

**Central Administrative Tribunal
Principal Bench**

**OA No.1437/2013
OA No.1351/2013
OA No.1439/2013**

New Delhi, this the 06th day of February, 2017

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. K. N. Shrivastava, Member (A)**

1. OA No.1437/2013

Sushil Hembrom
S/o Late Raiku Hembrom
R/o Village Ghatchora, Distt. Pakur,
Jharkhand,
Serving as Director, TEC
O/o Sr. DDG, TEC, Khurshid Lal Bhawan,
Janpath, New Delhi. Applicant.

(By Advocate : Shri M. K. Bhardwaj)

Vs

1. Secretary
Ministry of Communication & IT
Govt. of India, Sanchar Bhawan,
20, Ashoka Road,
New Delhi.
2. Under Secretary
Ministry of Communication & IT
Govt. of India, Sanchar Bhawan,
20, Ashoka Road,
New Delhi. Respondents.

(By Advocate : Shri Rajinder Nischal)

2. OA No.1351/2013.

Sushil Hembrom
S/o Late Raiku Hembrom
R/o Village Ghatchora, Distt. Pakur,
Jharkhand,
Serving as Director, TEC
O/o Sr. DDG, TEC, Khurshid Lal Bhawan,
Janpath, New Delhi. Applicant.

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20, Ashoka Road,
New Delhi.
2. Under Secretary
Ministry of Communication & IT
Govt. of India, Sanchar Bhawan,
20, Ashoka Road,
New Delhi.

.... Respondents.

(By Advocate : Shri Hilal Haider)

3. OA No.1439/2013

Sushil Hembrom
S/o Late Raiku Hembrom
R/o Village Ghatchora, Distt. Pakur,
Jharkhand,
Serving as Director, TEC
O/o Sr. DDG, TEC, Khurshid Lal Bhawan,
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Govt. of India, Sanchar Bhawan,
20, Ashoka Road,
New Delhi.

.... Respondents.

(By Advocate : Shri Subhash Gosain)

: O R D E R (ORAL) :

Justice Permod Kohli, Chairman :

These three Applications (OAs No.1437/2013, 1351/2013 and 1439/2013) have been filed by the same applicant challenging the orders imposing penalties upon him. The controversy being similar in nature, all these Applications were heard and are being disposed of by this common order.

2. The applicant Shri Sunil Hembrom was working as Telecom District Manager (TDM), BSNL, Dumka during the period 2004-2005. On the basis of certain allegations, he was served with three charge memos viz., Memorandum No.8-34/2007-Vig.II dated 20.08.2007; Memorandum No.8-13/2007-Vig.II dated 20.08.2007 and Memorandum No.8-35/2007-Vig.II dated 20.08.2007 for initiating disciplinary proceedings under Rule 14 of CCS (CCA) Rules, 1965. On completion of the necessary procedural requirements, inquiry proceedings were held against the applicant in respect to each of three charge sheets. The Inquiry Officer submitted separate reports holding the charges to be proved in each case. The Disciplinary Authority consulted the UPSC. UPSC tendered its advice vide letter dated 21.12.2012 in all the aforesaid three proceedings, and recommended imposition of penalty. The Disciplinary Authority accordingly considering the advice of the UPSC imposed penalty of reduction of pay by one stage in the time scale of pay for a period of one year with further direction that the charged officer will earn increments of pay during the period of such reduction, and on expiry of the period, the reduction will not have the effect of postponing the future increments of his pay. Similar punishments have been imposed in all the proceedings. Order dated 28.01.2013 arising out of Memorandum No.8-13/2007 is under challenge in OA No.1351/2013 whereas Order dated 30.01.2013 arising out of Memorandum No.8-34/2007 is under challenge in OA No.1437/2013 and Order dated 31.01.2013 arising out of Memorandum No.8-35/2007 is under challenge in OA No.1439/2013.

3. A common ground of challenge to the aforesaid orders is non furnishing of the UPSC advice relied upon by the Disciplinary Authority before imposing the punishment, and without affording any opportunity

to the applicant to submit his representation/response to the UPSC advice. As a matter of fact, in all the cases, UPSC advice was served upon the applicant along with the impugned penalty orders. This is the admitted position as is evident from para 4.11 in all the Applications. In counter affidavit filed by the respondents, this factual position is admitted. In reply to para 4.11 of the OA, the respondents stated:

“The Proceedings against the applicant was conducted strictly as per the provisions of CCS (CCA) Rules, 1965. As per the provision of the said rules a copy of UPSC advice, if any, is to be provided alongwith the final order passed by the disciplinary authority. This provision has been complied with.”

The Disciplinary Authority has relied upon the UPSC advice for purposes of imposing the punishment.

4. Based upon the above factual aspect, it is contended by Shri M. K. Bhardwaj, learned counsel for the applicant that the impugned penalty orders are liable to be quashed in view of the law laid down by the Hon'ble Supreme Court in ***Union of India and Others vs. S. K. Kapoor*** (2011) 4 SCC 589, wherein, in paras 6 to 8, their Lordships have observed 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 v. T. V. Patel. We do not agree.

7. In the aforesaid decision, it has been observed in SCC 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 to the employee concerned so that he may have an opportunity of rebuttal. Thus, in our view, the aforesaid decision in T. V. Patel 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 employee concerned. However, if it is replied 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 the Court in *S. N. Narula vs. Union of India*.”

From the perusal of the impugned orders also, we find that the UPSC advice was served upon the applicant along with the impugned penalty orders for the first time.

5. In view of the law laid down in ***S. K. Kapoor's case*** (supra), these Applications succeed only on this ground. Other issues are not being considered in this order and are left open. These Applications are accordingly allowed with the following directions:-

- (i) Impugned order dated Order dated 28.01.2013 in OA No.1351/2013, Order dated 30.01.2013 in OA No.1437/2013 and Order dated 31.01.2013 in OA No.1439/2013 are hereby set aside.
- (ii) Since the UPSC's advice has already been served upon the applicant along with the impugned penalty orders, the applicant shall submit his representation to the Disciplinary Authority in respect to the UPSC's advice within a period of four weeks from the date of receipt of copy of this order.
- (iii) The Disciplinary Authority after considering the representations to the UPSC's advice and all other relevant factors including the Inquiry Report and other material on record shall pass a fresh, reasoned and speaking order within a period of two months thereafter and communicate the same to the applicant.

(K. N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman