

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

OA No.597/2002

New Delhi, this the 25th day of January, 2008

HON'BLE MR. SHANKER RAJU, MEMBER (J)
HON'BLE MRS. CHITRA CHOPRA, MEMBER (A)

Shri S.K. Pandey
222/5924, CBI Officer's Quarter
Pantnagar, Ghatkopar (E)
Mumbai – 75.

... Applicant

(By Advocate: Shri K.K. Rai with Shri V.P. Singh)

Versus

1. The Union of India
Through The Secretary
Ministry of Personnel, Public Grievances & Pensions
Department of Personnel & Training,
New Delhi.
2. The Union Public Service Commission
Through it's Secretary
Dholpur House
Shah Jahan Road
New Delhi.
3. The Central Bureau of Investigation
Through it's Director
C.G.O. Complex, Block No.III
Lodhi Road
New Delhi.
4. The Central Vigilance Commission
Through it's Secretary
Satarkata Bhawan,
New Delhi.
5. Shri Inder Singh
The then Commissioner for Departmental Inquiry
Satarkata Bhawan,
New Delhi.

..... Respondents

(By Advocate: Ms. Jyoti Singh)

ORDER

Mrs. Chitra Chopra, Member(A):

This case has been remanded back by the Hon'ble High Court of Delhi vide order dated 21.08.2007 passed in Writ Petition (C) No.2943/2003 filed by the respondents against the Tribunal's order dated 06.01.2003 in OA 597/2002. The High Court's order dated 21.08.2007 reads as under:

"On the last date of hearing, Mr. K.K. Rai, learned Senior Advocate appearing for the respondent, had pointed out that in view of the judgment of the Supreme Court in the case of Union of India and Another Vs. T.V. Patel, 2007 (6) SCALE 9, the matter needs to be remanded back. Learned counsel for the petitioner had taken some time to study that judgement. She agrees with the submission with the submission of the learned senior counsel for the respondent.

The impugned judgment of the Tribunal is accordingly set aside and the matter is remanded back to the Tribunal for fresh consideration on merits in the light of the said judgment."

2. The OA was filed by the applicant impugning the respondents' order dated 28.6.2001, whereby after disagreeing with the advice of the UPSC, Respondent No.1 had imposed upon him a penalty of removal from service.

3. Before adjudicating the matter, it is necessary to recapitulate the facts of the case which are as follows:-

The applicant was placed under suspension on 22.12.1993 and was served a memorandum on 6.1.1994 with the allegation of lack of integrity and contravention of Rule 3(1) of CCS (Conduct) Rules inasmuch as he while conducting a search at the residence of Sh. T.T. Parwani in connection with a CBI case, a bribe of Rs.50,000/- was demanded. Thereupon an inquiry was held and applicant was found guilty of Charges

No.1 and 3 by the inquiry officer, however, Charge 2 was not proved. The Articles of Charge No.1 and 3 read as under:

"Article No.1

Sh. S.K. Pandey while functioning as Dy. S.P., CBI/ACB/Bombay on 23.11.1993 while conducting a search of the residential premises of Sh. T.T. Parwani in connection with RC. 53 (A)/93 found cash of 1,50,000/- in his house. He threatened to seize the cash amount and for not seizing the same he demanded a bribe of Rs.50,000/- on bargaining he reduced the bribe amount of Rs.30,000/- which was given by Sh. T.T. Parwani and accepted by Sh. S.K. Pandey, and in return despite clear instruction to seize the cash, Sh. Pandey did not seize the same.

Article No.3

Shri S.K. Pandey while functioning as above on 23.11.93 after completing the search of the residential and office premises of Sh. T.T. Parwani went to readymade garment shop of the wife of Sh. T.T. Parwani and took one pant and one shirt from her shop without paying any consideration.

Shri S.K. Pandey by his above acts exhibited lack of integrity and thereby contravened rule 3(1) (i) and (iii) of CCS Conduct rules."

4. While accepting the findings of the Inquiry Officer, the Disciplinary Authority came to the conclusion that as the matter relates to major penalty, the consultation with UPSC was required to be made. Accordingly, the Disciplinary Authority had referred the matter to UPSC. The UPSC, vide their advice dated 22.6.2000, proposed a penalty of stoppage of two annual increments without cumulative effect. The Disciplinary Authority again referred the matter for re-examination to UPSC and vide letter dated 6.12.2000, UPSC reiterated their earlier advice. The Disciplinary Authority vide order dated 28.6.2001 while disagreeing with the advice of the UPSC, imposed a penalty of removal

from service upon the applicant. The review application of the applicant was also rejected.

5. The main contention of the applicant, apart from the other contentions, is that before disagreeing with the advice of the UPSC, the Disciplinary Authority has not issued a show cause notice or accorded him a reasonable opportunity of hearing, which violates the principles of natural justice.

6. Since the matter has been remanded back by the Hon'ble High Court of Delhi to decide the matter in the light of the judgment of the Supreme Court in the case of **Union of India and Another Vs. T.V. Patel, 2007 (6) SCALE 9**, we have heard the learned counsel for both the parties and perused the pleadings on record.

7. The main issue for determination in this case, is whether before imposing the penalty a show, cause notice or a copy of the advice of the UPSC is required to be issued to the delinquent and whether the advice of the UPSC is binding on the disciplinary authority or not.

8. Learned counsel for the applicant Shri K.K.Rai argued that the punishment of removal from service is not only extreme but has been imposed without application of mind and in violation of principle of natural justice. Further, the review application dated 23.8.2001 filed by the applicant (Annexure A-24 (B)) was not properly considered. Learned counsel would also contend that judgment in **T.V.Patel's case (Supra)** is not applicable. While rebutting the contentions of Shri K.K.Rai, learned counsel for the respondents Ms.Jyoti Singh would contend that the plea taken by the applicant regarding legality of the punishment that it is arbitrary, is not tenable. UPSC has obviously not given clean chit to the applicant. Learned counsel emphasized that looking to the gravity of the offence, the President, after taking clearly the note of the advice of UPSC, decided for imposition of major penalty of removal from service. Learned

ce

counsel also submitted that applicant is now even challenging the UPSC advice which plea was never raised earlier by him. She also highlighted that the advice of UPSC is that advice which is not binding. It is open to the Disciplinary Authority and other competent authorities (including the President) to accept or not accept the advice of the UPSC.

9. The Hon'ble Supreme Court in N. Rajarathinam v. State of Tamil Nadu & Anr., 1997(1) ATJ SC 143 held that Government is not bound to accept the recommendation of the Public Service Commission.

10. The Hon'ble Apex Court in the case of T.V.Patel (supra), while relying upon the case of State of U.P. vs. Manbodhan Lal Srivastava, 1958 SCR 533, delivered by the Constitution Bench, has dealt with the above issue and held as under:

“16. As already noticed, Rule 32 of the Rules deals with the supply of a copy of Commission's advice. Rules as read as it is mandatory in character. Rule contemplates that whenever a Commission is consulted, as provided under the Rules, a copy of the advice of the Commission and where such advice has not been accepted, also a brief statement of the reasons for such non-acceptance shall be furnished to the Government servant along with a copy of the order passed in the case by the authority making the order. Reading of the Rule would show that it contemplates two situations; if a copy of advice is tendered by the Commission, the same shall be furnished to the Government servant along with a copy of the order passed in the case by the authority making the order. The second situation is that if a copy of the advice tendered by the Commission has not been accepted, a copy of which along with a brief statement of the reason for such non-acceptance shall also be furnished to the Government servant along with a copy of the order passed in the case, by the authority making the order, In our view, the language employed in Rule 32, namely “along with a copy of the order passed in the case, by the authority making the order” would mean the final order passed by the authority imposing penalty on the delinquent Government servant.”


XXXXX X XXXXXXXXXXXX XX XXXX
XXXXX

“23. In view of the law settled by the Constitution Bench of this Court in the case of Srivastava (supra) we hold that the provisions of Article 320 (3) (c) of the Constitution of India are not mandatory and they do not confer any rights on the public servant so that the absence of consultation or any irregularity in consultation process or furnishing a copy of the advice tendered by the UPSC, if any, does not afford the delinquent government servant a cause of action in a court of law.”

11. In the present case, the Disciplinary Authority has neither issued a show cause notice nor a copy of the advice of the UPSC to the applicant before or after imposing the punishment of removal from service. As the Hon'ble Apex Court has already held that the Government is not bound to accept the recommendation/advice of the Commission, non-supply of the copy of the advice does not cause any prejudice to the applicant.

12. Having regard to the ruling of Hon'ble Supreme Court in **T.V.Patel's case (supra)**, we find that the present case is also squarely covered by the above cited case laws. If before imposing the major penalty of removal from service, an advice was sought for from the UPSC, the Disciplinary Authority is not bound to accept the findings of the UPSC as has been held in **N.Rajarathinam's case (Supra)** and there was no need to supply a copy of the same or issue a show cause notice to the delinquent.

13. Finding no merit, the OA is dismissed. No order as to costs.


(Chitra Chopra)
Member (A)


(Shanker Raju)
Member (J)

/usha/