

* **THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Contempt Case (C) No.162/2008**

% Date of Decision : March 17, 2008

Mr. Arvind Rishi Petitioner

Through : Mr. Mohit Chaudhary,
Mr. Manish Jain,
Mr. Pradeep Chandel and
Ms. Puja Sharma,
Advocates

Versus

Mr. H. P. Tripathi Respondent

Through : NEMO

CORAM:

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

1. Whether Reporters of local papers may be allowed to see the judgment? No
2. To be referred to the Reporter or not ? No
3. Whether the judgment should be reported in the Digest ? No

SUDERSHAN KUMAR MISRA, J : (Oral)

1. The petitioner, Mr. Arvind Rishi, is an employee of Life Insurance Corporation of India. He is facing disciplinary proceedings primarily on the charge of insubordination and breach of office discipline. A charge sheet to that effect has admittedly been issued to him. In that connection, he moved Writ Petition (C) No.6720/2005 in this Court along with a Civil Miscellaneous Application No.4797/2005 seeking stay of the disciplinary proceedings, inter alia, on the ground that despite repeated requests to the Enquiry Officer, relevant documents

have not been supplied to him and he was not permitted to produce witnesses in support of his case. While pressing for interim orders, the petitioner alleged that a close reading of the entire charge sheet would show that the charge sheet itself also amounts to an act of vendetta against the petitioner and therefore, with a view to demonstrate this aspect of the matter, the petitioner is seeking liberty to produce various documents and witnesses. This allegation was traversed by the respondent on the plea that only those documents and those witnesses can be produced which have a direct relevance to the charge sheet issued to the petitioner. In support of his case in the aforesaid Writ Petition (C) No.6720/2005, the petitioner also filed an additional list of documents with an affidavit dated 19.9.2007. In that context, on 21.9.2007, in the said Civil Miscellaneous Application No.4797/2005, this Court passed the following order:-

“Learned senior counsel for the respondents has fairly conceded that the photocopies of documents at Sl.No.1 & 4 will be given to the petitioner. Various other documents which have been demanded by the petitioner are not relevant and have no connection with the charge sheet.

As far as non-supply of other documents are concerned, it would be open to the petitioner to raise such objection as may be available to him, at any appropriate stage, in accordance with law. As far as the production of witnesses are concerned, the petitioner is granted liberty to approach the enquiry officer and make a request to him giving the list of witnesses which has been filed along with an affidavit on 19.09.2007. It is hoped that the enquiry officer will look into the list of witnesses sought to be produced by the petitioner in a reasonable manner and pass appropriate orders accordingly. On handing over of the documents and after appropriate order has been

passed on the request of the petitioner for producing witnesses, it will be open to the enquiry officer to conclude the proceedings.

No further orders are required to be passed. Interim order dated 20.04.2005 stand varied in terms of the order passed in Court today.

Application stands disposed of.”

2. A reading of this order shows that counsel for the respondent conceded in court that out of the additional list of documents filed by the petitioner, two documents are relevant to the proceedings, and that photocopies of the same would be provided to the petitioner. As regards the other documents in that list, this Court said that, “it would be open to the petitioner to raise such objection as may be available to him, at any appropriate stage, in accordance with law”, and as far as the production of witnesses was concerned, the petitioner was granted liberty to approach the Enquiry Officer for that purpose. In this regard, this Court further ordered that, “It is hoped that the Enquiry Officer will look into the list of witnesses sought to be produced by the petitioner in a reasonable manner and pass appropriate orders accordingly.”

3. The minutes of the hearing held on 19.2.2008 thereafter before the Enquiry Officer show that an extensive discussion has taken place with regard to the documents demanded by the petitioner. Whilst two of the documents from that list were supplied, the other eleven documents were not. According to the Enquiry Officer, they were not relevant to the charge. The Enquiry Officer also offered to have the relevant section of the

staff regulations mentioned in the charge sheet be made available to the petitioner, if he so desired. Along with this, the Enquiry Officer stated that if the guidelines for Enquiry Officers for conducting the enquiry are available with the personnel department, they too would be made available to the petitioner on the next hearing. In response, the defence assistant of the petitioner again asked the Enquiry Officer whether the rest of the eleven documents demanded were not relevant to the enquiry. He also asked the Enquiry Officer to elaborate the word “relevant” . The Enquiry Officer responded as follows :-

“The documents which I have said as non-relevant, are not directly/indirectly connected with the charge mentioned in the charge-sheet as the charges are not for non-attending the office but for the language written on the applications submitted by you.”

Not satisfied with this, the defence assistant again pressed his case for those documents claiming that his defence would be prejudiced in their absence. He now put the following question to the Enquiry Officer:-

“.....I now once again request the Enquiry Officer to first please state whether he has seen these 11 documents.”

In response, the Enquiry Officer stated as follows :-

“I have not seen the 11 documents referred above but from the nature of the documents demanded I have come to the conclusion that these documents are not relevant to the charges as the charges are not for non-attending the office but for the language written on the applications submitted by you. As regards the directions of the Hon'ble High Court referred by you I have to state nothing about it. I have been appointed as Enquiry Officer by the Disciplinary Authority and as Enquiry Officer I have to conduct the enquiry as per guidelines for fair conduct of enquiry proceedings.”

At this stage, the defence assistant appears to have pounced upon the statement of the Enquiry Officer that he has not seen these documents and contended that it was unfair on his part to have concluded that those documents are not relevant without actually seeing them. He then requested for an opportunity to prove the relevance of those documents one by one so that it can be analysed whether the enquiry was being conducted fairly or not. The Enquiry Officer replied that the documents which he felt were relevant to the charge have been provided. In response to this, the defence assistant appearing for the petitioner stated that since the Enquiry Officer has decided that these documents will not be provided to him, and since his request for a chance to prove the relevance of those documents has been refused, the claim of the petitioner that the respondent does not want to conduct a fair enquiry is vindicated.

4. According to learned counsel for the petitioner, the denial of copies of the documents demanded by the petitioner in the aforesaid hearing constitutes a deliberate and malicious violation of the order dated 21.9.2007 passed by this Court. He states that as a consequence of this order, which had permitted the petitioner to raise any objection with regard to non-supply of the documents, it was the duty of the Enquiry Officer to see each document and, thereafter, discuss the relevance of each such document before taking a decision thereon, and since he has clearly not examined every single document demanded

individually, nor had he taken any decision about its relevance after recording arguments of both sides on that aspect, the same constitutes contempt.

5. Apart from this, the petitioner has also raised a number of other grievances with regard to the nature of the proceedings as also the manner in which the minutes of the proceedings were recorded to demonstrate a lack of fairness in the enquiry. Since, to my mind, these aspects are not directly connected with this petition, I do not wish to comment on them, and it would be open to the petitioner to raise these allegations elsewhere , if he is so advised.

6. As regards the non-supply of the documents, the petitioner's case, stated in paragraph 8 of this petition, is that in fact, the Enquiry Officer bluntly refused to handover the said documents and stated that the proceedings would be done according to his choice and that he refused to see the order passed by this Court on 21.9.2007.

7. On going through the copies of the proceedings annexed by the petitioner, I do not think any case of contempt is made out. The order of this Court dated 21.9.2007 is very clear. It merely states that in case other documents are not supplied, and for any reason, the petitioner is prejudiced thereby, it would be open to him to seek redressal "at any appropriate stage, in accordance with law". Significantly, there is no specific mandate by this Court for the supply of those documents. After stating that it would be open to the petitioner to raise any objection to

non-supply of any of the documents at any appropriate stage in accordance with law, this Court has merely stated that, on handing over of the documents and after appropriate order is passed on the request of the petitioner for producing witnesses, it will be open to the Enquiry Officer to conclude the proceedings. It is obvious that the documents referred to over here are the two documents which were conceded as being relevant by the counsel for the respondent before the Court and were therefore required to be handed over to him, and not with regard to the other documents for which it was stated that it is open to the petitioner to raise any other objection under the law. An examination of the minutes shows clearly that there has been due application of mind to the relevance of these documents by the Enquiry Officer. It further shows that the Enquiry Officer repeatedly asserted that these documents were not material. He has also given reasons for that conclusion by stating that they are not directly/indirectly connected with the charges mentioned in the charge sheet because the charges are not for non-attendance of the office, but for the language written on the applications submitted by the petitioner. On being pressed by the defence assistant, the Enquiry Officer has again made it clear that although he has not seen the documents sought, "but from the nature of the documents demanded I have come to the conclusion that these documents are not relevant to the charge....."

8. In my view, what has been directed by this Court on 21.9.2007 is merely that it is open to the petitioner to agitate whatever objections may be open to him for non-supply of those documents in accordance with law. He has raised his objections to the non-supply of those documents before the Enquiry Officer. The Enquiry Officer has rejected the demand on the ground that in his opinion, these documents are not relevant to the charges brought against the petitioner. Whether this decision is correct or incorrect, may or may not constitute a fresh cause of action giving the petitioner the right to institute any fresh proceedings at the appropriate stage, including, inter alia, at the conclusion of the disciplinary proceedings, but the same certainly does not constitute contempt.

9. As regards the allegations raised by the petitioner in paragraph 8 to the effect that the Enquiry Officer has bluntly refused to handover the documents, I do not think that this is borne out from the records. Similarly, I do not find anything in the proceedings that could be taken as an indication that the Enquiry officer has decided to proceed arbitrarily after refusing to see the order of 21.9.2007 or that the proceedings conducted by him in the matter of the supply of documents was in any way contrary to the spirit of the said order passed by this Court. To my mind, there is no abuse of the process of law, nor is there any deliberate or willful contempt made out.

10. If anything, the tenor of the defence assistant's approach, as reflected from the proceedings of that day shows that it was

the defence assistant who was intent on badgering the Enquiry Officer by persisting with his demand even after the same was unequivocally refused and the reason for such refusal also furnished. He seems to be under the impression that simply because this court stated that it would be open to him to raise objections to the non-supply of the documents sought at the appropriate stage and in accordance with law, it had afforded him some sort of licence for badgering and hectoring the Enquiry Officer on the subject even after he had given his decision on the point.

11. The order of 21.9.2007 deals with two aspects, that is, (a) the non-supply of certain documents sought by the petitioner; and (b) the non-production of certain witnesses whose presence was requisitioned by the petitioner in support of his defence. Counsel for the petitioner, however, seems to be mixing up the directions made in respect of these two aspects. The direction of this Court that, "it is hoped that the Enquiry Officer will look into the list of witnesses sought to be produced in a reasonable manner and pass appropriate orders accordingly", is sought to be pressed by counsel for the petitioner for the proposition that this should be read as a specific direction to the Enquiry Officer to look into the list of documents sought by the petitioner in a reasonable manner and pass appropriate orders accordingly, and therefore, since individual documents have not been looked at or examined and separate orders concerning each document have not been passed, the Enquiry Officer is in contempt. I do

not think the order of 21.9.2007 can be interpreted in such manner. There is no specific direction by this Court to the Enquiry Officer to look at and to examine every single document individually and thereafter pronounce specific orders with regard to the relevance of that document.

12. I find that in addition, the petitioner has also prayed for a direction to the respondent “to record the enquiry proceedings in verbatim”. Although from the proceedings of 19.2.2008 placed on the record by the petitioner, which have also been signed by him on each page, it appears that a reasonably accurate record of the proceedings is being kept, this prayer must be declined for the reason that the same cannot be a subject matter of contempt proceedings since no such direction is shown to have been given by this Court. This prayer is therefore dismissed.

13. Under the circumstances, and for the reasons stated, the contempt petition is dismissed.

CMs No.3938, 3939/2008

14. Since the main petition has been dismissed, these applications do not survive and are also dismissed as such.

Sudershan Kumar Misra, J.

March 17, 2008
OPN.