

(2001) 08 DEL CK 0182

Delhi High Court

Case No: Civil Writ Petition No.4506 of 2001

Shri Surinder Pal Singh

APPELLANT

Vs

Union of India and another

RESPONDENT

Date of Decision: Aug. 21, 2001

Acts Referred:

- Central Civil Services (Classification, Control and Appeal) Rules, 1965 - Rule 11(2, 14(3), 3)
- Criminal Procedure Code, 1973 (CrPC) - Section 161
- Customs Act, 1962 - Section 108

Citation: (2001) 93 DLT 542 : (2002) 62 DRJ 58 : (2001) 78 ECC 49 : (2002) 139 ELT 24

Hon'ble Judges: Sharda Aggarwal, J; B.A. Khan, J

Bench: Division Bench

Advocate: Mr. Parag Tripathi and Mr. C.D. Mulharkar, for the Appellant; Mr. K.K. Sud, A.S.G. and Mr. Alok Gupta, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Khan, (J)

1. There is much ado about nothing. Petitioner wants copies of pre-recorded statements of enlisted witnesses u/s 108 of the Customs Act to prepare his reply to the charge sheet issued to him but respondents are resisting his demand. As a result, he has failed to file his written statement and respondents have proceeded to appoint Enquiry and Presentation Officers.

2. Petitioner was working as Additional Commissioner (Customs) at relevant time in 1989-90 but was issued charge-sheet dated 5.11.1999 allegedly after 10 years or so charging him of some misconduct and requiring him to submit his written statement within 10 days. He made representations requesting for supply of copies of previously recorded statements of enlisted witnesses which was turned down by

respondents. He felt aggrieved and filed OA No.906/01 seeking quashment of the charge-sheet and filed MA No.1190/2001 also along with for direction to respondents to supply him these copies and not to appoint the Enquiry Officer. Tribunal, on noticing that he was supplied relied upon documents, disposed of his MA by impugned order dated 26.2.2000 without granting him either relief. He has now filed this petition for supply of the copies which is stoutly resisted by respondents.

3. Petitioner's case is short and simple. He wants to prepare his defense by reference to pre-recorded statements of enlisted witnesses by highlighting some alleged contradictions in these and those recorded u/s 161 Cr.P.C. and believes that respondents were withholding these in a malafide action to defeat and frustrate his defense.

4. Learned counsel for petitioner Mr. Tripathi argued that petitioner was entitled to these copies both under relevant rules and the rules of natural justice. He took us through various provisions of Evidence Act and CCS (CCA) Rules to show that there was a difference between a "document" and a "statement" and that respondents were otherwise obliged to supply such copies. He referred to Rule 14 as also to note appended to instruction 25 of GOI Instructions (Departmental Proceedings & Prosecution) and sought support from Supreme Court judgment in State of U.P. Vs. Shatruhan Lal and Another, and a judgment of this court in Surat Singh and Others Vs. S.R. Bakshi and Others.

5. Learned ASG Mr. Sud, on the other hand, contended that departmental proceedings had now entered second stage with the appointment of Enquiry Officer and it was for petitioner to approach him with his demand and to seek appropriate orders. The matter fell within his domain now and this court was not competent to interfere. He also submitted that respondents did not propose to rely upon these statements and that petitioner was only wanting to prolong and avoid the enquiry by asking for one thing or the other. His concern was that it would open flood gates if delinquent employees were encouraged to ask for anything and everything at any stage.

6. There is no dispute that a delinquent employee was to be afforded an effective opportunity of being heard and was to be supplied all relied upon documents to enable him to prepare and set up his defense. But the dispute in the present case is whether petitioner was entitled to be given copies of pre-recorded statements of enlisted witnesses u/s 108 of the Customs Act.

7. We see no impediment in petitioner being supplied such copies if he wanted to use these for his defense. Nor do we find any rationale behind respondents' resistance to withhold these. We also don't see any prejudice, which was likely to be caused to them in the process. It was understandable if the matter involved consideration of public interest or security of State in which case it could perhaps be

justified in withholding these copies. But in the present case, none of these conditions exist and respondents opposition appeared to be for the heck of it.

8. Even the rule position does not empower or authorise respondents to withhold these copies on the specious plea that they don't propose to rely upon them. Part VI of CCS (CCA) Rules provides procedure for imposing penalty and Rule 14(3) requires disciplinary authority to draw or cause to be drawn amongst other things a list of documents by which and a list of witnesses by whom articles of charge were to be supported and sustained. Sub-rule 4 of this Rule obliges the Authority to deliver statement of imputations and a list of witnesses to the delinquent employee and to ask him to file the written statement of his defense and to state whether he desired to be heard.

9. Similarly, note appended to sub-rule 11(2) provides that if Government servant applies for supply of copies of statements of enlisted witnesses orally or in writing, Enquiry Officer shall furnish him such copies not later than three days before commencement of examination of prosecution witnesses. Sub-Rule 3 of this Rule also permits the Inquiring Authority to allow such servant discovery or production of documents which are in the possession of Government but not mentioned in the list referred to in sub-rule (3). So does GOI, GI Central Vigilance letter dated 19.6.87 contained in a note to Instruction No.25 supra provides among other things requires supply of copies of relied upon documents and statements of cited witnesses.

10. All this shows that the relevant rules maintain a distinction between a document and statement of enlisted witnesses. IT is not that once relied upon documents were supplied, it would suffice and satisfy the requirement. Apart from this, Rules of natural justice would also demand that all that was required by a delinquent facing punishment was given to him to enable him to prepare his defense and have his full say. Otherwise withholding of supporting elements to a charge would cause grave prejudice to him. Therefore, when a delinquent wanted copies of pre-recorded statements of enlisted witnesses. these could not be withheld by the Authority save otherwise on legally permissible considerations. We find support for this from a recent Supreme Court judgment in Shatrughan Lal's case (supra) laying down thus:- "Before a person is, Therefore, called upon to submit his reply to the charge-sheet, he must, on a request made by him in that behalf, be supplied the copies of the statements of witnesses recorded during the preliminary enquiry particularly if those witnesses are proposed to be examined in the departmental trial. The other aspect of the matter is whether any prejudice would be caused by supplying such documents."

11. We are informed at this stage that both Enquiry and Presentation Officers stood appointed to conduct the inquiry against petitioner. That being so, this petition could be disposed of to the mutual satisfaction of both parties by providing thus:-

"Petitioner shall have four weeks time from today to submit his reply to charge-sheet in the absence of copies of his pre-recorded statements u/s 108 and without prejudice to his contentions in this regard. However, Respondents are directed to furnish these statements to him two weeks before prosecution evidence commences. Enquiry Officer shall be at liberty to proceed with enquiry after expiry of three weeks from now and which he shall conclude within six months from the date petitioner is asked to appear before him."