

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH**

**O.A. No.100/1194/2014**

**New Delhi this the 04<sup>th</sup> day of November, 2016**

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

S.S. Goel  
 S/o Shri Bhagwant Sarup Goel,  
 R/o F-420, Vikas Puri,  
 New Delhi, Age 47,  
 Designation: Retd. Dy. Controller of  
 Accounts. ....Applicant

(Argued by: Shri Yogesh Sharma, Advocate)

Versus

1. Union of India through  
 The Secretary,  
 Govt. of India, Ministry of Home Affairs,  
 North Block, New Delhi.
2. The Under Secretary to the Govt. of India,  
 Govt. of India,  
 Ministry of Home Affairs,  
 North Block, New Delhi.
3. The Chief Secretary,  
 Govt. of NCT of Delhi,  
 Delhi Secretariat, Players Building,  
 I.P. Estate, New Delhi.
4. The Union Public Service Commission,  
 Through the Secretary,  
 Dholpur House, Shahjahan Road,  
 New Delhi. ....Respondents

(By Advocate : Shri R.V. Sinha)

**ORDER (ORAL)**

**Justice M. S. Sullar, Member (J)**

The challenge in this Original Application (OA), filed by the Applicant, S.S. Goel, is to the charge sheet dated 17.08.2006 (Annexure A-2), report of the Enquiry Officer

dated 17.07.2009 (Annexure A-5 Colly), advice dated 04.10.2013 (Annexure A-1 Colly) of the Union Public Service Commission (UPSC) and impugned order dated 15.10.2013 (Annexure A-1 Colly) conveyed to the applicant vide letter dated 15.01.2014 (Annexure A-1), whereby the Competent Authority (President), by virtue of power vested under Rule 9 of CCS (Pension) Rules, 1972, having accepted the advice of the UPSC, imposed a penalty of withholding of 25% of monthly pension otherwise admissible for a period of 3 years, on the applicant.

2. The matrix of the facts and material, culminating in the commencement, relevant for deciding the core controversy involved in the instant OA, and exposed from the record is that, applicant, was working as Deputy Registrar (Accounts) in Netaji Subhash Institute of Technology (NSIT) on deputation basis. He in collusion with Professor B.N. Gupta, Ex. Director and Ramesh Chander, the then DDO, NSIT were held responsible for causing financial loss to the Government exchequer by delaying the payment of RA bill to the Contractor. Thus, he and his other co-delinquents, were stated to have committed a grave misconduct in performance of their official duty.

3. As a consequence thereof, applicant was served with the following impugned Statement of Article of Charge (Annexure A-2 Colly):-

“That Shri S.S. Goel, DCA (Retd.) while functioning as Dy. Registrar (Accounts) in Neetaji Subhash Institute of Technology

(NSIT) on deputation basis during the period 19.07.2002 to 08.06.2004, in collusion with Prof. B.N. Gupta, Ex. Director (Retd.), NSIT and Shri Ramesh Chander, the then DDO, NSIT was responsible for causing heavy financial loss to the extent of Rs.14.7 lacs (approximately) to the NSIT/Govt. Exchequer by delaying the payment of second RA bill amounting to Rs.29,21,526/- submitted by M/s. Uttar Pradesh Rajkiya Nirman Nigam Ltd. (UPRNN) on 25.07.2002 in respect of construction of three nos. Boys Hostel in NSIT despite the fact that sufficient funds were available in various Bank accounts under the various Heads of account of NSIT.

Thus, the said Shri S.S. Goel, DCA (Retd.) has failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a government servant thereby contravening the provisions of Rule 3 of CCS (Conduct) Rules, 1964".

4. After completion of the enquiry proceedings, the Enquiry Officer (EO) concluded that the charges served upon the applicant were partly proved, vide impugned enquiry report conveyed to the applicant, by means of order dated 20.01.2009 (Annexure A-5 Colly). In pursuance thereof, he filed the representation dated 12.08.2009 (Annexure A-6), which was found unsatisfactory and the case was referred to the UPSC for advice by the DA. The UPSC, tendered its advice, by way of communication letter dated 04.10.2013 (Annexure A-1 Colly).

5. Having completed all the codal formalities of the enquiry, taking into consideration the entire material on record and the advice of the UPSC, the Disciplinary Authority (DA) imposed the indicated penalty, by virtue of impugned order dated 15.10.2013 (Annexure A-1 Colly). The operative part of the order reads as under:-

"8. Now, therefore, after considering the evidence on record and facts and circumstances of the case, the President by virtue of power vested under Rule 9 of CCS (Pension) Rules, 1972 has decided to accept the advice of UPSC and to impose the penalty of 'withholding of 25% (Twenty Five percent) of monthly pension otherwise admissible to him for a period of 3 (Three) years' on the CO, Shri S.S. Goel, Deputy Controller of Accounts (Retd.) and ordered (sic) accordingly. His gratuity may be released if not otherwise required".

6. Aggrieved thereby, the applicant has preferred the instant OA, challenging the impugned proceedings and order, invoking the provisions of Section 19 of the Administrative Tribunals Act, 1985.

7. At the very outset, it will not be out of place to mention here, that although the applicant has pleaded a variety of grounds to challenge the impugned disciplinary proceedings and order, but during the course of arguments, learned counsel has confined his argument only to the extent of prejudice caused to the applicant on account of non-supply of copy of advice of UPSC, before passing the impugned punishment order. In this regard, he has pleaded in ground 5(k) in his petition as under:-

“(k) That the copy of the “UPSC advice” was not communicated to the applicant prior to the passing the impugned penalty order and the applicant was not given any proper opportunity to submit his representation against the “UPSC advice” and more particularly in the situation of the present case when the disciplinary authority without application of mind passed the impugned order on the basis of UPSC’s advice, which is totally illegal as held by the courts in various judgments”.

8. In reply to this para, the respondents have only stated that “the advice of the UPSC in the letter dated 19.05.2014 is enclosed”. However, the learned counsel for the respondents has very fairly, acknowledged, that the copy of the advice of the UPSC was not supplied to the applicant, before passing the impugned order, it was attached with the punishment order. But he urged, that was not mandatory and will not have any adverse bearing on the case of the respondents.

9. Having heard the learned counsel for the parties, having gone through the relevant record and legal position, with their valuable help, we are of the firm view that the instant OA deserves to be partly accepted, on the short ground of non-supply of the copy of advice of the UPSC to the applicant before passing the impugned punishment order, for the reasons mentioned herein below.

10. What cannot possibly be disputed here is that although the DA accepted and relied upon the advice of UPSC, but its copy was not supplied to the applicant before passing the impugned punishment order. No cogent evidence is forthcoming on record even to suggest remotely, that copy of advice of UPSC was ever supplied, rather fairly acknowledged by learned counsel for respondents, that copy of the advice of UPSC was not supplied to enable the applicant to file representation/objection to it, before passing the impugned order by the DA.

11. Admittedly, the Government of India, Ministry of Personnel, PG & Pensions 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”.

12. Therefore, it was mandatory duty of the DA to supply the copy of the advice of the UPSC before passing the impugned order, but it has miserably failed to do so. Indeed, it has caused a great deal of prejudice to the case of the applicant in this regard. This matter is no more res integra and is now well settled.

13. 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 matter, 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”.

14. 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”.

15. Again, the same view was reiterated by Hon'ble Supreme Court in case ***U.O.I. Vs. R.P. Singh in Civil Appeal No.6717/2008*** decided on 22.05.2014 and this

Tribunal in a bunch of OAs decided with main **OA No.4289/2012** titled as ***B.P. Mahaur Vs. U.O.I. & Others*** decided on 22.07.2014.

16. It is not a matter of dispute that in the instant case, the Disciplinary Authority has placed reliance upon the advice of the Commission, then it was obligatory on its part to supply a copy of the advice of the Commission, in advance, to enable the applicant to file objection/representation against it, before passing the impugned punishment order, which admittedly has not been done in the present case. Therefore, non-supply of the copy of advice of the UPSC to the applicant, was fatal to the case of department and vitiated the impugned order as well. The ratio of law laid down in the indicated judgments of Supreme Court and of this Tribunal is *mutatis mutandis* applicable to the present controversy, and is a complete answer to the problem in hand. Hence, the impugned punishment order cannot legally be sustained, in the obtaining circumstances of the case.

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 passing the fresh order by DA, the OA is partly allowed. The impugned order dated 15.10.2013 conveyed to the applicant by way of letters dated 07.01.2014 (Annexure A-1 Colly)/15.01.2014 (Annexure A-1) is set aside.

18. As a consequence thereof, the case is remitted back to the DA to decide the matter afresh, after supplying the copy of the advice of the UPSC to the applicant to enable him to file his objection/representation against it, and then to pass an appropriate order in accordance with law, within a period of 3 months from the date of receipt of a certified copy of this order. However, the parties are left to bear their own costs.

Needless to mention, here is that, since this OA has been disposed of only on the limited point of non-supply of the copy of the advice of the UPSC, so in case the applicant still remains aggrieved with the order to be passed by the Disciplinary Authority, in that eventuality, he would be at liberty to challenge its validity on all the grounds contained in this OA, and in accordance with law.

**(P.K. BASU)  
MEMBER (A)**

**Rakesh**

**(JUSTICE M.S. SULLAR)  
MEMBER (J)  
04.11.2016**