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Central Administrative Tribunal, Principal Bench

O.A.No.3269/2001

New Delhi, this the 4th day of October, 2002

Hon'ble Mr.Justice V.S.Aggarwal, Chairman
Hon'ble Mr.M.P.Singh, Member(A)

C.L. Tank,
S/o late Badlu Ram
R/o House No.1430,
Govindpuri,
New Delhi-23 ....Applicant

(By Advocate: Shri S.N.Anand)

Versus

1. Union of India through Secretary,
   Ministry of Personel,
   (Department of Personnel & Training)
   North Block,
   New Delhi.

2. The Chairman,
   Union Public Service Commission,
   Dholpur House,
   New Delhi.

3. The Secretary,
   Department of Telecommunications,
   Sanchar Bhawan,
   20, Ashoka Road,
   New Delhi-1.

4. The Director (Vigilance)
   Department of Personnel & Training,
   Ministry of Personnel,
   (Department of Personnel and Training)
   North Block,
   New Delhi.

5. The Deputy Secretary (Admn.)
   Department of Telecommunications,
   Sanchar Bhawan,
   20, Ashoka Road,
   New Delhi-1. ....Respondents

(By Advocate: Shri H.K. Gangwani)

O R D E R

By Justice V.S. Aggarwal, Chairman

The applicant (C.L. Tank) seeks quashing of the order of penalty dated 23.8.2001 issued by respondent no.5 (Deputy Secretary (Admn.) on the basis of the order of

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10.8.2001 issued by the disciplinary authority and further to treat him to be in service from the date of imposition of penalty of compulsory retirement and pay him salary and allowances for the said period.

2. The relevant facts are that the applicant during January,1990 and 29.6.93 was dealing with the conduct of departmental examination for promotion to the grade of J.T.O. There was alleged leakage of the question paper of the said examination. The applicant deserted the place of duty on 16.6.93 without getting the leave sanctioned from the competent authority and without informing his whereabouts to his superiors. He deserted the place alongwith the bunch of keys of all almirahs containing most important documents at an important juncture when he was required to help in the investigation relating to leakage of aforesaid question papers. He is also alleged to have disobeyed the instructions of the superiors directing him to report for duty.

3. A chargesheet was issued to the applicant vide the Department of Personnel & Training charge memo dated 24.1.97 under Rule 14 of the Central Civil Service (Classification, Control and Appeal) Rules, 1965 for the misconduct. He denied the charges. Enquiry officer and Presenting Officer had been appointed. The enquiry officer held the charges as not proved. On receipt of the report of enquiry officer, the disciplinary authority did not agree with the findings of the enquiry officer that the charge was not proved. A copy of the report of the investigating officer alongwith the reasons of disagreement of the disciplinary authority had been forwarded to the applicant to enable him to make representation, if any. In turn, the applicant submitted representation stating that the charges were baseless. After taking

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into consideration the records and the disagreement, the disciplinary authority tentatively decided to impose a major penalty. Thereafter the records were sent to the Union Public Service Commission (U.P.S.C.) for their advice. The U.P.S.C., after analysis of the case records and taking into account all aspects, advised that ends of justice would be met if penalty of compulsory retirement with 20% cut in pension otherwise admissible, is imposed. The disciplinary authority, after independent examination of the case records including findings of the enquiry officer, advice of the U.P.S.C. and taking into account all other facts and circumstances, came to the conclusion that both the Articles of Charge were substantially proved. It was thereafter that the impugned order of penalty of compulsory retirement with 20% cut in pension was passed. Sanction had also been accorded by the Central Government under Section 19 of the Prevention of Corruption Act for prosecution of the applicant.

4. The applicant assails the impugned order on the ground that the findings that have been arrived at, are totally unsustainable. It is based on surmises and conjectures. No reasonable opportunity had been granted at the pre-decisional stage to the applicant. He further contends that he had not been supplied the opinion of the U.P.S.C. and on that account, prejudice had been caused.

5. In the counter filed, the assertions as such, have been controverted.

6. So far as the contention of the applicant that the findings are based on no evidence is concerned, indeed it has to be stated to be rejected. We know from the decision of the Supreme Court in the case of Bank of India and Another vs.

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Degala Suryanarayana, (1995) 5 SCC 762 that in judicial review unless findings are totally perverse or there is totally no evidence or a reasonable person would not come to such a conclusion, the court or the Tribunal would not interfere. In paragraph 11 of the said judgement, the Supreme Court held :

> "11. Strict rules of evidence are not applicable to departmental enquiry proceedings. The only requirement of law is that the allegation against the delinquent officer must be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the gravamen of the charge against the delinquent officer. Mere conjecture or surmises cannot sustain the finding of guilt even in departmental enquiry proceedings. The court exercising the jurisdiction of judicial review would not interfere with the findings of fact arrived at in the departmental enquiry proceedings excepting in a case of mala fides or perversity i.e. where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at that finding. The court cannot embark upon reappreciating the evidence or weighing the same like an appellate authority. So long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained. In Union of India vs. H.C. Goel, the Constitution Bench has held:
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> > "(T)he High Court can and must enquire whether there is any evidence at all in support of the impugned conclusion. In other words, if the whole of the evidence led in the enquiry is accepted as true, does the conclusion follow that the charge in question is proved against the respondent? This approach will avoid weighing the evidence. It will take the evidence as it stands and only examine whether on that evidence legally the impugned conclusion follows or not."

7. Can we say in the facts of the present case that there is no material on record? The answer necessarily

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has to be in the negative. It is one thing to say that the charge is not proved but it is totally another matter to conclude that there is no evidence on the record. In the present case in hand, it is apparent from the statements of the witnesses on record that it is not a case of no evidence on the record. Once the strict rule of evidence and it has not to be proved beyond all reasonable doubts but on preponderance of probabilities, we find that the plea much thought of by the learned counsel for the applicant necessarily must be rejected.

8. Yet another submission was made that no reasonable opportunity had been granted to the applicant and on that count, prejudice had been caused to him. Even on this count, when during the course of submissions it has been so pointed out, our attention was not drawn to any fact whereby it could be termed that no reasonable opportunity had been granted or on that count, prejudice had been caused to the applicant.

9. The last submission made was that the report of the U.P.S.C. had not been supplied to the applicant and on that count, the impugned order deserves to be quashed because the applicant could not make a reasonable representation in this regard.

10. The main thrust however of the arguments of the learned counsel was that the copy of the opinion of the U.P.S.C. has not been supplied to the applicant and, therefore, it is violation of the principles of natural justice. The impugned order consequently should be set aside. In support of his argument, the learned counsel referred to a few

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precedents in this regard.

11. In the case of State Bank of India & others vs. D.C. Aggarwal and another, (1993) 1 SCC 13, the disciplinary authority had proceeded against an officer of the Bank. The enquiry officer exonerated the concerned officer. The Central Vigilance Commission (CVC) had disagreed with the report. The said report of the CVC was not supplied to the delinquent official. The disciplinary authority disagreed with the recommendations of the CVC regarding major/minor punishments. The Supreme Court held that this violated the principles of natural justice and the order of the High Court quashing the said punishment, has been upheld. The Supreme Court held :

> "The order is vitiated not because of mechanical exercise of powers or for non-supply of the inquiry report but for relying and acting on material which was not only irrelevant but could not have been looked into. Purpose of supplying document is to contest its veracity or give explanation. Effect of non-supply of the report of Inquiry Officer before imposition of punishment need not be gone into nor it is necessary to consider validity of sub-rule (5). But non-supply of CVC recommendation which was prepared behind the back of respondent without his participation, and one does not know on what material which was not only sent to the disciplinary authority but was examined and relied on, was certainly violative of procedural safeguard and contrary to fair and just inquiry. From the letter produced by the respondent, the authenticity of which has been verified by the learned Additional Solicitor General, it appears the Bank turned down the request of the respondent for a copy of CVC recommendation as "The correspondence with the Central Vigilance Commission is a privileged communication and cannot be forwarded as the order passed by the appointing authority deals with the recommendation of the CVC which is considered sufficient." Taking action against an employee on confidential document which is the foundation of order exhibits complete mis-apprehension about the procedure that is

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> required to be followed by the disciplinary authority. May be that the disciplinary authority has recorded its own findings and it may be coincidental that reasoning and basis of returning the finding of guilt are same as in the CVC report but it being a material obtained behind back of the respondent without his knowledge or supplying of any copy to him the High Court in our opinion did not commit any error in quashing the order. Non-supply of the Vigilance report was one of the grounds taken in appeal. But that was so because the respondent prior to service of the order passed by the disciplinary authority did not have any occasion to know that CVC had submitted some report against him. The submission of the learned Additional Solicitor General that CVC recommendations are confidential, copy of which, could not be supplied cannot be accepted. Recommendations of Vigilance prior to initiation of proceedings are different than CVC recommendation which was the basis of the order passed by the disciplinary authority."

12. It is obvious and clear that the case rested on a fact where there was disagreement on certain points between the disciplinary authority and the recommendations of the C.V.C. It was this fact that prompted the Supreme Court to state that non-supply of the report of the C.V.C. would cause prejudice to the concerned officer. To the same effect has been a subsequent decision of the Delhi High Court in the case of <u>Union of India vs. Charanjit Singh Khurana</u> in Civil Writ No.69/2002 decided on 7.1.2002. A similar question had been considered. The disciplinary authority had proposed lesser punishment and U.P.S.C. had disagreed with the same. It had suggested extreme punishment of dismissal. This Tribunal had upset the order of the disciplinary authority because advice of the U.P.S.C. had not been supplied. The said order was upheld holding:

> "The only ground taken by learned counsel for the petitioner challenging the aforesaid judgment is that it was not necessary to furnish the copy of advice of UPSC the

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respondent before imposing the punishment inasmuch as as per rules a copy of the said advice has to be given along with the penalty order. This submission of the learned counsel is not correct in the facts of this case when the disciplinary authority had proposed a lesser punishment and UPSC disagreed therewith and suggested imposition of extreme punishment of dismissal and disciplinary authority acted on that advice. In such circumstances, a copy of the advice should have been supplied to the petitioner in consonance with the principles of natural justice as has been held in the aforesaid cases cited in the impugned judgment. Even otherwise when the impugned order of punishment is set aside on various other grounds by the Tribunal, the challenging the same only on this one ground would not help the petitioner."

13. In the case of Krishan Lal vs. State of J&K, 1994 (4) SCC 422 also, the Supreme Court on consideration of a similar controversy, held that copy of the recommendations/report, if any, should have been supplied.

14. This Tribunal in the case of R.K.Mishra vs. Union of India & ors. (O.A. No. 2582/2000) decided on 2.8.2001, in an identical fashion, held:

"Applying the aforesaid ratio in the facts and circumstances of the present case we find that in the minor penalty charge-sheet issued to the applicant he has not been charged for a grave misconduct and even according to the conclusion of the disciplinary authority which has been later on disagreed by the UPSC there was occasion only for imposing a minor penalty as the charges of evidence do not indicate a grave misconduct. This has also been admitted by the respondents. In such circumstances, the minor penalty charge-sheet issued to the applicant is certainly not of grave misconduct and this has been the view of the disciplinary authority. As such the inquiry should not have been continued after retirement and there is no question of imposition of any punishment as envisaged under Rule 9 of the Pension Rules, but for the disagreement arrived at by the UPSC the disciplinary has already taken a firm decision regarding the minor penalty. It is only on the advice of the UPSC which prompted the disciplinary authority to take a different view from what he had earlier formed and this would have certainly necessitated

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supply of the advice of the Commission to the applicant before a final decision is taken by the disciplinary authority. Placing reliance on the decision of the Full Bench which is binding on us as the fact that the same has neither been modified or over-ruled by the higher Courts the proceeding drawn up against the applicant for a minor penalty and discontinuance after his retirement is not legally tenable."

15. However a Full Bench of this Tribunal in the case of Shri Chiranji Lal vs. Union of India & ors., 2000 (1) ATJ 3 was referred one of the questions:

"Whether in proceedings under Rule 9 of the CCS (Pension) Rules, 1972, a further show cause notice needs to be given to the charged officer together with a copy of the advice received from the UPSC, as provided under Article 311(2) of the Constitution and principles of natural justice ?"

16. The Full Bench answered the same by holding it in the negative. The findings of the Full Bench are:

"18. The consultation with the UPSC does not take away the duty of the disciplinary authority to apply its own mind before giving his final orders. There is also no additional material before the UPSC excepting that which is also with the disciplinary authority. A second stage show cause notice forwarding to him on the advice of the UPSC will necessarily involve the supply of the provisional conclusion of the disciplinary authority. It will in effect set the 42nd amendment of the Constitution at nought. Even if the UPSC disagrees with the provisional conclusion of the disciplinary authority it has to give its reasons but those reasons are based on the same material as were before the disciplinary authority and such advice is thus no more than an assistance to the disciplinary authority in applying its mind and coming to a final conclusion. The charged officer has already given his interpretation and comments on the findings of the enquiry officer, the UPSC gives its own and the disciplinary authority can then finally make up its mind. We cannot therefore say that non-supply of the advice at the pre-decisional stage to the charged officer is a denial of fair hearing to the applicant as he has already exercised his right to fair hearing when he has made a representation on the same material as is

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before the UPSC".

17. In other words, the Full Bench had categorically held that once the advice of the U.P.S.C. is in line with the thinking of the disciplinary authority, in that event, the said advice of the U.P.S.C. need not be conveyed. The binding nature of the decision of the Full Bench of the Tribunal need not be emphasised.

18. In the present case in hand, as already pointed above, the disciplinary authority had disagreed with the findings of the enquiry officer. Indeed the matter had been referred to the U.P.S.C. and thereafter had recorded:

> "AND WHEREAS the Disciplinary Authority has carefully considered the case records of Shri C.L.Tank, the findings of the Inquiry Officer, evidence on record, the representation submitted by the officer and the advice dated 30.4.2001 of Union Public Service Commission. The Disciplinary Authority finds that the Charged Officer proceeded on leave without sanction and was untraceable by phone, post or messenger till 18.6.93. The excuse of the bereavement in the family advanced by the Charged Officer was not convincing. Further the Disciplinary authority finds that it was the Charged Officer's duty to keep the keys in his personal custody and his lapse was (a) in not attending to duties to assist the investigations on leakage of papers and (b) in sending the keys in an unsecured manner. The Charged Officer has also disobeyed the instructions of his superiors as proved from both oral and documentary evidence. In view of this, the Disciplinary Authority finds that Article-I of the charge is substantially proved."

19. It also went on to accept the advice but passed the order which is under challenge. Once the advice of the U.P.S.C. is in line with the thinking of the disciplinary authority, in that event it becomes wholly unnecessary to supply the advice of the U.P.S.C. It is not a case where

the disciplinary authority differed from the advice of the U.P.S.C. All the precedents relied upon by the learned counsel for the applicant belong to the category of cases where there was difference of opinion between the U.P.S.C's. advice and the disciplinary authority. Consequently this particular argument in the peculiar facts is totally devoid of any merit.

20. Resultantly the present O.A.No.3269/2001 being without merit, must fail and is accordingly dismissed.

(M.P. Singh)
Member(A)

(V.S. Aggarwal)
Chairman

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