

**Central Administrative Tribunal
Principal Bench**

OA NO. 222/2015

Order reserved on: 09.03.2016

Order pronounced on: 21.03.2016

Hon'ble Mr. V. N. Gaur, Member (A)

Hon'ble Dr. Brahm Avtar Agrawal, Member (J)

Kishan Chand, aged about 69 years,
Retd. Post Master,
S/o Late Sh. Jesa Ram,
R/o C-24, FF, New Acharya Kriplani Road,
Adarsh Nagar,
Delhi-110033.

- Applicant

(By Advocate: Sh. Narendra Mukhi)

Versus

1. Union of India through
Secretary-cum-Director General (Posts),
Ministry of Communication & IT,
Department of Posts,
Dak Bhawan, Sansad Marg,
New Delhi-110016.
2. Chief Postmaster General,
Haryana Circle,
Ambala-133001.
3. Supdt., Post Offices,
Sonipat Division,
Sonipat-131001 (Haryana).

- Respondents

(By Advocate: Sh. Rajinder Nischal)

ORDER

Hon'ble Shri V.N.Gaur, Member (A)

A disciplinary enquiry was initiated against the applicant while he was serving as Postmaster in Head Post Office, Sonapat

vide memorandum dated 17.06.2005. He was identified as subsidiary offender in fraud case relating to alleged misappropriation of public money by Sh. M.L.Kumar, Ex-SAS agent. The applicant superannuated on 30.06.2005 and the disciplinary proceeding pending against him on the day of retirement was continued under the provisions of Rule 9 (2) (a) of CCS (Pension) Rules, 1972. The Enquiry Officer in the report dated 28.03.2007 held all the charges as "not proved" but the disciplinary authority issued a disagreement note on which the applicant submitted his representation. The matter was then referred to the UPSC who after examining the records of the case pointed out to the disciplinary authority certain lapses in the disagreement note which was rectified by the disciplinary authority and the papers sent back to the UPSC after obtaining the comments of the applicant once again. In its second advice, the UPSC noted that first article of charge was fully proved and the other two articles of charge were partly proved. UPSC further advised that ends of justice would be met if a penalty of 20% cut in the monthly pension was imposed on the applicant for a period of three years. The competent authority accepted the advice of UPSC and issued the penalty order on 13.07.2012. The applicant submitted a review petition under Rule 29 (a) of CCS (CCA) Rules to the respondent no.3 for forwarding it to respondent no.1. However, his request was not accepted stating that after

retirement of the applicant CCS (CCA) Rules were not applicable, and therefore, no review of presidential order was possible in the instant case.

2. Applicant has sought the following reliefs:

- a) Quash and set aside the impugned penalty order no.14016/34/2007-VP dated 13/07/2012 issued by the Director (VP & DE) Govt. of India, Ministry of Communication & IT, Department of Posts, New Delhi by order and in the name of the President;
- b) To quash and set aside the Advice of the U.P.S.C. no.F-3/208/2009-SI dated 25/06/2012;
- c) To quash and set aside the New Disagreement Note communicated vide order no. F-4/2/04-05/Disc. Dated 15/04/2010 of the Supdt. Post Offices, Sonipat, the Disciplinary Authority;
- d) To quash and set aside the Union Public Service Commission letter no.F-3/208/2009-SI dated 03/02/2010 addressed to the Secretary, Ministry of Communications & IT (Department of Posts), New Delhi regarding disciplinary proceeding against Kishan Chand, Postmaster (Retd.);
- e) To issue direction to the Respondent No.1 Secretary-cum-Director General (Posts), Ministry of Communications & IT, Department of Posts, New Delhi, the Competent Authority and the Respondent No.3 Supdt. Post Offices, Sonipat (Haryana), the Disciplinary Authority to decide the case of the Applicant afresh on considering the original Disagreement Note communicated vide order no. F-4/2/04-05/Disc. Dated 16/04/2007 submitted against the original Disagreement Note of the Disciplinary Authority;
- f) To set aside the order dated 03/12/2014 and issue order or direction to the respondents to forward the Review Petition of the Applicant to the Competent Authority for consideration within a reasonable time;
- g) To grant any other relief as this Hon'ble Tribunal deems fit and proper in the interest of justice."

3. Learned counsel for the applicant during the argument challenged the order of respondents imposing the penalty on the applicant on the following grounds:

- (1) On the day of his superannuation the disciplinary proceeding was pending against the applicant, and therefore, it was allowed to continue under Rule 9 (2) (a) of CCS (Pension) Rules. Having subjected the applicant to disciplinary proceedings as in the case of serving Government servants, the avenue to file the review application in terms of Rule 29 (a) of CCS (CCA) Rules could not have been denied to him.
- (2) There was no provision in law to record a second disagreement note and that too on the advice of the UPSC. In this case precisely that is what was done. The fresh disagreement note was recorded by the disciplinary authority on the advice of the UPSC thereby implying that there was no independent application of mind.
- (3) The advice of UPSC on both the occasions was not supplied to the applicant till the time of imposing punishment. This was violative of principles of natural justice and also the law as laid down by the Hon'ble Supreme Court in **Union of India vs. S.K.Kapoor**, 2011 (4) SCC 589.

4. Learned counsel for applicant also placed on record a compilation of 18 judgments without making any reference to them during the oral submission or pointing out the point in law on which those judgments were relied upon except the judgment of S.K.Kapoor (supra) referred to in para 4.7 (D) of the OA.

5. Learned counsel for the respondents, on the other hand, submitted that the respondents and UPSC were within their jurisdiction to enter into a process of consultation in terms of the relevant rules and the respondents could not be said to have acted illegally if they have acted on the advice of the UPSC. Following the superannuation of the applicant, the pending disciplinary proceeding was continued after his retirement in terms of the provisions of Rule 9 (2) (a) of CCS (Pension) Rules. However, the purpose of this rule was limited to the continuation of disciplinary proceedings and it cannot be said that the retired employee could be treated at par with a serving Government employee. This has been made clear in the provision of Rule 3 (1) of CCS (CCA) Rules, 1965 stating that those rules shall apply to “every Government servant”. Since the applicant had ceased to be a Government servant after attaining the age of superannuation, CCS (CCA) Rules as applicable to the serving Government servants, including the provision of review under Rule 29 (a) of CCS (CCA) Rules, 1965, would not apply to him. With regard to the supply of UPSC advice to the applicant, learned counsel fairly

admitted that it was a fact that the copy of the UPSC advice was not supplied to the applicant until the order imposing major penalty on the applicant was issued on 13.07.2012. However, he referred to the stand taken in the counter filed by the respondents distinguishing the judgment of S.K.Kapoor (supra) from the present case stating that the petitioner therein was dismissed from Government service by the appointing authority on the advice of the UPSC which is not the case in the present OA. The applicant has been granted reasonable opportunity at each and every stage of hearing during the enquiry.

6. We have heard the learned counsels and perused the record. Under rule 15 (2) of CCS (CCA) Rules, the disciplinary authority has to forward a copy of the report of the enquiry together with its own tentative reasons for disagreement with the finding of the enquiry authority to the Government servant who shall be required to submit, if he so desires, his representation to the disciplinary authority. The disciplinary authority, after considering the representation of the Government servant shall record its finding and where it was intended to impose a major penalty on the Government servant, shall forward the records to the UPSC for advice before imposing any penalty on the Government servant. In S.K.Kapoor (supra) the Hon'ble Supreme Court held that:

“If the Authority do consult the U.P.S.C. and rely on the report of the U.P.S.C. for taking disciplinary action, then the principles of natural justice require that a copy of the report must be supplied in advance to the employee concerned so that he may have an opportunity of rebuttal.”

7. In the order dated 13.07.2012 para 5 of the order reads as follows:

“5. The Commission have tendered their advice vide their letter No.F.3/208/2009-SI dated 25.6.2012 (copy enclosed). The Commission after taking into account all aspects relevant to the case and evidence on record noted that the first article of charge was fully proved against the CO and the other two articles were partly proved. The Commission has advised that ends of justice would be met in this case if a penalty of 20% cut in the monthly pension otherwise admissible to Shri Kishan Chand is imposed for a period of three years. The gratuity admissible to him may be released, if not otherwise required, in any other case.”

8. It can be seen that the disciplinary authority has taken into account the advice of the UPSC and at the same time it is an admitted fact that the UPSC advice was not supplied to the applicant before the imposition of penalty by the impugned order. We are of the view that in the present case there has been violation of the law as laid down in S.K. Kapoor (supra) and hence the order dated 13.07.2012 passed by the respondents cannot be sustained. We, therefore, quash the order dated 13.07.2012 (impugned) and remand the matter back to the respondents, who will be at liberty to proceed against the applicant from the stage of supplying a copy of the advice of the UPSC and complete the disciplinary proceedings in accordance with the rules.

9. It may be clarified that we do not consider it necessary to examine the remaining grounds taken by the applicant in the OA questioning the impugned orders at this stage. OA is disposed of accordingly. No costs.

(Brahm Avtar Agrawal)
Member (J)

(V.N. Gaur)
Member (A)

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