

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No.37/2014

New Delhi this the 5th day of May, 2016

**HON'BLE MR. JUSTICE M.S. SULLAR, MEMBER (J)
HON'BLE MR. K.N. SHRIVASTAVA, MEMBER (A)**

Hari Shankar
S/o Shri Ram Chand
Aged: 64 years (DOB: 1/4/1949)
R/o B-1/28A Raja Puri,
Gali No.5, Uttam Nagar,
New Delhi-110059.Applicant

(Argued by: Mr. D.C. Vohra, Advocate)

Versus

Union of India
Through
The Foreign Secretary,
Government of India,
Ministry of External Affairs,
South Block,
New Delhi-110001.Respondents

(By Advocate : Ms. Neetu for Ms. Rashmi Chopra)

ORDER (ORAL)

Justice M. S. Sullar, Member (J)

The challenge in this Original Application (OA) filed by applicant, Hari Shanker, Assistant (since retired on superannuation), is to the impugned order dated 05.07.2013 (Annexure A-1) by virtue of which his review petition was rejected by the Reviewing Authority (RA) and confirmed the punishment order dated 28.03.2013 (Annexure A-26).

2. The epitome of the facts, relevant for deciding the instant OA is that, applicant remained absent

unauthroizedly since 08.08.2003, after availing of Ex-India leave, in Chicago (USA) and did not comply with the directions to report for duty at the Head Quarter of the Ministry of External Affairs. Thus, he was stated to have committed the misconduct, exhibited lack of devotion to duty and his conduct was unbecoming of a Government servant. He was accordingly charged under the provisions of Rule 14 of the CCS (CCA) Rules, 1965 [hereinafter referred to as CCS(CCA) Rules].

3. Having completed all the codal formalities and relying upon the advice of Union Public Service Commission (UPSC), a penalty of reduction of pension to the minimum admissible pension for a period of 5 years was imposed on the applicant vide order dated 28.03.2013 (Annexure A-26) by the competent authority.

4. The applicant did not feel satisfied and filed the Review Petition dated 09.05.2013 raising certain issues mentioned therein. Again agreeing with the advice of the Commission, the Review Petition was dismissed vide impugned order dated 05.07.2013 (Annexure A-1) by the competent authority.

5. Aggrieved thereby, the applicant has preferred the present OA challenging the impugned orders on various grounds, but during the course of argument, he has only urged that the UPSC in its advice illegally changed the allegation of “misconduct” to “grave misconduct” which was

totally contrary to the rules. The applicant claimed that if the advice of the Commission was to be relied upon, then it was incumbent on the part of the Disciplinary Authority to supply the copy of the advice tendered by UPSC to the applicant prior to the passing of the punishment order. As such, the impugned orders are in violation of Rule 32 of CCS (CCA) Rules and principles of natural justice [para 4.18 of rejoinder]. That being so, he prayed for quashing of the impugned orders at Annexure A-1 and Annexure A-26.

6. The contesting respondents refuted the claim of the applicant and filed the reply wherein they have stoutly denied the allegations contained in the OA and prayed for its dismissal.

7. Controverting the pleadings in the reply filed by the respondent and reiterating the grounds contained in the OA, the applicant filed his rejoinder wherein he has pleaded that non-supply of a copy of the advice of the UPSC to the applicant has prejudiced his case [para 4.18 of the rejoinder]. That is how we are seized of the matter.

8. Having heard the learned counsel for the parties at length and after going through the records with their valuable assistance and without entering very deep into the merits of the case, we are of the considered view that the instant OA deserves to be allowed on the short ground of non-supply of a copy of the UPSC advice to the applicant mentioned herein below.

9. Ex-facie the argument of the learned counsel that although the Disciplinary/Reviewing Authority has relied upon the advice of UPSC but since a copy of the UPSC advice was not supplied to the applicant to enable him to file representation against it and hence the impugned punishment orders are liable to be set aside, has considerable force.

10. What cannot possibly be disputed here is that although the Disciplinary Authority accepted and relied upon the advice of UPSC, but its copy was not supplied to the applicant before passing the impugned penalty order dated 28.03.2013 (Annexure A-26). No cogent record is forthcoming on file that a copy of the UPSC advice was indeed supplied to the applicant at appropriate stage. Moreover, the learned counsel for the respondents has fairly acknowledged that a copy of the UPSC advice was not supplied to the applicant by the Disciplinary Authority before passing the impugned punishment order.

11. Such this being the position on the record, the sole controversy that arises for adjudication in this case is as to whether non-supply of a copy of the UPSC advice to the applicant before passing the punishment order is fatal to the case of department or not.

12. Having regards to the rival contentions of the learned counsel for the parties, we are of the firm view that answer

must obviously be in the affirmative. This matter is no more res integra and is now well settled.

13. It is not a matter of dispute that the Government of India, Ministry of Personnel, PG & Pensions has issued instructions vide OM No.11012/8/2011-Estt.(A) dated 06.01.2014 which, in substance, are as under:-

“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”.

14. An identical question came to be decided by the Hon'ble Apex Court in the case of **S.N. Narula Vs. U.O.I. and Others (2011) 4 SCC 591**. Having considered the significance of the advice of the Commission, it was ruled 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 Paragraph 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".

15. Sequelly, the Hon'ble Supreme Court in the case of ***Union of India and Others Vs. S.K. Kapoor 2011 (4) SCC 589*** has held as under:-

"6. Mr. Qadri, learned counsel for the appellant submitted that the copy of the Report of the Union Public Service Commission was supplied to the respondent-employee along with the dismissal order. He submitted that this is valid in view of the decision of this Court in Union of India vs. T.V.Patel, (2007) 4 SCC 785. We do not agree.

7. In the aforesaid decision, it has been observed in para 25 that 'the provisions of Article 320(3)(c) of the Constitution of India are not mandatory'. We are of the opinion that although Article 320(3)(c) is not mandatory, if the authorities do consult the Union Public Service Commission and rely on the report of the commission 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. Thus, in our view, the aforesaid decision in T.V. Patel's case is clearly distinguishable.

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 concerned employee. However, if it is relied upon, then a copy of the same must be supplied in advance to the concerned employee, otherwise, there will be violation of the principles of natural justice. This is also the view taken by this Court in the case of S.N. Narula vs. Union of India & Others, Civil Appeal No.642 of 2004 decided on 30th January, 2004.

9. It may be noted that the decision in S.N. Narula's case (supra) was prior to the decision in T.V. Patel's case(supra). It is well settled that if a subsequent co-ordinate bench of equal strength wants to take a different view, it can only refer the matter to a larger bench, otherwise the prior decision of a co-ordinate bench is binding on the subsequent bench of equal strength. Since, the decision in S.N. Narula's case (supra) was not noticed in T.V. Patel's case(supra), the latter decision is a judgment per incuriam. The decision in S.N. Narula's case (supra) was binding on the subsequent bench of equal strength and hence, it could not take a contrary view, as is settled by a series of judgments of this Court.

10. For the aforesaid reasons, this appeal is dismissed. Parties shall bear their own costs".

16. Meaning thereby, if the Disciplinary Authority intends to rely upon the advice of the UPSC, then it was obligatory on its part to supply a copy of the UPSC advice, in advance, to enable the applicant to enable him to file objection/representation to it, before passing the punishment order, which admittedly has not been done in the present case. Therefore, non-supply of a copy of the UPSC advice is fatal and vitiate the impugned orders. Hence, the impugned orders would naturally fall on the ground on their own feet and cannot legally be sustained.

17. In the light of the aforesaid reasons, and without commenting further anything on merits, lest it may prejudice the case of either side, during the course of disciplinary proceedings, the OA is partly allowed. The impugned punishment order dated 28.03.2013 (Annexure A-26) and impugned order of Reviewing Authority dated 5.7.2013 (Annexure A-1) are set aside. As a consequence thereof, the case is remitted back to the Disciplinary Authority to decide the matter afresh after supplying a copy of the UPSC advice to the applicant to enable to file his objection/representation to it and then to him pass appropriate order in accordance with law, within a period of 3 months from the date of receipt of a certified copy of this order. No costs.

Needless to mention, here is that, since this OA is disposed of on the limited point of non-supply of a copy of the UPSC advice. In case the applicant remains aggrieved with the order to be passed by the competent authority, in that eventuality, he would be at liberty to challenge the same on all the grounds contained in this OA.

(K.N. SHRIVASTAVA)
MEMBER (A)

(JUSTICE M.S. SULLAR)
MEMBER (J)

Rakesh