureau of Investigation
Lodhi Road, CGO Complex
New Delhi-110003 Respondents.

(By Advocate: Mr. Ashok Kumar).

ORDER (ORAL)

By Hon'ble Shri A.K. Bhardwaj, Member (J):

The prayer made in the Original Application filed under section 19 of Administrative Tribunals Act 1985 reads thus.:

“8.1 The impugned order dated 05.12.2013 (Annexure A/1) be quashed.

8.2 The Respondents be directed to supply the documents mentioned in his representation dated 30.08.2013 and 30.10.2013 to the Applicant enabling him to file written statement of his defence.

8.3 Costs of the proceedings may be allowed.

8.4 Any other order(S) as deemed fit and proper to secure the ends of justice may be passed.”

2. Learned counsel for respondents opposed the prayer espousing that in terms of the view taken by this Tribunal in

Dr. Swetabh Suman vs Union of India (OA No. 518/2011)

decided on 02.02.2011, merely because the copies of the documents relied upon by the Disciplinary Authority in support of the charges are not made available to the delinquent employee, the chargesheet would not be vitiated. He further submitted that in view of the law declared by the Hon'ble Supreme Court in **Syndicate Bank & Ors. Vs. Venkatesh Gururao Kurati**, non supply of the documents on which the Enquiry Officer relied upon during the course of enquiry does not create any prejudice to the delinquent employee.

3. On the other hand, Mr. D.S. Chaudhary, learned counsel for the applicant, submitted that once in the case of A.K. Singh, Sr. Public Prosecutor the relied upon documents were made available to him, the request of the applicant for supply of the documents referred to in the prayer clause of the OA cannot be nixed.

4. We heard learned counsel for the parties and perused the records.

5. In Dr. Swetabh Suman's case (supra), this Tribunal viewed thus:-

"4. The only contention raised by the learned counsel, as mentioned above, does not appear to be correct on the basis of rule 14 of the Rules of 1965, where the procedure for imposing major penalties has been prescribed. In view of sub-rule (2) of rule 14, whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a government servant, it may itself inquire into, or appoint under the rule an authority to inquire into the truth thereof. Sub-rule (3) prescribes that where it is proposed to hold an inquiry against a government servant under rule 14 and rule 15, the disciplinary authority shall draw up or cause to be drawn up (i) the substance of the imputations of misconduct or misbehaviour into definite and distinct articles of charge; (ii) a statement of the imputations of misconduct or misbehaviour in support of each article of charge, which shall contain (a) a statement of all relevant facts including any admission or confession made by the government servant; and (b) a list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained. Sub-rule (4) of rule 14, which is relevant, reads as follows:

(4) The Disciplinary Authority shall deliver or cause to be delivered to the Government servant a copy of the articles of charge, the statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article of charge is proposed to be sustained and shall require the Government servant to submit, within such time as may be specified, a written statement of his defence and state whether he desires to be heard in person. [Perusal of sub-rule (4) reproduced above would manifest that what has to be delivered to the government servant is a copy of the articles of charge, the statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses. There is no requirement at that stage to give the government servant the documents and copies of the statements of witnesses. The government servant is to submit his written statement of defence on the basis of the material supplied to him, as mentioned in sub-rule (4), and, we may reiterate, the same does not include copies of the documents and the statements of witnesses. The government servant is enjoined upon to give his statement of defence on receipt whereof, the disciplinary authority may itself inquire into such of the articles of charge as are not admitted, or, if it considers it necessary to do so, appoint under sub-rule (2), an inquiring authority for the purpose. The inquiring authority is thus appointed as per sub-rule (5) on receipt of the written statement of defence for which the material to be supplied to the government servant is as mentioned in sub-rule (4). If the disciplinary authority is not itself the inquiring authority, and, therefore, an inquiring authority is appointed, the disciplinary authority shall forward to the inquiring authority (i) a copy of the articles of charge and the statement of the imputations of misconduct or misbehaviour; (ii) a copy of the written statement of defence, if any, submitted by the government servant; (iii) a copy of the statements of witnesses, if any, referred to in sub-rule (3); (iv) evidence proving the delivery of the documents referred to in sub-rule (3) to the government servant; and (v) a copy of the order appointing the presenting officer, as may be made out from sub-rule (6). At the stage when the inquiring authority is appointed, the material that may be sent to the said authority is as mentioned above, which includes copy of the statements of

witnesses and evidence providing delivery of the documents to the government servant referred to in sub-rule (3). The government servant is not required to be supplied copies of the documents and the statements of witnesses even at that stage. The inquiry then starts and the government servant is to appear before the inquiring authority on such day and such time as may be ordered by the said authority, as per sub-rule (7). It may not be relevant to refer to provisions of sub-rules (8), (9) and (10). In view of provisions contained in sub-rule (11), the inquiring authority shall, if the government servant fails to appear within the specified time or refuses or omits to plead, require the presenting officer to produce the evidence by which he proposes to prove the articles of charge, and shall adjourn the case to a later date not exceeding thirty days, after recording an order that the government servant may, for the purpose of preparing his defence (i) inspect within five days of the order or within such further time not exceeding five days, as the inquiring authority may allow, the documents specified in the list referred to in sub-rule (3); and (ii) submit a list of witnesses to be examined on his behalf. The government servant even at that stage is only to be given a right to inspect the documents. A note has been appended to sub-rule (11), which reads as follows:

NOTE. If the Government servant applies orally or in writing for the supply of copies of the statements of witnesses mentioned in the list referred to in sub-rule (3), the Inquiring Authority shall furnish him with such copies as early as possible and in any case not later than three days before the commencement of the examination of the witnesses on behalf of the Disciplinary Authority. What thus clearly emerges from the procedure prescribed for holding departmental enquiries, as envisaged in rule 14 of the Rules of 1965, is that there is no obligation on the part of the department to supply copies of documents to the government servant. The only requirement is that the government employee should have a list of witnesses and a list of documents on which the department may rely to prove the charges against him. It is not in dispute that the charge memo served upon the applicant did contain the list of documents and witnesses. The right of the government servant to inspect the records comes far

after the inquiring authority has been appointed. He indeed has a right to have copies of the documents and the statement of witnesses, but that is only when he is to demand the same. There is thus no obligation on the part of the department at any stage to necessarily provide copies of the documents and the statements of witnesses on which it may place reliance to prove the charge against an employee. Even though, as mentioned above, when the delinquent may demand the same, it shall have to be supplied to him, but that is at a stage when the inquiring authority has already been appointed and the enquiry has started.

5. Before we may part with this order, we may mention that the counsel for the applicant, for the proposition as advanced by him, relied upon a Full Bench judgment of the Hon'ble High Court of Andhra Pradesh in *Government of A.P. & others v M. A. Majeed & another* [W.P. No. 15962 of 2001 decided on 7.10.2005, reported as 2006 (2) Administrative Total Judgments p.581]. The questions that came to be framed and referred to the Full Bench for its answer, read as follows:

(a) Whether framing of charge under Rule 20 of the A.P. Civil Services (Classification Control and Appeal) Rules, 1991 by the Disciplinary Authority is a mandatory requirement?

(b) Whether the Enquiry Officer appointed by the Disciplinary Authority is competent to frame charge-sheet and proceed with the enquiry? The questions have been answered to state, thus:

19. It is apparent from R. 20 that the role of the Enquiry Officer commences after the disciplinary authority framing the charges and applying its mind to the statement of defence if any, filed by the delinquent. We express our inability to agree with the view taken by the Division Bench of this Court in *V. Rajamallaiah's case* that R. 20(4) is too much technical in nature. The object of making the disciplinary authority to frame the charges and consider the written statement of defence if any filed by the delinquent before the appointment of Enquiry Officer has been stated in the aforesaid paras of the judgment and, therefore, we do not wish to burden the judgment by reiterating the same. In our considered opinion, it is mandatory for the disciplinary

authority under the C.C.A. Rules, 1991 to frame charges before the appointment of the Enquiry Officer. The appointment of Enquiry Officer under R. 20(2) arises after serving the articles of the charge and receiving the written statement of defence, if any, from the delinquent. We are unable to understand as to how the judgment of the Full Bench of the Hon'ble High Court of Andhra Pradesh would advance the case of the applicant. All that has been held, and that too under provisions of rule 20 of the A.P. Civil Services (Classification, Control and Appeal) Rules, 1991, is that the role of the enquiry officer commences after the disciplinary authority frames the charges by applying its mind to the statement of defence, if any, filed by the delinquent.

6. *Finding no merit in this Application, we dismiss the same in limine.”*

6. In **Syndicate Bank & Ors. Vs. Venkatesh Gururao**

Kurati, Hon'ble Supreme Court ruled thus:-

“In the writ appeal, the learned Division bench framed the following issues:-

- (i) Whether charges framed against the appellant-delinquent officer are vague?*
- (ii) Whether non-supply of the documents sought by the appellant vitiated the enquiry and the action of the management of the respondent Bank in removing the appellant from service as a disciplinary measure?*
- (iii) Whether placing reliance on statements previously recorded by CBI by the Enquiry Officer has vitiated the enquiry?*
- (iv) Whether the findings of fact recorded by the Enquiry Officer are perverse for want of legal evidence?*

The Division Bench decided issue Nos. 1, 3 and 4 against the respondent herein. The Division Bench, however, decided issue No.2 against the appellant

herein, that non-supply of documents sought by the appellant vitiated the inquiry resulting the removal of the respondent from the bank service.

The sole question, therefore, to be determined is, whether non-supply of documents, which did not form part of chargesheet and were not relied upon by the prosecution prejudice the delinquent officer resulting in vitiating the enquiry proceedings.

During the proceeding the management has produced oral evidence of 24 witnesses and documentary evidence by producing 218 documents, the fact which is not denied by the delinquent officer.

It was the specific case of the appellants that the documents sought by the delinquent officer which were relevant for the purpose of enquiry and which were part of the charges were supplied to the delinquent officer, but the documents which were not supplied to the delinquent officer were those on which the prosecution either did not rely or which did not form part of the charges. Before we examine the issue No.2 we may at this stage quote the finding of the learned Division Bench in paragraph 16 of the judgment:

"The reasons stated by the management of the Bank not to supply copies of certain documents sought by the appellant, in our considered opinion, are totally irrational and untenable. The documents in respect of which privilege of confidentiality was claimed by the Bank's Management, by no stretch of imagination, could be regarded as privileged documents or confidential in nature. Therefore, we do not think that the Bank's Management was justified and acted legally in refusing to furnish the copies of the documents sought by the appellant. It is our considered opinion that all the documents sought by the appellant-delinquent are either those documents on the basis of which the disciplinary authority has framed the charges and the documents on which the disciplinary authority has placed reliance to prove those charges or the documents though, they are not the basis for framing the charges nor those of which the disciplinary authority places reliance to prove the charges against the appellant delinquent, but, they would have aided

the appellant-delinquent, to effectively cross-examine the witnesses of the disciplinary authority."

(emphasis supplied) The High Court's finding, in our view, is perverse. The High Court having come to the conclusion that the documents sought by the respondent are not the basis for framing the charges nor those on which the Disciplinary Authority placed any reliance to prove the charges against the delinquent officer held that non-supply of those documents sought by the delinquent officer prejudiced his case and resulted in vitiating the proceedings. From the record, it appears that the delinquent officer sought for supply of certain documents. The twelve documents, which formed part of the charges and were relied upon by the Inquiry Officer, were supplied to him by a letter dated 11th August, 1987. Two documents were produced during the enquiry for cross-examination of the witnesses. This fact was admitted by the counsel for the respondent at the time of hearing. Rest of the documents were not supplied to the delinquent officer stating that they had no relevancy to the enquiry, meaning thereby that neither they form part of the charges nor were relied upon by the prosecution during the course of enquiry.

Apart, from this the delinquent officer did not deny that the prosecution relied upon 218 documents and also 24 witnesses and the delinquent officer had an opportunity to cross examine them and also examine the documents on basis of which the witnesses were cross-examined in the course of enquiry. The Enquiry Officer as stated earlier submitted a detailed report in which the delinquent officer did not deny at all, either by oral or written arguments, that he did not receive the cash from the cashier which was meant for the loanee. Learned counsel for the respondent vehemently urged that although the documents may not form part of the charges or be relied upon by the prosecution in the course of enquiry, denial of the same would prejudice the delinquent's case because denial of contemporary documents deprive the right of the delinquent to set up an effective defence. We are unable to countenance such submissions at all, that the documents which do not form part of the charges or are relied upon by the prosecution during the course of

enquiry, non-supply of which would cause any prejudice to the delinquent officer. In the case of *Krishna Chandra Tandon Vs. The Union of India*, (1974) 4 SCC 374, it is held in paragraph 16 as under:-

"Mr. Hardy next contended that the appellant had really no reasonable opportunity to defend himself and in this connection he invited our attention to some of the points connected with the enquiry with which we have now to deal. It was first contended that inspection of relevant records and copies of documents were not granted to him. The High Court has dealt with the matter and found that there was no substance in the complaint. All that Mr. Hardy was able to point out to us was that the reports received by the Commission of Income-tax from his departmental subordinates before the charge-sheet was served on the appellant had not been made available to the appellant. It appears that on complaints being received about his work the Commission of Income-tax had asked the Inspecting Assistant Commissioner Shri R.N. Srivastava to make a report. He made a report. It is obvious that the appellant was not entitled to a copy of the report made by Mr. Srivastava or any other officer unless the enquiry officer relied on these reports. It is very necessary for an authority which orders an enquiry to be satisfied that there are *prima facie* grounds for holding a disciplinary enquiry and, therefore, before he makes up his mind he will either himself investigate or direct his subordinates to investigate in the matter and it is only after he receives the result of these investigations that he can decide as to whether disciplinary action is called for or not. Therefore, these documents of the nature of inter-departmental communications between officers preliminary to the holding of enquiry have really no importance unless the Enquiry Officer wants to rely on them for his conclusions. In that case it would only be right that copies of the same should be given to the delinquent. It is not the case here that either the Enquiry Officer or the Commissioner of Income-tax relied on the report of Shri R.N. Srivastava or any other officer for his finding against the appellant. Therefore, there is no substance in this submission."

In the case of Chandrama Tewari vs. Union of India, 1987 (Supp.) SCC 518 at scc p.521 it was held by this Court:

"However, it is not necessary that each and every document must be supplied to the delinquent government servant facing the charges, instead only material and relevant documents are necessary to be supplied to him. If a document even though mentioned in the memo of charges is not relevant to the charges or if it is not referred to or relied up by the enquiry officer or the punishing authority in holding the charges proved against the government servant, no exception can be taken to the validity of the proceedings or the order. If the document is not used against the party charged the ground of violation of principles of natural justice cannot successfully be raised. The violation of principles of natural justice arises only when a document, copy of which may not have been supplied to the party charged when demanded is used in recording finding of guilt against him. On a careful consideration of the authorities cited on behalf of the appellant we find that the obligation to supply copies of a document is confined only to material and relevant documents and the enquiry would be vitiated only if the non-supply of material and relevant documents when demanded may have caused prejudice to the delinquent officer."

In our view, non-supply of documents on which the Enquiry Officer does not rely during the course of enquiry does not create any prejudice to the delinquent. It is only those documents, which are relied upon by the Enquiry Officer to arrive at his conclusion, the non-supply of which would cause prejudice being violative of principles of natural justice. Even then, the non-supply of those documents prejudice the case of delinquent officer must be established by the delinquent officer. It is well settled law that the doctrine of principles of natural justice are not embodied rules. It cannot be put in a straitjacket formula. It depends upon the facts and circumstances of each case. To sustain the allegation of violation of principles of natural justice, one must establish that prejudice has been caused to him for non-observance of principles of natural justice."

7. As has been submitted by Mr. Ashok Kumar, learned counsel for respondents, it is true that since the delinquent employee has an opportunity to ask for the copies of the documents, relied upon by the Enquiry Officer, during the course of the enquiry, non supply of the same may not vitiate the memo of charges. Similarly, non supply of the documents to the charged official, not relied upon by the Enquiry Officer, may also not vitiate the enquiry proceedings. Nevertheless, once in the case of A.K. Singh Sr. PP/CBI/SC III/New Delhi, the respondent had no difficulty in making the documents of the similar nature available, as sought by the applicant, the Enquiry Officer should examine the request of the applicant for supply of such documents, keeping in view the order placed on record along with the rejoinder, which reads thus:-

“*Govt. of India*
Ministry of Personnel, Public Grievances and Pensions
Department of Personnel & Training
AVD-II(B)

Sub.: Disciplinary Proceedings under Rule 14 of CCS (CCA) Rules, 1965 against Shri A.K. Singh, Sr. PP/CBI – supply of documents – Regarding.

CBI may please refer to their ID No. DP/PERS.I/2014/1459/53/1/2013 dated 29.04.2014 forwarding therewith a representation dated 09.04.2014 from Shri A.K. Singh, Sr. PP/CBI seeking inspection/supply of files/documents.

2. The said representation dated 09.04.2014 of Shri A.K. Singh, Sr. PP/CBI has been examined and in accordance with the provisions contained in Rule 14(20) of CCS (CCA) Rules, 1965, it has been decided to supply the following documents pertaining to file No. 221/12/2013-AVD.II(B) to Shri A.K. Singh, Sr. PP/CBI.

(i) copy of note-sheets from page 4-9n and page 11-14/n

(ii) copy of correspondence page no. 12 and 14.

3. Accordingly, the above copies are enclosed herewith and request the CBI to supply the same to Shri A.K. Singh, Sr. PP/CBI under proper acknowledgement.

4. CBI is also requested to allow inspection of their file as sought by Shri A.K. Singh, Sr. PP/CBI in his representation dated 09.04.2014.

This issues with the approval of JS (S&V.I)

*(M.P. Rama RAO)
Under Secretary to Government of India”*

8. In view of the aforementioned, OA is disposed of with liberty to the applicant to make an application to the Enquiry Officer for supply of the documents sought to be relied upon by him for his defence and if such an application is made within two weeks, the Enquiry Officer would decide the same as expeditiously as possible, keeping in view the order passed in the case of A.K. Singh, Sr. PP/CBI. No costs.

(K.N. Shrivastava)
Member (A)

(A.K. Bhardwaj)
Member (J)

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