No.F.30/5/61-AVD
Government of India
Ministry of Home Affairs
(Administrative Vigilance Division)

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New Delhi, the 25th August, 1961.

OFFICE MEMORANDUM

Subject:- Supply of copies of documents to the delinquent official.

The undersigned is directed to say that the question often arises whether a particular document or set of documents asked for by a Government servant involved in a departmental enquiry should be made available to him or not; and pending the decision of the question the submission of the written statement by the Government servant concerned is delayed, in some cases for months. In view of this and also of the judgment pronounced by the Supreme Court in Raizada Trilok Nath Vs. the Union of India, in which it has been decided that failure to furnish copies of documents such as the First Information Report, and statements recorded during investigation amounts to a violation of Article 311(2) of the Constitution, the whole question of the extent of access to official records to which a Government servant is entitled under sub-rule 4 of Rule 5 of the All India Services (Discipline & Appeal) Rules or sub-rule 3 of Rule 15 of the Central Civil Services (Classification, Control and Appeal) Rules has been examined in consultation with the Ministry of Law.

2. The right of access to official records is not unlimited and it is open to the Government to deny such access if in its opinion such records are not relevant to the case, or it is not desirable in the public interest to allow such access. The power to refuse access to official records should, however, be very sparingly exercised. The question of relevancy should be looked at from the point of view of the defence and if there is any possible line of defence to which the document may, in some way be relevant, though the relevance is not clear to the disciplinary authority at the time that the request is made, the request for access should not be rejected. The power to deny access on the ground of public interest should be exercised only when there are reasonable and sufficient grounds to believe that public interest will clearly suffer. Cases of the latter type are likely to be very few and normally occasion for refusal of access on the ground that it is not in public interest should not arise if the document is intended to be used in proof of the charge and if it is proposed to produce such a document before the Inquiry Officer, if an enquiry comes to be held. It has to be remembered that serious difficulties arise when the Courts do not accept as correct the refusal by the disciplinary authority, of access to documents. In any case, where it is decided to refuse access, reasons for refusal should be cogent and substantial and should invariably be recorded in writing.

3. Government servants involved in departmental enquiries often ask for access to and or supply of copies of -

(1) documents to which reference has been made in the statement of allegations;

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(2) documents and records not so referred to in the statement of allegations but which the Government servant concerned considers are relevant for the purposes of his defence;

(3) statements of witnesses recorded in the course of -

(a) a preliminary enquiry conducted by the department; or

(b) investigation made by the Police.

(4) Reports submitted to Government or other competent authority including the disciplinary authority, by an officer appointed to hold a preliminary inquiry to ascertain facts;

(5) reports submitted to Government or other competent authority including the disciplinary authority, by the Police after investigation.

4. A list of the documents which are proposed to be relied upon to prove the charge and the facts stated in the statement of allegations should be drawn up at the time of framing the charge (This will incidentally reduce the delay that usually occurs between the service of the charge-sheet and the submission of the written statement). The list should normally include documents like the First Information Report if there is one on record. Anonymous and pseudonymous complaints on the basis of which inquiries were started need not be included in the list. The list so prepared should be supplied to the officers either along with the charge-sheet or as soon thereafter as possible. The officer should be permitted access to the documents mentioned in the list if he so desires.

5. If the officer requests for any official records other than those included in the list, the request should ordinarily be acceded to in the light of what has been stated in para 2 above.

6. While there is no doubt that the Government servant should be given access to various official records like documents to which reference has been made in the statement of allegations and documents and records which the Government servant concerned considers are relevant for the purposes of his defence though the relevancy is not clear to the disciplinary authority, doubts very often arise whether official records include the documents mentioned at items 3, 4 and 5 in para 3 above. Reports made after a preliminary enquiry, or the report made by the Police after investigation, other than those referred to in clause (a) of Sub-Section 1 of Section 173 of the Code of Criminal Procedure, 1898, are usually confidential and intended only to satisfy the competent authority whether further action in the nature of a regular departmental inquiry or any other action is called for. These reports are not usually made use of or considered in the inquiry. Ordinarily even a reference to what is contained in these reports are not made in the statement of allegations. It is not necessary to give access to the Government servant to these reports. (It is necessary to strictly avoid any reference to ~~the contents of~~ such reports in the statement of allegations as, if any reference is made, it would not be possible to deny access to these reports; and giving of such access to these reports will not be in public interest for the reasons stated above).

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7. The only remaining point is whether access should be given to the statements of witnesses recorded in the course of a preliminary enquiry conducted by the department or investigation made by the Police and if so, whether the access should be given to the statements of all witnesses or to the statements of only those witnesses who are proposed to be examined in proof of the charges or of the facts stated in the statement of allegations. These statements can be used only for the purposes of cross-examination and the Government servant is called upon to discredit only those witnesses whose statements are proposed to be relied upon in proof of the charges or of the facts stated in the statement of allegations. As such the Government servant concerned need not be given access to the statements of all witnesses examined in the preliminary enquiry or investigation made by the Police and access should be given to the statements of only those witnesses who are proposed to be examined in proof of the charges or the facts stated in the statement of allegations. In some cases, the Government servant may require copies of the statements of some witnesses on which no reliance is proposed to be placed by the disciplinary authority on the ground that he proposes to examine such witnesses on his side and that he requires the previous statement to corroborate the testimony of such witnesses before the inquiring authority. Previous statements made by a person examined as a witness is not admissible for the purposes of corroboration and access to such statements can safely be denied. However, the law recognises that if the former statement was made at or about the time when the fact took place and the person is called to give evidence about such fact in any proceedings, the previous statement can be used for purposes of corroboration. In such cases, it will be necessary to give access to the previous statements.

8. The further point is the stage at which the Government servant should be permitted to have access to the statements of witnesses proposed to be relied upon in proof of the charges or of the facts stated in the statement of allegations. As stated earlier, the copies of the statements of the witnesses can be used only for the purpose of cross-examination and, therefore, the demand for copies must be made when witnesses are called for examination at the oral enquiry. If such a request is not made, the inference would be that the copies were not needed for that purpose. The copies cannot be used at any subsequent stage as those statements are not to be taken into consideration by the disciplinary authority also. Copies should be made available within a reasonable time before the witnesses are examined. It would be strictly legal to refuse access to the copies of the statements prior to the evidence stage in the departmental enquiry. However, if the Government servant makes a request for supply of copies of statements referred to at (3) of para 3 above before he files a written statement, the request shall be acceded to.

9. Neither sub-rule (4) of Rule 5 of All India Services (Discipline and Appeal) Rules nor sub-rule (3) of Rule 15 of the Central Civil Services (Classification, Control and Appeal) Rules provide for supply of copies of documents. Therefore, it is not ordinarily necessary to supply copies of the various documents and it would be sufficient if the Government servant is given such access as is permitted under the rules referred to above. Government servants involved in departmental proceedings when permitted to have access to official records sometimes seek

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permission to take photostat copies thereof. Such permission should not normally be acceded to especially if the officer proposes to make the photostat copies through a private photographer as thereby third parties would be allowed to have access to official records which is not desirable. If, however, the documents of which photostat copies are sought for are so vitally relevant to the case (e.g., where the proof of the change depends upon the proof of the hand-writing or a document the authenticity of which is disputed), the Government should itself make photostat copies and supply the same to the Government servant. In cases which are not of this or similar type (the example given above is only illustrative and not exhaustive), it would be sufficient if the Government servant is permitted to inspect the official records and take extracts therefrom as is provided for in sub-rule (3) of Rule 15 of the Central Civil Services (Classification Control and Appeal) Rules. Sub-rule (4) of Rule 5 of the All India Services (Discipline and Appeal) Rules does not specifically provide for the Government servant taking extracts from official records. The practice, however, is that officers governed by the All India Services (Discipline and Appeal) Rules do take such extracts from records. This practice should be continued and no restriction should be placed on such officers from taking extracts from official records.

(T.C.A. Ramanujachari)
Deputy Secretary to the Government of India.

To

(i)All Vigilance Officers,

(ii)All Ministries.