

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH,
ALLAHABAD**

Orders reserved on : 7.12.2017

Orders pronounced on : 23.01.2018

Hon'ble Mr. Justice Dinesh Gupta, Member (J)

Hon'ble Mr. Gokul Chandra Pati, Member (A)

O.A. No.330/330/1640/2011

*Roop Ram Pippal, son of Shri Chirmauli Ram,
Resident of House No.222, near Bus Stand,
Radha Niwas, Vrindawan, District Mathura.*

..... Applicant

(By Advocate : Shri A.K. Pandey)

Versus

1. *Union of India through Secretary, Ministry of Railways
(Rail Bhawan), New Delhi.*

2. *Director Establishment (D & A), Railway Board, New
Delhi.*

3. *General Manager (Personnel), Northern Eastern Railway,
Gorakhpur.*

4. *Divisional Railway Manager, Northern Eastern Railway,
Izzatnagar, Bareilly.*

5. *Union Public Service Commission, Dhaulpur House,
Shahjahan Road, New Delhi through its Secretary.*

..... Respondents

(By Advocate : Shri B. Tiwari)

ORDER

Delivered by Hon'ble Mr. Justice Dinesh Gupta, J. M.:

By filing the instant OA under Section 19 of the Administrative Tribunals Act, 1985, the applicant is seeking the following reliefs:-

- "8.1 Issue an appropriate order or direction of suitable nature quashing the impugned order dated 16.12.2010 communicated through the Director Establishment (D & A) Railway Board, whereby, the verdict and consent of Hon'ble President is communicated (Annexure No.A-1), the advice of Union Public Service Commission dated 02.11.2010 (Annexure No.A-2) and the consequential order of withholding the pensionary benefits dated 28.03.2011 issued by Divisional Rail Manager (Annexure NO.A-3 to the Compilation No.I).
- 8.2 Issue a further order or direction of appropriate nature directing the respondent No.4 to release the complete pension of the applicant with all consequential benefits and also to pay the other post retiral benefits detained by the department, with an interest thereupon.
- 8.3 Issue any other order or direction which this Hon'ble Tribunal may deem fit and consider proper under the circumstances of the case.
- 8.4 Award the exemplary compensation to the applicant for wrong harassment of the applicant."

2. Although the applicant has stated the chequered history of the case, however, the bare minimum facts which are relevant for adjudication of the issue involved are noted below. The applicant, who had been working as Station Master in the respondents' department, was issued a chargesheet dated 1.1.2001 vide which two articles of charges were levelled against the applicant. An inquiry was held in the

matter. Due to circumstances mentioned in the facts stated by the applicant in the OA, the inquiry could not be proceeded and ultimately the inquiry was completed by the inquiry officer, who has submitted his report dated 11.5.2005 vide which he has proved both the articles of charges levelled against the applicant vide chargesheet dated 1.1.2001. In the meantime, the applicant also stood retired from service on 31.5.2005. However, since the applicant has requested for a copy of statement of Shri Mannu Ram Meena, the then Station Master, vide letter dated 2.3.2006, the respondents have provided the same vide letter dated 24.7.2007 in which although they have categorically stated that with a copy of inquiry report, copies of statements of witnesses alongwith questionnaire has already been provided to the applicant, however, they have provided a copy of statement of Shri Manu Ram Meena and further directed the applicant to submitted his representation within 21 days against the aforesaid inquiry report. Against the aforesaid inquiry report, the applicant has submitted his representation dated 14/16.8.2007. Since the said chargesheet was issued for major penalty proceedings and the applicant had stood retired from service, the respondents have sought advice of the UPSC in the matter and the UPSC vide its letter dated 2.11.2010 gave its advice. The disciplinary authority vide its impugned order dated 16.12.2010 conveyed the order of the President vide which the President by agreeing with the

advice of the UPSC dated 2.11.2010 and after taking into consideration all other aspects relevant to the case held that the charges proved against the applicant constitute grave misconduct on his part and has decided that the applicant's monthly pension be reduced to the minimum at Rs.3500/- on permanent basis and the gratuity admissible to the applicant, however, may be released if not required in any other case.

3. The applicant has challenged the aforesaid order dated 16.12.2010 in the present OA on various grounds, however, his main ground to attack the aforesaid order is that the impugned order which has been passed pursuant to the advice of the UPSC dated 2.11.2010, a copy of the said advice has not been supplied to the applicant before passing the said impugned order, which amounts to violation of principles of natural justice. To buttress his argument, learned counsel for the applicant has replied upon the judgments of the Hon'ble Supreme Court in the cases of ***Union of India and others vs. S.K. Kapoor***, 2011 LawSuit(SC) 214, and ***Union of India and others vs. R.P. Singh***, 2014 LawSuit(SC) 415.

4. Pursuant to notice issued to the respondents the respondents have filed their reply in which although respondents have taken certain preliminary objections but it is an admitted position that the respondents have not given a copy of the advice of the UPSC to the applicant before passing the impugned order dated 16.12.2010.

5. During the course of argument counsel for the applicant reiterated the aforesaid averments made in the OA and likewise counsel for the respondents also reiterated the stand taken by them in their counter affidavit.

6. We have heard learned counsel for the parties and have also perused the material available on record.

7. Counsel for the applicant submitted that so far as the question of providing a copy of advice of UPSC is concerned, the matter has already been settled by the Hon'ble Supreme Court in the cases of S.K. Kapoor (supra) and R.P. Singh (supra) and the case of R.P. Singh (supra) was also challenged and considered by the Apex Court in the case of ***Union of India and others vs. Hari Shankar Dixit*** in Civil Appeal Nos.6394-6395 of 2012 with 6575 of 2012, 5133 of 2013, 6270 of 2013, 6412 of 2014 and 8155 of 2016, as the High Court had directed the Union of India to provide a copy of the report of CVC/UPSC to the delinquent employee in the said cases, and the Apex Court vide its judgment dated 28.09.2016 dismissed all the said appeals, maintaining the Orders of the High Court by which the Union of India was directed to supply a copy of the advice of the CVC/UPSC to the concerned employees. However, the question of law raised regarding the correctness of R.P. Singh's case (2014) 7 SCC 340, is left open to be addressed in any other appropriate matter.

8. Counsel for the respondents submitted that in the case of ***Union of India and others vs. Bal Indu and another*** in CWP No.14721/2015 decided on 24.2.2016, the Hon'ble High Court of Punjab and Haryana at Chandigarh also directed the Union of India to provide a copy of advice given by the UPSC in view of the decision rendered by the High Court in ***Union of India and another vs. Maya Ram and others***, 2016 (1) S.C.T. 275. Against the said decision of Punjab and Haryana High Court, Union of India referred a Civil Appeal No.3068/2017 (***Union of India and others vs. Bal Indu and another***) before the Hon'ble Supreme Court and the Apex Court vide its order dated 7.4.2017, while issuing notice directed that the said matter be listed before a Three-Judge Bench in view of conflict in the judgments of this Court in ***Union of India & another vs. T.V. Patel***, (2007) 4 SCC 785, and ***Union of India and others vs. R.P. Singh***, (2014) 7 SCC 340. Counsel for the respondents further brought to our notice that Allahabad High Court in Writ Petition No.7367/2017 (***Union of India and others vs. Cyril Soloman***) vide its Order dated 10.7.2017, also relied upon the fact that the cases of ***R.P. Singh*** (supra) and ***T.V. Patel*** (supra) have been referred to a Larger Bench by the Supreme Court in the case of ***Bal Indu*** (supra) in view of conflicts of views and have also admitted the said Writ Petition and stayed the operation of judgment and order dated 25.9.2014 passed by the CAT, Lucknow Bench, Lucknow in OA

No.66/2011 (*Cyril Soloman vs. Union of India and others*) wherein the Tribunal directed the Union of India to provide a copy of advice of the UPSC.

9. From the above referred judgments, it is clear that since there was conflict of opinion in the cases of *T.V. Patel* (supra) and other decisions based on *R.P. Singh* (supra) which was based upon the earlier decision of the Apex Court in the case of *S.K. Kapoor* (supra), the matter is subjudice before the Larger Bench of the Hon'ble Supreme Court. However, the counsel for the applicant has also brought to our notice two Office Memorandums issued by the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training. One such Office Memorandum is dated 6.1.2014, which has been issued with 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."

After the aforesaid 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. The said DOP&T's OM is also reproduced below:

"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."

10. It is also noteworthy to mention here that these two Office Memorandums were already mentioned in the case of **R.P. Singh** (supra) by the Apex Court. The respondents have not disputed the issuance of the aforesaid Office Memorandums. A bare reading of both the aforesaid Office Memorandums clearly supports the case of the applicant as now the Govt. of India has taken a decision 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. So far as the present case is concerned, admittedly the respondents have obtained the advice of the Commission and sent it to the Disciplinary Authority (President of India) for decision who is the disciplinary authority since the applicant was retired earlier without affording a copy of the advice of the Commission to the applicant or asking any representation on the said advice from the applicant. Thus, the respondents have utterly failed to adhere to the aforesaid Office Memorandums issued by the Govt. of India through DOP&T and since the respondents have failed to adopt a procedure, hence the order of punishment passed by the disciplinary authority dated 16.12.2010 is also vitiated to this extent that the same has been passed without giving an opportunity to the applicant to make representation on the advice of the Commission and as such the consequential order of withholding of pensionary benefits dated 28.3.2011 is also

vitiated. Therefore, we are left with no option but to quash the order dated 16.12.2010 passed by the disciplinary authority as well as order dated 28.3.2011 and to remit the matter to the respondents from the stage where the respondents have obtained the advice of the UPSC and to direct the respondents to provide the copy of the inquiry report and the advice of the UPSC to the applicant as per the provisions of DOP&T's OM dated 5.3.2014 as mentioned in paragraph 9 of this Order. On receipt of the representation of the charged officer on the UPSC's advice, the disciplinary authority shall take appropriate decision as laid down in the DOPT's OM dated 5.3.2014. Since we are remitting the matter back to the disciplinary authority, we are not commenting upon the merits of the case and we left it to the disciplinary authority to take decision in the matter in accordance with law. We order accordingly. Since the matter is quite old and the applicant has already retired, we expect from the respondents that they will complete the aforesaid exercise as early as possible and preferably within a period of four months.

12. In the result, the present OA is allowed in terms of directions given in preceding paragraph. There shall be no order as to costs.

(Gokul Chandra Pati)
Member (A)

(Justice Dinesh Gupta)
Member (J)

/ravi/