

19

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A.No.1182 of 1993.

New Delhi, this the 8th day of February, 1996.

HON'BLE MR N.V.KRISHNAN, ACTING CHAIRMAN
SMT.LAKSHMI SWAMINATHAN, MEMBER(J)

Shri Pritam Singh,
R/O No.IV/251,
Bholanath Nagar, Gali No.4,
Idgarh Road,
Delhi-110032.

..... Applicant.

(through Mr J.K.Bali, Advocate).

vs.

1. Union of India,
through Secretary to the Govt. of India,
Ministry of Railways,
Railway Board, Rail Bhawan,
New Delhi.
2. General Manager,
Northern Railway,
Headquarters Office, Baroda House,
New Delhi.
3. Secretary,
Union Public Service Commission,
Dholpur House, New Delhi. Respondents.

(through Mr R.L.Dhawan, Advocate).

ORDER

(delivered by Hon'ble Smt.Lakshmi Swaminathan, Member(J))

The Applicant, who was working as
Assistant Works Manager in the Bikaner Division
of Northern Railway and has retired from service
on 31.1.1981 on superannuation is aggrieved by the
order passed by the President dated 9.3.1993(Enclosure
to Ann:A-13). By this order, the President has decided

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that 10% of the D.C.R.G. and 25% of the monthly pension normally admissible to the applicant be withheld on permanent basis.

2. The brief facts of the case are that on 24.1.1981 the applicant was charge-sheeted. The charge was that he had committed misconduct inasmuch as that he changed the result of Trade Test of Shri Ram Dev from "Pass" to "Fail" by replacing his Trade Test form dated 8.11.1978 and putting in a fresh form dated 18.11.78 deliberately in connivance with Shri A.D.Singh, the then Works Manager, Bikaner. On these acts, the applicant was alleged to have failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Railway Servant, thereby contravened Rule 3(1)(i)(ii) and(iii) of Railway Services Conduct Rules, 1966(Annexure A-1). The proceedings were continued after his retirement on 31.1.1981.

3. After holding the inquiry as per the Rules, the Inquiry Officer had submitted his report dated 29.11.1981(Ann:A-2). The Disciplinary Authority accepted the findings of the Inquiry Officer. By memorandum dated 4.9.1982(Annexure A-3) the President had provisionally decided in terms of Rule 2308 of Indian Railway Establishment Code that Rs.500/- should be reduced from his DCRG and he was given an opportunity to make his submissions which he did on 12.10.1982(Annexure A-4). Thereafter, on reference by the Railway Board to U.P.S.C.(Ann:R-3) which was replied on 9.5.1984, UPSC expressed the view that the charged proved on the basis of the applicant's own admission^{is} of a serious nature. The Commission,

therefore, advised that they are provisionally of the view that a fresh notice should be served on the applicant requiring him to show-cause why 10% of the DCRG and 25% of the monthly pension admissible to him may not be withheld on a permanent basis (Ann:A-5). Accordingly, the Railway Board issued the memorandum dated 15.9.1984 proposing the revised penalty (Ann:A-5) to which the applicant gave his reply and also asked for the copy of the Union Public Service Commission (UPSC) advice and copies of show-cause notice issued to the three other co-accused and some further time to submit his final reply. By memorandum dated 12.7.89, his request for supply of show-cause notice, inquiry report and final decision of penalty imposed on the other co-accused officer was rejected. In this memo. it was also stated that the UPSC's letter proposing the enhanced penalty has already been furnished to him on 18.7.88. He was given further time of 15 days to make a representation.

4. According to the applicant, the impugned penalty order has imposed on him a very harsh punishment against the rules. Shri J.K.Bali, learned counsel for the applicant has submitted that having regard to the provisions of Rule 2038 of the Indian Railways Establishment Code (IREC) Volume III, the U.P.S.C. was not required to be consulted in regard to the punishment originally proposed to be imposed vide order dated 4.9.1982, namely, that D.C.R.G. ordinarily payable to him should be reduced by Rs.500/-

5. Rule 2308 of I.R.E.C. reads:

" 2308(CSR 351A): The President further reserves to himself the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period, and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if the pensioner is found in departmental or judicial proceedings to have been guilty of grave misconduct, or to have caused pecuniary loss to Government by misconduct, or negligence, during his service including service rendered on re-employment after retirement. provided that -

a) such departmental proceeding instituted while the Railway servant was in service whether before his retirement or during his re-employment shall, after the final retirement of the Railway servant, be deemed to be proceeding under this Article and shall be continued and concluded by the Authority by which it was commenced in the same manner as if the officer had continued in service.

b) Such departmental proceeding if not instituted while the railway servant was in service before his retirement or during his re-employment,

i) shall not be instituted save with the sanction of the President;

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ii) shall not be in respect of an event which took place more than four years before such institution; and

iii) shall be conducted by such authority and in such place as the President may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the Railway servant during his service.

c) No such judicial proceedings if not instituted while the Railway Servant was in service ~~mk~~ whether before his retirement or during his re-employment shall be instituted in respect of a cause of action which arose or an event which took place more than four years before such institution.

d) The Union Public Service Commission shall be consulted before final orders are passed.

Rule 2308- R II of Indian Railway Establishment Code Volume II (1971 Edition) was amended to include gratuity vide correction slip no.409 issued vide Railway Board's letter no.P(E)III/91-1/29 dated 29.11.1991. The correction slip reads as under:

"Rule 2308-RII

Para 1 of Rule 2308-R-II be substituted as under:

"The President reserves to himself the right of withholding a pension or gratuity, or

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both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement. etc.

Shri J.K. Balli, learned counsel for the applicant submits that as per the un-amended Rule 230B prior to 1991 there was no provision for consultation with U.P.S.C. for imposing any punishment on gratuity. Therefore, seeking the advice of the UPSC and acting in accordance with that advice was itself in violation of the rules. He has also submitted that the Ministry of Railways has mis-conceived ^{the} role of UPSC, which is only an advisory body and has treated the advice of the U.P.S.C. as if they were to pass the orders as is seen from the letter of the U.P.S.C. dated 11.1.1993. In this letter, it is stated that after issuing fresh show-cause why 10% of the DCRG and 25% of the monthly pension should not be withheld on permanent basis and after receiving a reply from the applicant, the Ministry of Railways vide order dated 17.9.92 forwarded the records of the

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case to the Commission for their final orders in the
 matter so as to ^{enable} the final orders to be passed in this
 case by the President. Shri Bali, submits that the
 Ministry, ^P had treated the U.P.S.C. advice
 as if it is an order ^P binding on the Government,
 and ^P the competent authority, ^P had therefore, failed
 to apply its mind and exercise its discretion in the
 matter. This, according to him, vitiates the order. He
 further submits that the Railway Ministry had failed
 to give ~~their~~ point of view before forwarding the records
 to the U.P.S.C. which, therefore, does not constitute
 effective consultation as held in Dr.A.K.Gupta and Ors.
vs. Municipal Corporation of Delhi and others (1979(3)

SLR 1416 Delhi).

6. The second argument of the learned counsel
 for the applicant Shri J.K.Bali is that consultation
 with U.P.S.C. under Article 320(3)(c) of the Constitution
 is only to safeguard the interest of the Government
 servant and for his protection against any adverse orders.
 He submits that the UPSC cannot, therefore, propose to
 enhance the punishment already proposed by the
 Ministry as this cannot be taken as consultation for
 " protection" of the government servant. He relies on

181

26

Pradyat Kumar Bose vs. The Hon'ble the Chief Justice of
of Calcutta High Court (1955(2) SCR 1341 at page 1347),
 wherein the High Court has held that the applicant, **not being**
 a Government Servant was not entitled to the protection of
 Article 320(c) of the Constitution. He also relies on the
 Constituent Assembly Debates wherein it was mentioned
 that in disciplinary matters, these cases should be placed
 before the U.P.S.C. so that injustice may be redressed
 and it will also reduce the number of cases in Court.
 From this also, he submits that U.P.S.C. is to be consulted
 only for the protection of the government servant
 and so the Commission is vested with no powers to
 propose any enhancement of penalty.

8. The next argument is that punishment given
 to the applicant is harsh as compared to that given to
 Shri A.D.Singh, the other co-accused, who was working as a
 Works Manager on whom the penalty of reduction of one
 increment was imposed for a period of two years.

9. The respondents have filed the reply denying
 the above contentions. The respondents have submitted
 that the impugned penalty orders have been passed in
 accordance with the rules and hence the application may
 be dismissed. Shri R.L.Dhawan, learned counsel for the
 respondents has submitted that in accordance with I.R.E.C.
 Rule 2308 proviso(d), the UPSC has to be
 consulted before final orders are passed in departmental
 proceedings. He further submits that under IREC Volume II,
 Fourth re-print dated 26.7.1962(copy placed on record)
 Rule 2303(10)CSR 41) defines pension. It reads:

"(10)(C.S.R.41) - Pension - Except when the
 term 'pension' is used in contra-
 diction to gratuity, 'pension' includes
 gratuity."

181

Therefore, under Rule 2308, reproduced in para 5 above 'Pension' includes gratuity and accordingly consultation with U.P.S.C. under Rule 2308 was necessary even before the amendment/correction slip clarifying the position was issued by the Railway Board vide their letter dated 29.11.1991, also reproduced above. He relies on Full Bench judgment of this Tribunal in Amrit Singh vs. Union of India and others (1988) 8 ATC page 532 at page 548. The Tribunal in this case has also held:

"On the contrary, Article 2308 expressly includes gratuity. That being so, the contention that gratuity cannot be withheld under that article could not be sustained. We must also point out that although initially in Article 2308, only the word 'pension' was used, by amendment dated 18.6.1983 referred to above, the term 'pension' was to include D.C.R.G. also. Admittedly, gratuity, is a retirement benefit and when there is a specific provision in Article 2308 for withholding pension which includes gratuity in the circumstances mentioned in that article and where there is no specific rule prohibiting/ withdrawing of gratuity, the Railways have power to order withholding or withdrawing of pension."

10. Shri R.L.Dhawan, learned counsel for the respondents further submitted that the object of consultation the U.P.S.C., under Article 320(3) of the Constitution is to obtain the advice which is taken into consideration by the competent authority before arriving at its decision in the matter. He submits that no fetter can be placed on the UPSC's role to advice and they can in the circumstances of the case and after evaluation of the case record suggest even enhancement of the proposed punishment. He submits that the

27A

observations of the Supreme Court in Pradaya Kumar's Case (supra) relied upon by the learned counsel for the applicant is not relevant to the facts and circumstances of the present case. His contention is that the requirement under clause (d) of Rule 2308 is that the U.P.S.C. should be consulted before passing the final orders, which has been done in this case. Further that the U.P.S.C. in exercise of its power conferred under Article 320(3)(c) of the Constitution can advise in the matter as deemed fit. Shri R.L. Dhawan

has also submitted that no such restrictions on the powers of the U.P.S.C. can be put, as contended by the applicant's counsel. Under Rule 2302(1), 'pension' means that it includes gratuity unless that expression is used in contradiction to or in to gratuity. He, therefore, submits that under Rule 2308 Vol. II, as it existed even before the amendment of 29.11.1991, ^{it} empowered the President to withhold or withdraw pension and this automatically included / gratuity or any part of it, subject to the other conditions mentioned in the Rule.

Reliance on the Judgment of the Supreme Court in Jarnail Singh vs. Union of India 1992(3) Scale 313, has been placed. In this case, Rules 3 and 9 of the Pension Rules, 1972 were considered, which are in perimateria to the Rules 2302(10) and 2308 of the Railway Rules. In this case, the Court had, while dismissing the appeal held _____

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that having regard to the definition of the term 'pension' under Rule 3(o), the expression 'pension' in Rule 9(1) must be construed to include 'gratuity' since the term 'pension' in the context is not used in contradiction to gratuity. In this case, the Supreme Court had disagreed with the earlier observations in D.V. Kapur vs. Union of India and others (1990) 4 Supreme Court Cases 314 to the effect that the powers of the President under Rule 9 prior to its amendment was confined only to withholding of pension but did not include gratuity. Shri Dhawan submits that in the light of the later judgment of the Supreme Court in Jarnail Singh's case (supra), the amendment to Rule 2308 by Railway Board's letter dated 29.11.1991 is only clarificatory in nature. He has also referred to the amendment of the CCS (Pension) Rules, 1972, Rule 9(1) dated 23.8.1991 issued by the Ministry of Personnel in which the words 'or gratuity' was added after the word 'pension'. He, therefore, submits that the corrections issued by the Railway Board's letter dated 29.11.1991 referred to in the application is only a clarification of the rules in line with the DO P&T's Notification dated 23.8.1991 which itself was done following the decision of the Supreme Court in Jarnails Singh's case (supra). He also submits that no such amendment dated 18.6.1983 mentioned in Amrit Singh's case (supra) is traceable in the records although the ratio of this decision is fully applicable. The learned counsel, therefore, submits that on the facts of the case, the punishment imposed on the applicant has been done in accordance with the rules and, therefore, the application may be dismissed.

11. We have carefully gone through the pleadings, arguments of the learned counsel for both the parties and the records.

12. The main issues involved in this case are, namely, (i) whether the President ought to have consulted the U.P.S.C. when it was proposed to reduce the applicant's gratuity by Rs.500/- under Rule 2308 and (ii) whether the U.P.S.C. could have advised that a fresh show-cause notice may be given for enhancement of the ^{proposed} penalty, namely, why 10% of the D.C.R.C. and 25% of the monthly pension, admissible to him should not be withheld permanently.

13. On the first issue, the applicant's counsel contended that till the rule 2308 was amended by Railway Board's Circular letter dated 29.11.1991, the President was only empowered to withhold the pension and not gratuity. Therefore, according to him, as the rule stood before amendment, since the proposal of the President was ^{only} to withhold Rs.500/- from the DCRG, there was no necessity to consult the U.P.S.C. We are unable to ~~accept~~ accede to this line of argument for the following reasons.

14. Rule 2302(1) of the Railway Rules gives the definition of the term 'Pension' to include gratuity unless this expression is used in contradiction to gratuity. This definition in the Railway Rules is in ~~parimateria~~ to the definition given in Rule 3(1)(o) of the CCS(Pension) Rules, which provides

as under:

"'pension' includes gratuity except when the term pension is used in contradistinction to gratuity."

15. Therefore, even before Rule 2308 which was amended by Railway Board's letter of 29.11.1991, the term 'pension' will include gratuity as there is nothing in the expression to suggest to the contrary. The Supreme Court in Jarnail Singh's case (supra), while dealing with Rule 3(i)(o) and Rule 9 of the CCS(Pension) Rules (disagreeing with the earlier decision in D.B.Kapur's case) held:

" Bearing in mind the definition of the term 'pension' in Rule 3(1)(o), the term 'pension' used in Rule 9(1) must be construed to include gratuity since the term 'pension', in the context, is not used in contradiction to gratuity. Learned counsel for the appellant, however, referred to the amendment made in Rule 9(1) by the Central Civil Services(Pension) Third Amendment Rules, 1991, whereby the term 'pension' has been substituted by the expression 'pension or gratuity, or both' and consequential amendments made in that sub-rule. The question is: Whether this amendment made in 1991 indicates, as contended by learned counsel for the appellant, that 'pension' alone could be withheld under Rule 9(1) and not also the gratuity prior to the amendment of Rule 9(1) in 1991? In our opinion, the definition of 'pension' in Rule 3(1)(o) quoted above negatives the appellant's contention and clearly indicates that the 1991 Amendment is merely clarificatory and makes explicit that which was clearly implicit prior to that Amendment by virtue of the definition of term 'pension' "

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in Rule 3(1)(o). This clarification appears to have been made only to remove the doubt created by the decisions relied on by the counsel for the appellant which are considered hereafter."(emphasis added)

16. As already mentioned above, Rule 2302(1) and Rule 2308 of the Railway Rules are parimateria to Rule 3(1)(o) and Rule 9(1) of the C.C.S. (Pension) Rules, 1972. Therefore, having regard to the judgment of the Supreme Court in Jarnail Singh's case (supra), ~~the~~ ^{even the} ~~the term 'pension' in Rule 2308,~~ ^{as it stood before} clarification issued by the Railway Boards letter dated 29.11.1991, read with Rule 2302(10) of the Railway Rules, ^{includes gratuity as} there is nothing in the Rule to the contrary. In the circumstances, in accordance with Rule 2308 proviso(d), the Ministry of Railways had to consult the U.P.S.C. before passing the final orders on the proposal initially to withhold Rs.500/- from the applicant's gratuity. We, therefore, find no substance in the applicant's contention that consultation with the U.P.S.C. was unnecessary and it is accordingly rejected.

17. The next argument strenuously put forward by Shri J.K.Bali was that the purpose of consulting the U.P.S.C. was solely for the protection of the Government Servant and the U.P.S.C. could not, therefore, advise any enhancement of the proposed pension. For this, he relies on the following observations of the Supreme Court in Pradyat Kumar's case (supra), wherein it has been held :

52

" There can be no doubt that members of the staff in other Government departments of the Union or the State are normally entitled to the protection of the three constitutional safeguards provided in Articles 311(1), 311(2) and 320(3)(c)."

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"Therefore, both on the ground that Article 320(3)(c) would be contrary to the implication of Article 229 and on the ground that language there-of is not applicable to the High Court staff, we are of the opinion that for the dismissal of the appellant by the Chief Justice, prior consultation with the Public Service Commission was not necessary. We accordingly, hold that the appellant was not entitled to the protection under Article 320(3)(c).

(emphasis added).

18. Shri Bali submits that the above decision of the Supreme Court can only mean that the consultation with the U.P.S.C. under Article 320(c) is for the 'protection' of the Government Servant and in no way this should be extended to mean that the U.P.S.C. can recommend enhancement of the proposed punishment. He argues that this will not amount to 'protection' of the Government Servant, who is sought to be proceeded against under Articles 311(1) and (2) of the Constitution.

19. The above case does not in any way establish that the U.P.S.C. cannot enhance the punishment proposed by the Ministry in suitable cases.

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20. In Pradyat Kumar's case (Supra) the applicant had raised an objection that even if the power of dismissal is vested in the Chief Justice of Calcutta High Court, the applicant who was Registrar of the said High Court was entitled to the protection of Article 320(3)(c) of the Constitution. It was in this context that the Court, while rejecting the above argument had stated that there was no doubt that members of the staff in other departments of the Union or the State are 'normally entitled to the protection of the three constitutional safeguards provided in Articles 311(1), 311(2) and 320(3)(c) of the Constitution.' In this context, the Supreme Court had also dealt in detail with the provisions of Article 320(3)(c) and Article 229 and finally came to the conclusion that the officers and staff of the High Court cannot be stated to fall within the scope of the phrase used in Article 320(3)(c), namely 'person serving under the Government of India or Government of a State' because in respect of them, the administrative control is clearly vested in the Chief Justice who under the Constitution has the power of appointment, removal and of making Rules for their conditions of service. Therefore, this case

cannot be of assistance to the applicant to mean that the consultation with the UPSC of a government servants' case can only be for his protection and the UPSC cannot propose enhancement of penalty.

21. We have also seen the extracts of the Constituent Assembly Debates placed on record. This only shows that it was felt that regarding appointments, promotion, discipline etc. of government servants, their cases should be placed before the Public Service Commission to reduce litigation and to protect them from political and other influences. This speech in no way suggests how the UPSC is to exercise its power when it is consulted. So we do not find this argument advanced by Shri S.K.Bali, learned counsel convincing. It is accordingly rejected.

22. The applicants' counsel had also contended that the Ministry had forwarded its records to the UPSC for their orders and thereafter on receipt of the UPSC's orders, without application of mind, they have passed the penalty order dated 9.3.1993. The applicant relies on Naagaraj Shivarao Kariagi v. Syndicate Bank Head Office Manipal and anr. (1991) 2 SLR page 784 ; D.K.Gupta v. Municipal Corporation of Delhi (1979) 3 SLR 416 and

Prakash Chand v. The Zila Parishad, Muzaffarnagar
and anr. (1971) 1 SLR 632. We have seen the records
submitted by the learned counsel for the respondents
(File No. CD (1) Aug./93/714 c(2004). We find that
the Ministry vide its letter dated 16th/17th
November, 1983 submitted their proposal to the UPSC
for its advice whether their proposal to withhold
a sum of Rs 500/- from the DCRG is justified or not
to enable them to submit it for orders to the
President. In this letter they had discussed the
salient features of the disciplinary proceedings
together with the relevant documents and C.R. file
of the applicant. To this, the UPSC after examining
the records of the case replied by their letter
dated 9.5.1984. Their advice was that the charge
is of a serious nature as it relates to manipulation
of marks which has been proved on the basis of
charged officer's own admission. On the records,
the UPSC was of the provisional view that a fresh
show cause notice should be served on the applicant
requiring him to show cause why 10% of the DCRG should
not be withheld on permanent basis. After receipt
of this letter, the matter was put up in detailed
note on 5.7.1984 for consideration of the Ministry of
Railways i.e., the competent authority as to whether

82

856

a fresh show cause notice should be issued to the applicant, as proposed by the UPSC or the earlier proposal of the Ministry to withhold Rs 500/- from the DCRG may be accepted. It was further mentioned that the convention is that the Commission's advice in such a case shall be accepted save in exceptional circumstance. Having regard to the above facts and circumstances, we are unable to accept the contention of the learned counsel for the applicant that the UPSC's advice has been accepted by the competent authority without application of mind or under any compulsion as if it was their order.¹ The records show that the matter has been examined by the Ministry before and after receiving the advice of UPSC and the applicant's contention to the contrary is therefore, rejected. We have also seen the cases cited by Shri S.K.Bali. The observations of the Courts in these cases will not assist the applicant in the facts of the case discussed above.

23. In another case State of UP v. M.L. Srivastava (1958) Vol.1 SCR 533) the Supreme Court has held that the provisions of Article 320(3)(c) are not arbitrary and do not confer any right on a public servant so that the absence of consultation or any irregularity in

857

consultation with UPSC does not afford him a cause of action in a court of law. Nevertheless it was held that such a consultation would be mandatory when the word shall is used in an Article or Regulation made by the Government. After decision of the Supreme Court in Srivastava's case (supra), the constitutional provision for consultation with UPSC read with Rule 2308 proviso (d) of the Railway Rules is to afford proper assistance to the Government in assessing the guilt or otherwise of the delinquent government servant as well as the suitability of the penalty to be imposed by an independent body. Article 320(3)(c) itself being a constitutional provision, which is not in any way restricted, as submitted by the learned counsel for the applicant, it cannot be circumscribed to mean that the UPSC cannot tender its advice on the suitability of the penalty to be imposed, including the enhancement of the proposed penalty. We do not find that any fetter is imposed on the UPSC in Article 320 of the Constitution nor do we find it necessary to read in that provision any such limitation. The penalty imposed cannot also be considered to be arbitrary in the circumstances of the case to warrant any interference in the matter.

24. After due consideration of the other grounds taken by the learned counsel for the applicant, we find

no substance in the same and they are also rejected.

25. In the result, for the reasons given above,

we find no merit in this application. The O.A. is

accordingly dismissed. No order as to costs.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)

Member (J) *8/2*

N.V. Krishnan
(N.V. Krishnan)
Acting Chairman

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