

**CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH
LUCKNOW**

**Original Application No. 218 of 2011
Order Reserved on 25.9.2014**

Order Pronounced on 27-10-2014

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

Cyril Solomon, aged about 65 years son of Late Shri A. Solomon, Resident of -No. 2, Lajpat Rai Road, Post-Dilkusha, Lucknow Cantt, Lucknow.

Applicant

By Advocate Sri Praveen Kumar.

Versus

1. Union of India, through the General Manager, Northern Railway, Baroda House, New Delhi.
2. The Director Establishment (D&A), Railway Board, New Delhi.
3. The Chief Works Manager, Carriage & Wagon Shop, Northern Railway, Alambagh, Lucknow.
4. The Deputy Chief Mechanical Engineer, Carriage & Wagon Shop, Northern Railway, Alambagh, Lucknow.

By Advocate Sri S. Verma

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:-

- (1) To quash the impugned punishment order dated 26.5.2010 along with order dated 10.6.2010 and charge sheet dated 24.12.2004, contained As Annexure A-1 and A-2 to this O.A. with all consequential benefits.
- (2) To release the withheld part of the pension i.e. 10% of the final pension along with interest @ 12% P. A.
- (3) To pay interest on withheld amount of gratuity as well as on remaining pension for the period it was unnecessarily delayed by

the respondents @ 12% PA as the applicant is not at fault in delayed finalization of the proceedings.

(4) Any other relief, which this Hon'ble Tribunal may deem fit, just and proper under the circumstances of the case, may also be passed.

(5) Cost of the present case.

2. The brief facts of the case are that the applicant while working on the post of Office Superintendent-I retired after attaining the age of superannuation on 31.05.2006 and prior to his retirement, the applicant was served with a charge sheet on 24.12.2004 wherein, certain charges were leveled against the applicant. The applicant demanded certain documents by means of his representations dated 11.9.2004 and the respondents acknowledged the same and has also replied to the applicant that the request of additional documents will be considered during the course of inquiry. The applicant was directed to submit his defence reply, but the applicant was not provided with the demanded documents and under the compelling circumstances, he submitted the reply to the charge sheet on 5.12.2005 along with the enclosures. After that the inquiry officer submitted the reply through which the applicant was held guilty of the charges. The applicant was also served with a show cause notice to which the applicant submitted the objections and also raised various plea. It is also to be indicated that the applicant superannuated after attaining the age of superannuation on 31.5.2006. The advice of the UPSC on the basis of which, the punishment to the applicant was awarded was not communicated to the applicant. As such, the same requires interference by this Tribunal. The learned counsel for the applicant has also relied upon the decision 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, S. N. Narula Vs. Union of India and Others reported in 2011 (4)**

SCC 591 and union of India & Ors. Vs. R. P. Singh reported in 2014 (7) SCC-340, and has indicated that the copy of the UPSC advice was not served upon the applicant before passing the orders by the Disciplinary Authority as such, the orders passed by the authorities is bad and is liable to be interfered with.

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 available on record 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. However, in rejoinder, the learned counsel for the applicant has again relied upon the decisions rendered by the Hon'ble Apex Court.

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

6. The applicant was appointed in the respondents organization and superannuated on 31.5. 2006 after attaining the age of superannuation. Prior to superannuation, the applicant was served with a charge sheet on 24.12.2004 wherein certain charges were leveled against the applicant. Along with the charge sheet, the statement of imputation of misconduct and list of documents as well as the list of witnesses were also mentioned. The applicant after receipt of the charge sheet demanded certain documents. In the

charge sheet, it is indicated that the applicant while posted and functioning as Head Clerk during the period 1995 to 1998, failed to maintain absolute integrity, devotion to duty and acted in a manner of unbecoming of a government servant in as much as he had handed over the letter directly to one Shri Surendra Singh without any dispatch through which acceptance of transfer was given for Suresh Kumar and Surendra Singh, Khallasis, who were never the employees of Railway and he had also received the letters/transfer orders/spare letters/LPC directly from the accused persons without any proper marking of his supervisory officers and processed these letters in the file in such a manner that several person who were never the employee of Railway got appointed in the C&W Workshop, Alambagh, Lucknow on the basis of bogus/forged transfer orders. The demanded documents were not supplied to the applicant, the applicant was to submit the reply to the charge sheet through his representation dated 5.12.2005. The inquiry officer so appointed by the disciplinary authority submitted his report. The inquiry officer in his report has categorically stated that the defence failed to produce any evidence to support their contention, as such, the charges so leveled against the applicant stands proved. The copy of the inquiry report was submitted to the disciplinary authority. The matter was placed before the higher authority for taking a decision. Since the applicant superannuated on 31.5.2006, as such, the case was referred to the UPSC for seeking their advice and the UPSC has rendered his advice and on the basis of the UPSC advice, the punishment was imposed upon the applicant and order was issued for 10% cut in monthly pension.

7. 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. It is also pointed out that

impugned penalty order has been passed on the advice of the UPSC, but the copy thereof, was not furnished to the applicant before passing the impugned punishment order. Not only this, the applicant has also relied upon two decisions of this Tribunal passed in O.A. No. 316 of 2010 as well as 212 of 2005 on 11.7.201 and 9.8.2011 respectively.

8. According to the proposition of law laid down 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)**, a copy of advice rendered by the UPSC should be made available to the delinquent officer in order to give him proper opportunity before passing the final punishment order. Undisputedly, this fact again reiterated by the Hon'ble Apex Court in the case of **Union of India and Ors Vs. R. P. Singh (Supra)** keeping in view that the copy of the 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 is violative of principles of natural justice.

9. In accordance with law settled on the point by the Hon'ble Apex Court is to supply copy of UPSC advice 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)**.

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. Not only this, the Hon'ble 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"-

- (i) On receipt of the Inquiry Report, the DA may examine the same and forward it to the Commission with his observations;
- (ii) 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;
- (iii) 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.
- (iv) 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."

12. Considering the submissions made by the Hon'ble Apex Court in the case of **S.K. Kapoor (supra), Union of India and Ors. 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 26.05.2010, and 10.6.2010, and 24.12.2004 as contained

in Annexure A-1 and A-2 to the O.A. are quashed. The applicant is entitled for all consequential benefits without any interest.

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

J. Chandra

(Ms. Jayati Chandra)
Member (A)

Navneet Kumar
(Navneet Kumar)
Member (J)

Vidya