

Central Administrative Tribunal, Lucknow Bench, Lucknow
Original Application No. 139/2005

This the ¹⁴10th day of December, 2013

Hon'ble Sri Navneet Kumar , Member (J)
Hon'ble Ms. Jayati Chandra, Member (A)

Kanchal Lal Kureel aged about 69 years son of Sri Mahabir r/o D-2/401-B, Sector D, LDA Colony, Kanpur Road, Lucknow

Applicant

By Advocate: Sri A.P.Singh, Sri Praveen Kumar and Sri Prashant Kumar Singh

Versus

1. Union of India through the Chairman, Railway Board, Baroda House, New Delhi.
2. The General Manager (P)/ HD, Qr. Office, Baroda House, New Delhi.
3. The Dy. Director Establishment (D&A) ,Railway Board, New Delhi.
4. Divisional Railway Manager, Northern Railway, Lucknow.
5. Senior Divisional Mechanical Engineer, Northern Railway, Lucknow.

Respondents

By Advocate: Sri S. Verma

(Reserved on 26.11.2013)

ORDER

BY HON'BLE SRI NAVNEET KUMAR, MEMBER (J)

The present Original Application is preferred by the applicant u/s 19 of the AT Act, with the following reliefs:-


- a) to issue an order or direction setting aside the impugned order No. E(D&A) 2000 AE 4-9 dated 8-9-2004 issued by respondent No. 3 imposing the penalty of 25% cut in pension for a period of 10 years as contained in Annexure No.1-16 and impugned communication letter No. P/Vig.102/87LCS dated 18-10-2004 issued by respondent No. 5 as contained in Annexure No.14 to the O.A. after summoning the original from the record.
- b) to issue any other order or direction which this Hon'ble Tribunal may deem fit appropriate in the interest of justice.
- c) to allow this O.A. with cost.

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2. Originally the present O.A. was finally heard and decided by the Tribunal vide order dated 10th October, 2011. Subsequently, the writ petition was preferred before the Hon'ble High Court (Writ Petition No. 59 (SB) of 2012 along with number of other writ petitions and the Hon'ble High Court was pleased to quash the order of the Tribunal and remanded back the matter to the Tribunal to decide the controversy afresh.

3. The brief facts of the case are that the applicant was working in the respondents organization was served with the charge sheet while he was working as Chargman in Locoshed, Charbagh, Lucknow. Subsequently the enquiry was conducted and enquiry officer found the charged to be proved. During the said period, the applicant retired and final pension was sanctioned to him along with other retiral benefits. Subsequently, the case of the applicant was forwarded to the Railway Board for Presidential approval under Rule 9 of Railway Services (Pension) Rules, 1993 and his Excellency, the President of India after consultation with the UPSC decided to impose penalty of 25% cut in pension for a period of 10 years. Subsequently, the applicant preferred the review petition which was also dismissed. The applicant also sought copies of the UPSC advise which was subsequently received by him in 2005 after the punishment is imposed and it is submitted by the learned counsel for applicant that the impugned order has been passed in gross violation of Principle of Natural Justice as a copy of the UPSC advise was not served upon him before passing of the punishment order.

4. Learned counsel appearing on behalf of the respondents has filed reply and through reply it was pointed out by the respondents that it is not necessary to serve copy of the UPSC advice to the delinquent employee before imposing any punishment and has also pointed out that after conducting a full fledged enquiry, the enquiry officer submitted his findings confirming that the charges framed



against the applicant have been proved. The applicant was given 15 days time to submit his representation and after considering his representation, the disciplinary authority who was not in a position to award any penalty against the applicant, as per terms of extent rules applicable to the retired employees, his case was forwarded to his Excellency, the President of India and after considering the report of UPSC as well as representation of the applicant, along with relevant record, the decision was taken by the respondents for imposing punishment to the applicant.

5. Learned counsel for applicant has filed Rejoinder Reply and through R.A., mostly the averments made in the O.A. are reiterated.

6. Heard the learned counsel for the parties and perused the material available on record.

7. Admittedly, the applicant who was working in the respondents organization served with a charge sheet and after enquiry, the charge sheet was served upon the applicant and during the proceedings, the applicant superannuated, as such the matter was referred to the higher authorities' and with the approval of his Excellency, the President of India, the punishment of 25% cut in pension was imposed upon the applicant. The only issue which involves in this case is whether the advice of the UPSC was considered while imposing the punishment or not. The bare perusal of the order dated 13.8.2004 written by Under Secretary, UPSC to Secretary to the Govt. of India, Ministry of Railways, Railway Board, New Delhi in regard to K.L. Kureel, the applicant, provides as under:-

“5. In the light of their of observation and findings as discussed above and after taking into account all other aspects relevant to the case, the Commission note that the charges established against the C.O. , constitute ‘grave misconduct’ on his part and

consider that the ends of justice would be met in this case if a penalty of 25% cut in pension for a period of 10 years imposed on the C.O. They advise accordingly.”

8. After receipt of the said advise, the respondents have communicated an order which contained in Annexure A-14 to the O.A. dated 18.10.2004, wherein they have mentioned as under:-

“Your case was forwarded to Railway Board for Presidential approval under Rule 9 of RS (Pension) Rules, 1993 for decision. The Dy. Director, Establishment (D&A) ,Railway Board vide their letter No. E(D&A) 2000 AE 4-9 dated 8.9.2004 has informed that the President with the consultation of UPSC has decided to impose penalty of 25% cut in pension for a period of 10 years.”

9. In the case of **Union of India and others Vs. S.K.Kapoor** reported in 2011 (4) SCC 589, the Hon'ble Apex Court observed as under:-


“8. There may be a case where the report of the Union Public Service Commission is not relied upon by the disciplinary authority and in that case, it is certainly not necessary to supply a copy of the same to the employee concerned. However, if it is relied upon, then a copy of the same must be supplied in advance to the employee concerned, otherwise there will be violation of the principles of natural justice. This is also the view taken by this Court in S.N, Narula Vs. Union of India .

10. In the case of **S.N. Narula Vs. Union of India and others** reported in (2011) 4 SCC 591, the Hon'ble Apex Court observed as under:-

“6. 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.

7. 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 para 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 authority within a period of 3 months thereafter.”

11. Considering the submissions made by the Hon'ble Apex Court in the case of S.K. Kapoor (supra) and in the case of S.N. Narula (supra), we deem it proper to interfere in the present O.A. Accordingly, the O.A. is allowed. The impugned order dated 18.10.2004 is hereby quashed. The respondents are directed to serve a copy of the UPSC advise to the applicant and after obtaining the required comments/ representation from the applicant, may refer the matter for further orders. This may be done within a period of 6 months from the date of certified copy of this order is produced.



12. With the above observations, O.A. is allowed. No order as to costs.

J Chandra

(Jayati Chandra)
Member (A)

U.P. Arora

(Navneet Kumar)
Member (J)

HLS/-