

**Central Administrative Tribunal
Principal Bench**

OA No.42/2015

New Delhi, this the 16th day of January, 2020

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. A.K. Bishnoi, Member (A)**



Krishna Singh, Aged-49 years,
S/o Lt. Ram Subhag Singh,
Presently working as Deputy General Manager/Project
and Project Director/
Rewari-Manheru Doubling Project,
Rail Vikas Nigam Limited,
Room No.269, 1st Floor,
August Kranti Bhawan,
Bhikaji Cama Place, R.K. Puram,
New Delhi-110066

R/o H.No.G-456, Gali No.20,
Tajpur Road, Molar Band Extension,
(Near Subham Garden-40 Feet Road),
Badarpur,
New Delhi-110044.

...Applicant

(By Advocate : Shri Yogesh Sharma)

Versus

1. Union of India through
The Secretary,
Ministry of Railway,
Govt. of India, Railway Board,
Rail Bhawan,
New Delhi-110001.
2. The Joint Secretary (E)-II,
Ministry of Railway,
Govt. of India, Railway Board,
Rail Bhawan, New Delhi.
3. The General Manager (Personnel),
North Eastern Railway,
Gorakhpur.

...Respondents

(By Advocate : Shri Kripa Shankar Prasad)

ORDER (ORAL)**Justice L. Narasimha Reddy, Chairman :-**

The applicant was working as Assistant Divisional Engineer (ADEN) in the North Eastern Railway, in the year 2009, and was Incharge of procurement of ballast. A charge memo was issued to him on 21.02.2009, wherein three articles of charge were framed. The applicant submitted his explanation denying the allegations. Not satisfied with that, the Disciplinary Authority (DA) appointed an Inquiry Officer. Through his report dated 14.06.2010, the Inquiry Officer held the charges, as not proved. The DA, however, issued a disagreement note on 10.03.2011, and on a consideration of the explanation, submitted by the applicant, passed an order dated 15.06.2011 imposing the punishment of "Censure". Aggrieved by that, the applicant preferred an appeal on 03.08.2011. The appeal was rejected through order dated 28.11.2013. This OA is filed challenging the order of punishment, as affirmed by the Appellate Authority AA).

2. The principal ground urged by the applicant is that though the AA, i.e. the President, consulted the UPSC

and the latter in turn tendered its advice, a copy thereof was not furnished to him. Reliance is placed upon the OM dated 19.11.2014 issued by the DOP&T. An effort is also made to challenge the very order of punishment and the findings recorded by the Inquiry Officer.



3. Respondents filed counter affidavit opposing the OA. It is stated that though the Inquiry Officer held the charges as not proved, the DA issued disagreement note and, on a consideration of the representation made by the applicant, has arrived at a conclusion that the articles No.1&2 are partly proved and charge No.3 is not proved and a punishment of very low degree, namely, 'Censure' was imposed. It is also stated that the occasion to furnish a copy of the advice tendered by the UPSC at the appellate stage would arise, if only, a view different from the one, taken by the DA is proposed by the AA.

4. We heard Shri Yogesh Sharma, learned counsel for applicant and Shri Kripa Shankar Prasad, learned counsel for respondents.

5. In certain service rules, the Disciplinary Authorities are placed under obligation to consult the UPSC, before

any punishment is imposed. In the instant case, there is no such requirement. Though the Inquiry Officer held the articles of charges as not proved, the DA issued a disagreement note and was of the view that articles No. 1&2 are partly proved, and article No.3 is not proved. On that basis, punishment of 'Censure' was imposed.



6. An appeal is provided to the President, having regard to the status of the post, held by the applicant. Such a remedy was availed and the President, in turn, consulted the UPSC, as required under the relevant provisions of law. The UPSC analysed the case and advised the Hon'ble President that there is no necessity to interfere with the punishment imposed by the DA. That was accepted and the appeal was rejected.

7. In ***Union of India and Ors. Vs. S.K Kapoor*** (2011) 4 SCC 589, the Hon'ble Supreme Court held that wherever the advice of the UPSC is taken in the disciplinary proceedings, a copy thereof, must be made available to the concerned employee. Following that, several orders of punishment were set aside and matters were remanded.

8. In the instant case, it is no doubt true that the advice was not obtained by the DA, and it was at the stage of appeal. The DOP&T issued OM dated 19.11.2014, indicating the steps to be taken in the light of the judgment of Hon'ble Supreme Court in **S.K. Kapoor's** case (supra). The question as to whether the same principle applies for the advice taken at the stage of the appeal also was dealt with, in para 5. The following was observed :-



“5. It is a settled principle of natural justice that if any material is to be relied upon in departmental proceedings, a copy of the same must be supplied in advance to the charge-sheeted employee so that he may have a chance to rebut the same.”

9. Once it was treated as mandatory to furnish the copy of advice of the UPSC, obtained at the stage of appeal also, the respondents herein cannot take a different view. The plea raised by them is totally on different lines altogether. It is not in dispute that the copy of the advice, tendered by the UPSC, was not made available to the applicant.

10. We, therefore, partly allow the OA and set aside the order of AA. It is directed that the advice tendered by the UPSC shall be furnished to the applicant within four

weeks from today, and it shall be open to him to submit his representation within four weeks thereafter. The AA shall pass appropriate orders, duly taking into account the representation that the applicant may submit, within six weeks thereafter.



There shall be no orders as to costs.

(A.K. Bishnoi)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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