CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH LUCKNOW

Original Application No. 316 of 2010

Order Reserved on 25.8.2014

Order Pronounced on 10/9/14

HON'BLE MR. NAVNEET KUMAR MEMBER (J)
HON'BLE MS. JAYATI CHANDRA, MEMBER (A)

Daya Ram, aged a about 70 years, son of Late Shri Pura Ram, resident of 5/337, Viram Khand-5, Gomti Nagar, Lucknow (lastly posted a Senior Divisional Engineer-III, North Eastern Railway, Lucknow Division Lucknow.

Applicant

By Advocate Sri Prashant Kumar Singh.

Versus

1. Union of India, Ministry of Railways (Railway Board), New Delhi, through its Secretary
2. General Manager (Personnel), North Eastern Railway, Gorakhpur.
3. Divisional Railway Manager (Personnel), North Eastern Railway, Lucknow Division, Lucknow.
4. Senior Divisional Finance Manager, North Eastern Railway, Lucknow Division , Lucknow.
5. Union Public Service Commission, New Delhi, through its Secretary.

By Advocate Sri S. Verma

Sri Pankaj Kumar Awasthi for Sri A. K. Chaturvedi

ORDER

By Hon'ble Mr. Navneet Kumar, Member (J)

The present Original application is preferred by the applicant under Section 19 of the AT Act, 1985 with the following reliefs:-

(a) Issuing/ passing of an order or direction setting aside the impugned punishment order dated 23.10.2009, issued in the name of the

the advice of the respondent No. 4 tendered vide letter dated 17.9.2008 (as contained in Annexure No. A-1 to this Original Application), after summoning the original records.

(b) Issuing/passing of an order or direction to the respondents to allow the applicant to continue to serve as Office Superintendent in office of Chief Engineer, Lucknow Zone, Lucknow as hither-to-fore and to pay him the salary regularly every month.

(c) Issuing/passing of any other order or direction as this Hon'ble Tribunla may deem fit in the circumstances of the case.

(d) allowing this Original Application with cost."

2. The brief facts of the case are that the applicant was initially appointed in the respondents organization and after serving for a quite long time, he was served with a charge sheet indicating there in certain charges levelled against the applicant. Subsequently, the applicant superannuated from service and finally, the respondents have imposed a punishment of 10% cut in pension for a period of five years. It is also indicated by the learned counsel for the applicant that the advice of the UPSC was not provided to the applicant before passing the final order and the order passed by the respondents is in a mechanical manner which is totally illegal, arbitrary and on unreasonable facts. The O.A. was finally disposed of by this Tribunal vide order dated 11th July 2011, and thereafter, Writ Petition was filed before the Hon'ble High Court and the Hon'ble High Court finally remanded back the matter to this Tribunal for deciding the issue afresh.

3. The learned counsel for the respondents filed the reply and through reply, it was pleaded by the respondents that the scope of judicial review in respect of disciplinary matters is very limited and no interference is called for by this Tribunal and in terms of the decision rendered by the Hon'ble Apex Court, the UPSC advice is not required to be given to the applicant before passing the final order. It is also argued by the learned counsel for the respondents that while passing the order by the disciplinary authority all the material evidence were taken into consideration and there is no illegality in doing so. As such no interference is required by this Tribunal.

4. On behalf of the applicant rejoinder is filed and through rejoinder, mostly the averments made in the O.A. are reiterated and the contents of the counter reply are denied. The learned counsel for the applicant has once again relied upon the decision of Hon'ble Apex Court rendered in the case of Union of India and others vs. S. K. Kapoor reported in 2011(4) SCC 589 as well as in the case of S. N. Narula vs. Union of India and others reported in 2011 (4) SCC 591 and also argued that in terms of the decision rendered by the Hon'ble Apex Court, the advice of the UPSC is required to be served upon the applicant before passing the orders by the disciplinary authority has taken a decision in regard to

the punishment to be imposing upon the applicant. Not only this, the learned counsel for the applicant has also relied upon the latest decision of the Hon'ble Apex Court in the case of Union of India & Ors vs R. P. Singh wherein, the Hon'ble Apex Court has once again reiterated that before passing the order by the disciplinary authority, the advice of the UPSC is required to be served upon the delinquent employee.

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

6. The applicant who was appointed in the respondents organization was charge sheeted and during the pendency of the disciplinary proceedings, the applicant superannuated from service and after the superannuation, the disciplinary authority imposed a punishment of 10% cut in pension for a period of five years. It is also indicated in the punishment order that the copy of the inquiry report was available to the applicant for submitting his representation and after the retirement of the applicant, the Railway Board remitted the case and subsequently the case was referred to UPSC seeking their advice on the matter as required under the Rules. The advice of UPSC was communicated to the Ministry after careful consideration of the matter and in the light of the relevant records of the case has accepted the advice of

the UPSC for the reasons mentioned therein and accordingly decided for imposing the punishment upon the applicant. Now the issue which requires determination is whether the UPSC advice is required to be served upon the delinquent employee before passing the order or not. In the c ase of S. K. Kapoor (Supra) the Hon'ble Apex Court has laid down that it is settled principle of natural justice that if any material is to be relied upon in departmental proceedings, a copy of the same must be supplied in advance to the charged sheeted employee so that he may have a chance to rebut the same.

7. 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 (Supra) and in the case of S.N. Narula Vs. Union of India and others (Supra).**

8. 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."

9. 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."

10. Not only this, the Hon'bel Apex Court in the case of Union of India & Ors vs R.P. Singh passed an order in Civil Appeal No. 6717 of 2008 on 22nd May 2014 and has been pleased to observe as under:-

"26. We have referred to the aforesaid decision in extenso as we find that in the said case it has been opined by the Constitution Bench that non-supply of the enquiry report is a breach of the principle of natural justice. Advice from the

UPSC, needless to say, when utilized as a material against the delinquent officer, it should be supplied in advance. As it seems to us, Rule 32 provides for supply of copy of advice to the government servant at the time of making an order. The said stage was in prevalence before the decision of the Constitution Bench. After the said decision, in our considered opinion, the authority should have clarified the Rule regarding development in the service jurisprudence. We have been apprised by Mr. Raghvan, learned counsel for the respondents, that after the decision in S. K. Kapoor's case, the Government of India, Ministry of Personnel, PG & Pensions, Department of Personnel & Training vide Office Memorandum dated 06.01.2014 has issued the following directions:

"4. Accordingly, it has been decided that in all disciplinary cases where the Commission is to be consulted, the following procedure may be adopted"-

(xiii) On receipt of the Inquiry Report, the DA may examine the same and forward it to the Commission with his observations:

(xiv) On receipt of the Commission's report, the DA will examine the same and forward the same to the Charged Officer along with the Inquiry Report and his tentative reasons for disagreement with the Inquiry Report and/ or the advice of the UPSC;

(xv) The Charged Officer shall be required to submit, if he so desires, his written representation or submission to the Disciplinary Authority within fifteen days, irrespective of whether the Inquiry report/advice of UPSC is in his favour or not.

(xvi) The Disciplinary Authority shall consider the representation of the Charged Officer and take further action as prescribed in sub-rules 2(A) to (4) of Rule 15 of CCS (CCA) Rules, 1965.

27. After the said Office Memorandum, a further Office Memorandum has been issued on 05.03.2014, which pertains to supply of copy of UPSC advice to the charged officer. We think it appropriate to reproduce the same:

"The undersigned is directed to refer to this Department's O.M. of even number dated 06.01.2014 and to say that it has been decided, in partial modification of the above O.M. that a copy of the inquiry report may be given to the Government servant as provided in Rule 15 (2) of Central Secretariat Services (Classification, Control and Appeal) Rules, 1965. The inquiry report together with the representation, if any, of the Government servant may be forwarded to the Commission for advice. On receipt of the Commission's advice a copy of the advice may be provided to the Government servant who may be allowed to submit his representation, if any, on the Commission's advice within fifteen days. The Disciplinary Authority will consider the inquiry report, advice of the Commission and the representation(s) of the Government servant before arriving at a final decision."

11. Considering the submissions made by the Hon'ble Apex Court in the case of S.K. Kapoor (supra), U.O.I. vs. R. P. Singh (Supra), and in the case of S.N. Narula (supra), as well as the office memorandum we are of the considered view that non supply of copy of UPSC advice is violative of principles of natural justice. As such, it requires interference by this Tribunal. Accordingly, the impugned orders dated 23.10.2009, and 17.9.2008 as contained in Annexure A-1 to the O.A. are quashed. The applicant is entitled for all consequential benefits.

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

J.Chandra

(Jayati Chandra)
Member (A)

V.K.Agrawal

(Navneet Kumar)
Member (J)

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