

**CENTRAL ADMINISTRATIVE TRIBUNAL  
LUCKNOW BENCH, LUCKNOW**

**ORIGINAL APPLICATION NO: 212/2005**

**This, the 9<sup>th</sup> day of August, 2011**

**HON'BLE SHRI JUSTICE ALOK KUMAR SINGH, MEMBER (J)  
HON'BLE SHRI S. P. SINGH, MEMBER (A)**

K. K. Srivastava (Kamelsh Kumar Srivastava),  
Aged about 63 years,  
Son of Late Shri Rajendra Bahadur Srivastava,  
Resident of A-837, Indira Nagar,  
Lucknow (lastly working as Assistant Station Director,  
All India Radio, Lucknow).

**Applicant**

**By Advocate: Shri R. C. Singh.**

**Versus**

1. Union of India,  
Through the Secretary,  
Ministry of Information and  
Broadcasting,  
New Delhi.
2. Union Public Service Commission,  
New Delhi, through its Secretary.
3. Pay and Accounts Officer,  
Central Pension Accounting Office,  
Government of India,  
Ministry of Finance, Trikootee Complex-II,  
Bhikaji Cama Place, Behind Hotel Hayat  
Residency,  
New Delhi-110066.
4. Station Director, All India Radio, Lucknow.

**Respondents**

**By Advocate: Shri Pankaj Awasthi for Shri A. K. Chaturvedi  
Shri B. B. Tripathi for Shri S. P. Tripathi.**

**Order (Dictated in Open Court)**

**By Hon'ble Shri Justice Alok Kumar Singh, Member (J)**

1. This O.A. has been filed with the following relief (s):
  - (a) issuing/passing of an order or direction to the Respondents setting aside the impugned order dated 15.02.2005, passed by the Respondent No. 1 on the advice of the Respondent No. 2 given vide letter dated 7.12.2004,

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as communicated by the Respondent. 3 vide letter dated 20.4.2005(as contained in Annexure No. A-1 to the application), after summoning the original records.

(b) issuing/passing of any other order or direction to the Respondents as the Hon'ble Tribunal considers appropriate in the circumstances of the case.

2. The case of the applicant is that he was appointed as Transmission Executive in the All India Radio, Government of India, Ministry of Information and Broadcasting on 19.2.1968. He was promoted as Programme Executive on 10.4.81 and he was further promoted as Assistant Station Director w.e.f. 18.1.2000. He superannuated on 28.2.2002 and till his retirement, he was not absorbed in the services of Prasar Bharti.

3. On 29.1.2002, a charge sheet was served upon him and the inquiry was proceeded with. Finally, the punishment order was passed on 15<sup>th</sup> February 2005 (Annexure A-1), by means of which, mainly on the basis of advice rendered by the UPSC, the penalty of reduction of pension to the minimum of Rs. 1,275/- per month on permanent basis was imposed upon him.

4. It is said that though the impugned penalty order has been passed on the advice of the UPSC, but the copy thereof, was not furnished to the applicant before passing impugned punishment order. We are not mentioning other details for the reasons that during the course of arguments, the main emphasis was laid on this very point that the copy of UPSC was not supplied before passing the final punishment order which was based on the advice of UPSC.

5. From the side of the respondents, there does not appear to be any contest so far as the aforesaid factual matrix is concerned in respect of supply of copy of UPSC advice as a condition

president for passing of the punishment order. But it has been contended that it was not necessary. This averment has been based on judgment rendered by the Hon'ble Delhi High Court in the case of Ranjit Singh Vs. Union of India and Others decided on 2.5.1991.

6. The UPSC has not filed any counter affidavit.

7. In the rejoinder affidavit, most of the averments have been reiterated. In respect of the judgment given by Delhi High Court. It has been said that the matter has now been settled by the Hon'ble Apex Court in the case of S. N. Narula's case (which has now been reported in (2011) 1 SCC (L&S) -727).

8. At the outset, it is worthwhile to mention that earlier a similar matter had been adjudicated by this Tribunal while deciding the O.A on 11<sup>th</sup> July, 2011 -Daya Ram Vs. Union of India and Others, a copy whereof has been submitted before this Tribunal for perusal.


9. There is no quarrel on the point that in the aforesaid O.A. also, the only legal point was in respect of supply of copy of UPSC advice prior to the passing of punishment order.

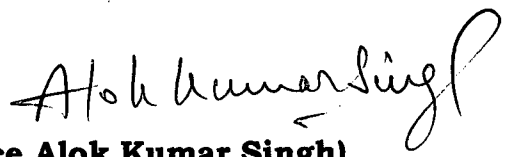
10. As far as the law on this point is concerned, concededly, it has now been settled in the case of S. N. Narula (Supra). According to the proposition of law settled in the aforesaid case, a copy of advice rendered by the UPSC should be made available <sup>AR</sup> to the delinquent officer in order to give him proper opportunity before passing the final punishment order. In this regard, the learned counsel for the applicant has referred to the case of Union of India Vs. S. K. Kapoor reported in (2011) 4 SCC 589 wherein, it has been held that the judgment rendered earlier in T.V. Patel's case is 'per incuriam' because in that case, S. N. Narula's case was not considered.

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11. In the backdrop of the aforesaid settled law and having regard to the facts and circumstances of the present case and particularly, keeping in view that the copy of UPSC advice which was relied upon by the authority concerned as mentioned in the impugned order itself, was not supplied to the applicant before passing the punishment order against him, thus, violating the principle of natural justice, we have no other option but to set aside the impugned punishment order and accordingly it is so ordered. It was also brought to our notice that about more than 9 years have passed, since the applicant has been retired. It is also brought to the notice that after considering the facts and circumstances of the case, an interim protection was given to the applicant on account of which, no deduction has been made till date from the pension of the applicant. Be that as it may. However, it is made clear that the respondents may pass appropriate order afresh, if they are so advised in accordance with law.

12. Finally, therefore, the O.A. is allowed with the aforesaid observations/orders. No order as to costs.

  
**(S. P. Singh)**  
**Member (A)**

  
**(Justice Alok Kumar Singh)**  
**Member (J)**