

Central Administrative Tribunal, Lucknow Bench, Lucknow
Original Application No. 263/2008

This the ¹⁴ day of December, 2013

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

Dr. Praveen Kumar Chandra aged about 62 years son of late Sri Buddha Ram resident of C-44, Sector G, LDA Colony, Kanpur Road, Lucknow

By Advocate: Sri Pankaj Awasthi

Applicant

Versus

1. Union of India through the Secretary, Railway Board, Ministry of Railways, Govt. of India, Rail Bhawan, New Delhi.
2. The General Manager, Central Railway, Headquarters Office, Mumbai CST.
3. The Divisional Railway Manager, Central Railway, CST, Mumbai.

By Advocate: Sri Praveen Kumar for Sri B.B. Tripathi

Respondents

(Reserved on 20.11.,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:-

- i) to set aside the office order No. E(O) I-2005/PU-2/CR/84 dated 9.5.2008 issued by Dy. Secretary (D&A) I, Railway Board, Ministry of Railways, Govt. of India, Rail Bhawan, New Delhi contained as Annexure No.1 to this Original Application.
- ii) to issue a direction to the respondents not to implement the officer order No. E(O)1-2005/PU-2/CR/84 dated 9.5.2008 contained as Annexure No.1 to this Original Application.
- iii) to issue a direction to the respondents to pay full and final pension and gratuity to the applicant.
- iv) Any other relief which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case may also be granted in favour of the applicant.
- v) Allow the original application with costs.

2. Originally, the present O.A. was decided by this Tribunal vide order dated 7th December, 2011. Subsequently, Writ Petition No. 809 (SB) of 2012 was preferred before the Hon'ble High Court by the respondents and the Hon'ble High Court while deciding the writ petition, remanded back the matter to the Tribunal to decide the controversy afresh. Thereafter, the applicant has preferred review petition and the said review petition was also dismissed, as such the matter was taken up for hearing.

3. The brief facts of the case are that the applicant challenges the punishment order, whereby the respondents have passed an order of punishment by which 50% cut of pension was ordered.

4. The learned counsel for the respondents have filed their short reply as well as detailed reply to the O.A. and it is pointed out by the respondents that there is no illegality in the impugned order and the same does not require any interference by this Tribunal.

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

6. Heard the learned counsel for the parties and perused the record.

7. During the course of arguments, the only issue which was confined by the learned counsel for the parties is whether before issuance of the punishment order, the Union Public Service Commission's advise required to be communicated to the delinquent or not before passing the punishment order.

8. In accordance with law settled on the point by the Hon'ble Apex Court is to supply copy of UPSC advise is a condition precedent putting the same has been considered and relied upon while imposing the punishment. As observed by the two decisions of the Hon'ble Apex Court in the case of **Union of India and others Vs. S.K.Kapoor reported in 2011 (4) SCC 589** and in the

case of **S.N. Narula Vs. Union of India and others** reported in (2011) 4 SCC 591.


9. In the case of **Union of India and others Vs. S.K.Kapoor (supra)**, 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 (supra)**, 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. It may further be necessary to point out that the punishment order which was passed under Rule 9 of Railway Services (Pension) Rules, 1993, the matter was considered by his Excellency, the President of India, to decide that the charges leveled against the charged officer has been proved or not by the enquiry officer. The consultation of UPSC was also made who rendered their advice vide their letter dated 5.9.2006 and the same was accepted while imposing the punishment and it is also clear that the copy of the advise of the UPSC was not made available to the applicant prior to passing of the impugned punishment order. As such, it is necessary to have supplied copy of the UPSC advise prior to passing of the punishment order.

12. Considering the submissions made by the learned counsel for the parties, we are of the considered view that in the inquiry proceedings, any material which is to be relied against a delinquent has to be supplied to him. Non-supply of the material relied upon being in violation of Principle of Natural Justice. As such, supply of material relied upon to the delinquent was a condition precedent prior to passing of punishment order which has not been done in the present case, whereas copy of the UPSC advise was supplied to the applicant along with the punishment order.

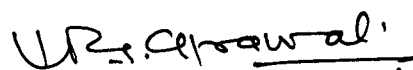
13. Considering the submissions made by the Hon'ble Apex Court in the case of S.K. Kapoor (supra) and in the case of S.N. Narula (supra), we deem it proper to interfere in the present O.A. As

such impugned order dated 9.5.2008 contained as Annexure No.A-1 being bad in law and is accordingly quashed. However, the respondents are directed to provide copy of UPSC advice to the applicant and after obtaining the necessary representation from the applicant, may refer the matter further for taking action. The same may be done within a period of 6 months from the date of certified copy of this order is procded.

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



(Jayati Chandra)
Member (A)


(Navneet Kumar)
Member (J)

HLS/-