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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.806/2004

New Delhi this the 22nd day of July, 2004.

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)
HON'BLE MR. S.A. SINGH, MEMBER (ADMNV)

Dr. V.K. Sinha,
R/o Flat No.9358,
C-9, Vasant Kunj,
New Delhi.

-Applicant

(By Advocate Shri G.D. Bhandari)

-Versus-

1. Union of India through
its Secretary,
Ministry of Health & Family Welfare,
Nirman Bhawan,
New Delhi.

2. Union Public Service Commission,
through its Secretary,
Dholpur House,
Shahjahan Road,
New Delhi.

-Respondents

(By Advocate Shri Madhav Panikar)

1. To be referred to the Reporters or not?

yes

2. To be circulated to other Benches of the Tribunal

yes

or not?

S. Raju

(Shanker Raju)
Member (J)

(2)

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New Delhi this the 22nd day of July, 2004.

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)
HON'BLE MR. S.A. SINGH, MEMBER (ADMIN)

Dr. V.K. Sinha,
R/o Flat No. 93584,
C-9, Vasant Kunj,
New Delhi.

-Applicant

(By Advocate Shri G.D. Bhandari)

-Versus-

1. Union of India through
its Secretary,
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Nirman Bhawan,
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(By Advocate Shri Madhav Panikar)

O R D E R (ORAL)

By Mr. Shanker Raju, Member (J):

Applicant impugns Presidential order dated 24.6.2003, imposing upon him post retirement penalty of 10% cut in pension for a period of two years.

2. Applicant who was working as CHS officer in the Directorate General of Health Services has been proceeded against for a major penalty under Rule 14 of the CCS (CCA) Rules, 1965 on the ground that on 16.12.1993 a misleading note has been written justifying free treatment given by M/s Lok Sewa C.T. Scan Centre Pvt. Ltd., Jodhpur to facilitate the company to gain, which ultimately resulted in loss to Government.

3. The charge against applicant was partly proved by the Inquiry Officer (IO). Applicant represented against

the inquiry report and was exonerated on referring back the inquiry by the disciplinary authority to the IO on article of charges I and II, except on technical grounds. The UPSC agreed to this, which was disagreed to on 7.1.2002 by the competent authority and the matter was remanded back to the UPSC for fresh consideration.

4. Vide its advice dated 19.3.2002 UPSC re-iterated the earlier view, exonerating applicant on technical fault and suggested the punishment of censure. Applicant, who retired on superannuation on 31.3.2002 sought for pensionary benefits.

5. By an order dated 24.6.2003 disagreeing with the advice of the UPSC without furnishing a copy of advice of UPSC before final order penalty under Rule 9 of the CCS (Pension) Rules was imposed.

6. The review filed to the President of India remained undisposed of, giving rise to the present OA.

7. Though several contentions have been placed for our consideration by Sh. G.D. Bhandari, learned counsel for applicant, at the outset, it is stated that though UPSC through its advice recommended censure the disagreement has been arrived at by the President without furnishing copy of the advice of the UPSC and according a reasonable opportunity to applicant, which vitiates the impugned order, being not in consonance with the principles of natural justice. By not furnishing the advice of the UPSC prior to imposition of penalty applicant has been denied an effective hearing which has prejudiced his right.

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8. On the other hand, learned counsel for respondents Sh. Madhav Panikar vehemently opposed the contentions but regarding disagreement with UPSC it is stated that the matter was referred to DoPT and thereafter a decision has been taken.

9. We have carefully considered the rival contentions of the parties and perused the material on record. Furnishing of UPSC advice in case of disagreement by the disciplinary authority or vice versa is a recognised principle of law in case of serving officials. The same mutatis mutandis applies to retired personnel also. It is trite law that after the disciplinary authority disagreed with the findings of the IO it is bound to state its tentative reasons and after according reasonable opportunity to show cause pass a final order.

10. As regards cases where the UPSC is to be consulted in case of any disagreement between the disciplinary authority and UPSC or vice versa the issue was racked up in **Charanjit Singh Khurana v. Union of India**, OA No.1826/98 decided by this Court on 14.9.2001, wherein the following observations have been made therein:

"8. In our considered view what has been held and affirmed by the High Court would hold the field and the ratio arrived at in Full Bench decision would be of no avail to the respondents as the decision of the High Court being of the superior court would be binding and the fact that the order has been affirmed by a speaking order is binding precedent under Article 141 of the Constitution of India. Applying the aforesaid ratio the contention of the respondents' counsel is that Rule 32 does not provide for furnishing of a copy of the advice before passing a final order by the disciplinary authority and the decision in **Rai Kamal's case (supra)** is per incuriam and the Full

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Bench decision would be of no legal effect. Applying the aforesaid ratio to the facts and circumstances of the present case we find that after the enquiry officer has proved the charge and the matter has been referred to on the provisional conclusion of the disciplinary authority as to major punishment the UPSC had advised imposition of a penalty of dismissal from service to which the disciplinary authority has written for reconsideration on the ground of proportionality of punishment but the same has been disagreed to. The aforesaid disagreement by the UPSC though was available with the disciplinary authority but has not been furnished to the applicant before awarding the punishment. The aforesaid material no doubt is an additional material taken into consideration by the disciplinary authority to award a punishment of dismissal to the applicant. From the perusal of the order passed by the disciplinary authority it can be apparently inferred that apart from the recommendation of the UPSC the disciplinary authority has not at all considered any other material and imposed the punishment of dismissal as recommended by the UPSC. The applicant has been deprived of a reasonable opportunity to defend himself which is in violation of the principles of natural justice and as such it was incumbent upon the disciplinary authority to have furnished him the copy of the UPSC advice disagreeing with the recommendation of the disciplinary authority for lesser punishment. The above stated advice is undoubtedly a disagreement and has been acted upon to the detriment of the applicant. We follow the ratio of the Rai Kamal's case (supra) as affirmed by the High Court and also having regard to the decision of the Apex Court in D.C. Aggarwal's case (supra) the impugned order is not sustainable on this ground!!

iii. When the matter was challenged before the High Court of Delhi in CWP No.69/2001 the following observations have been made:

"d) The disciplinary authority, without application of mind, merely agreed with the disagreement contained in the advice given by UPSC while imposing the extreme punishment and extenuating circumstances explained by the respondent herein were not considered at all.

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 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

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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 case cited in the impugned judgement. 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 ground would not help the petitioner."

12. The aforesaid decision of the High Court was further affirmed by the Apex Court in SLP No.9816/2002 on 9.5.2002. Accordingly the ratio laid down has attained finality and is a binding precedent. While laying at rest the ratio laid down by this Court as affirmed by the High Court of Delhi in CA No.642/2004 decided on 30.1.2004 in **S.N. Narula v. Union of India** the following observations have been made by the Apex Court:

"Leave granted.

The appellant was initially appointed as Station Master in Northern Railways in 1955 and during the relevant time when he was Senior Commercial Manager, and a charge-sheet was issued to the appellant and disciplinary proceedings were initiated against him, and enquiry officer filed report holding that the charge No.5 partly proved and the charge No.7 proved. As regards other charges he was exonerated. After considering the report of the enquiry officer, disciplinary authority proposed a punishment suggesting a suitable cut in the pension and the appellant was not heard on this proposal. Thereafter, the proceedings were sent for opinion of the Union Public Service Commission and the Union Public Service Commission gave an opinion to the effect that his pension shall be reduced to minimum and he shall not be granted any gratuity. The disciplinary authority accepted the proposal of the Union Public Service Commission and imposed the said punishment. It is to be noticed that the advisory opinion of the Union Public Service Commission was not communicated to the appellant before he was heard by the

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disciplinary authority. The same was communicated to the appellant along with final order passed in the matter by the disciplinary authority.

The appellant filed O.A. No.1154/2002 before the Central Administrative Tribunal, New Delhi and Tribunal held that there was violation of principles of natural justice and the following direction was issued:

"We are of the considered opinion that this order is a non-speaking one and as such we are of the view that the same cannot be sustained and is liable to be quashed. Accordingly, we quash the impugned order and remand the case back to the disciplinary authority to pass a detailed reasoned and speaking order within a period of 3 months from the date of receipt of a copy of this order in accordance with instructions and law on the subject."

This order was challenged by the Union of India by way of Writ Petition before the High Court of Delhi and by the impugned judgment the High Court interfered with that order. The Writ Petition was partly allowed and it was directed that the matter be again considered by the Tribunal. Against the order the appellant has come up in appeal by way of Special Leave Petition.

We heard the learned counsel for the appellant and the learned counsel for the respondent. It is submitted by the counsel for the appellant that the report of the Union Public Service Commission was not communicated to the appellant before the final order was passed. Therefore, the appellant was unable to make an effective representation before the disciplinary authority as regards the punishment imposed. We find that the stand taken by the Central Administrative Tribunal was correct and the High Court was not justified in interfering with the order. Therefore, we set aside the judgment of the Division Bench of the High Court and direct that the disciplinary proceedings against the appellant be finally disposed of in accordance with the direction given by the Tribunal in Paragraph 6 of the order. The appellant may submit a representation within two weeks to the disciplinary authority and we make it clear that the matter shall be finally disposed of by the disciplinary

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authority within a period of 3 months thereafter.

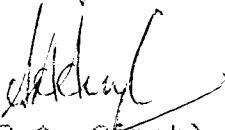
The appeal is disposed of."

13. If one has regard to the above, a copy of the UPSC advice particularly in view of disagreement by the disciplinary authority was necessarily to be supplied to applicant before imposition of penalty. This non-supply has denied a reasonable opportunity to applicant of making an effective representation. This is not in consonance with the principles of natural justice and passes the test of prejudice as held by the Apex Court in **Managing Director, ECIL, Hyderabad v. B. Karunakar**, JT 1993 (6) SC 1.

14. In this view of the matter, OA is partly allowed. Impugned order is set aside. As applicant along with the final order has been served upon a copy of the advice of the UPSC, he may represent against the disagreement within two weeks from the date of receipt of a copy of this order and the respondents shall pass a final order within 8 weeks from the date of receipt of the representation of applicant.

15. The other legal grounds taken are not adjudicated.

16. There shall be no order as to costs.


(S.A. Singh)
Member (A)


(Shanker Raju)
Member (J)

"San."