

Central Administrative Tribunal
Principal Bench, New Delhi

O.A. No. 100/2064/2013

New Delhi, This the 9th day of November, 2016

Hon'ble Mr. Justice M. S. Sullar, Member (J)
Hon'ble Mr. P. K. Basu, Member (A)

Smt. Sudershan Kohli
Wd/o Late M. M. Kohli
R/o. A-I, Shakti Apartment,
Sector-9, Rohini, Delhi. ... Applicant

(Argued by: Ms. Meenu Mainee, Advocate)

Versus

Union of India : Through :

1. The Secretary,
Railway Board, Ministry of Railways,
Rail Bhawan, Raisina Road, New Delhi.
2. The General Manager (E),
Western Railway, Churchgate, Mumbai.
3. Shri B. K. Ummat,
Retd. Sr. Deputy General Manager
N.F. Railway,
Through :
The Secretary, Railway Board,
Railway Board, Ministry of Railways,
Rail Bhavan, Raisina Raod, New Delhi. ...Respondents

(By Advocate : Mr. V. S. R. Krishna with Mr. Shailendra Tiwari)

ORDER (ORAL)

Hon'ble Mr. Justice M. S. Sullar, Member (J) :

The challenge in this Original Application (O.A), initially filed by the original applicant, Shri M. M. Kohli (since deceased), being represented by his wife Smt. Sudarshan Kohli (legal heir), was to the impugned order dated 24.05.2011, conveyed to the applicant, vide memo/letter dated 08.06.2011 (Annexure A/1), whereby a penalty of withholding of 20% of the monthly pension

for a period of five years was imposed on him, by the President, Disciplinary Authority (DA).

2. The crux of the facts and material, which needs a necessary mention, for a limited purpose of deciding the core controversy involved in the instant O.A. and expository from the record is that, the original applicant, Late Shri M.M Kohli was working as a Senior Scale Officer at Dahod in Railway Department. One Shri G. S. Rathod, EE(W)/DHD was transferred and posted in his place. Accordingly, Sh. G. S. Rathod carried out the transfer order and assumed the charge of the post of DEE(W)/DHD on 05.11.2001, in the absence of Mr. M. M. Kohli, as he was on leave and was not available on duty at Dahod, from 05.11.2001 to 21.11.2001. He returned on duty at Dahod on 22.11.2001 and relinquished the charge on 23.11.2001. On 22.11.2001, he cleared the final bills of two firms, in the capacity of DEE(W)/DHD and illegally directed his subordinate to make the measurement after his transfer. Thus, he was stated to have committed misconduct in performance of his duty, as a public officer.

3. As a consequence thereof, a Departmental Enquiry (DE) was initiated against the applicant, by the President (DA), in exercise of power conferred on him under Rule 9 of Railway Servant (Pension) Rules, 1993, vide impugned order dated 13.08.2003 (Annexure A/3). He was served with the following Articles of charges (Annexure A/1):-

“Shri M. M. Kohli, retired DEE/C/ADI while relinquishing the charge of the post of DEE/W/HDH during November, 2001 has committed several gross

misconduct even though he was well aware of the facts that his reliever Shri G. S. Rathore has already assumed the charge of the post of DEE (W)/DHD on 05.11.2001 in as much as :

Article-1

Shri M. M. Kohli misused his power in signing and passing the final bill of two firms i.e., M/s. Productive Technologies Company, Bill No. EL/79/LCW/PYM/2/2001 and M/s. Gujarat Traders, Bill No. EL/79/LCW/PYM/1/2001 in the capacity of DEE(W)/DHD, on 22.11.2001 although the new incumbent Shri G. S. Rathore had already assumed the charge of the post of DEE (W)/DHD on 05.11.2001 which indicates mala fide intentions on the part of Shri M. M. Kohli.

Article-II

Shri M. M. Kohli extended undue favour to the two firms M/s. Productive Technologies Company and M/s. Gujarat Traders by pressurizing Shri M. K. Joshi, SSE/LCW/DHD and Shri R B Sharma, Chief Estimator/LCW/DHD for recording the measurement in the Measurement Book and for checking the final bills respectively, on the same date (i.e. 22.11.2001) when the said works were physically completed only on 22.11.2001. It reflects mala fide intentions on the part of Shri M. M. Kohli.

Article- III

Shri M.M. Kohli has misused his powers to undertake an official tour to Mumbai on 22.11.2001 in the capacity of DEE/W/DHD when he was very well aware of the fact that his reliever Shri G. S. Rathore has already assumed the charge of the post of DEE/W/DHD on 05.11.2010 as per Western Railway HQ's office order. This clearly reflects lack of integrity & devotion to duty on the part of Shri M.M. Kohli.

Thus, by his aforesaid acts of commission and omission, Shri M.M. Kohli, the then DEE (W)/DHD/Western Railway (since retired) failed to maintain absolute integrity devotion to duty and acted in a manner unbecoming of a Railway Servant in contravention of Rule No 3(1) (i), (ii) & (iii) of Railway Services (Conduct) Rules, 1966."

4. After completion of the inquiry, the charges levelled against the applicant were held to be duly proved by the Enquiry Officer.

5. In the wake of the request of the DA, Union Public Service Commission (UPSC), advised that, ends of justice would be met in this case, if the penalty of withholding of 20% of monthly pension for a period of five years is imposed on him, vide its report dated 24.03.2011 (Annexure A-1 Colly).

6. Having completed all the codal formalities and fully accepting the advice dated 24.03.2011 of UPSC, the DA imposed the indicated punishment on the original applicant, vide

impugned order dated 24.05.2011 (Annexure A/1), which in substance is as under:-

“9. The President, after careful consideration of the matter, in the light of the relevant records of the case, has accepted the advice of the UPSC for the reasons mentioned therein and holding that charges stand proved and constitute grave misconduct on the part of the said Shri M. M. Kohli, has come to the conclusion that ends of justice shall be met by imposing a penalty of “withholding of 20% of the monthly pension otherwise admissible to Shri M. M. Kohli (the CO) for a period of 5 years.” on Shri M. M. Kohli, Retd. DEE(W)/DHD/Western Railway and to release his gratuity, if the same is not required to be withheld under the rules for any reason. This is hereby done.”

7. Aggrieved thereby, the original applicant had preferred the instant O.A, challenging the impugned enquiry proceedings and order, invoking the provisions of Section 19 of the Administrative Tribunals Act, 1985.

8. At the very outset, it will not be out of place to mention here that, although, the applicant had pleaded a variety of grounds to challenge the impugned disciplinary proceedings and order, but during the course of arguments, learned counsel has confined her arguments 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, the applicant has pleaded as under:-

“5.8 That the President has not passed a speaking and reasoned order. The President has only acted on the recommendations of the UPSC without application of his own mind.

5.9 That the Disciplinary Authority failed to supply a copy of the UPSC Report to the Applicant before imposition of penalty and, therefore, the applicant was delivered of his right to take into consideration the recommendations of the UPSC and rebut the same by an appropriate representation.

5.10 That the order passed by the Disciplinary Authority is in violation of law as laid down by the Hon’ble Supreme Court in the case of Shri S. K. Kapur Vs. Union of India & Ors. vide which the Hon’ble Supreme Court has held that a copy of the UPSC report has to be supplied to the charged officer before imposition of penalty and not along with the penalty order.

5.11 That the case of the applicant is also covered by the judgment of the Constitution Bench of the Hon’ble Supreme Court in the case of Karunakar in terms of which the Hon’ble Supreme Court has laid down the law that a copy of the enquiry report had to be forwarded to the

charged officer of give his comments before the punishment order is passed and issued."

9. The respondents have replied as under:-

"52. The averments made in the para 5.8 are not true and not admitted. The order impugned under this O.A passed by the DA, i.e. the President, in consideration with UPSC's advice along with available records and facts and circumstances of the case with due application of mind.

53. With reference to averments made in paras 5.9 to 5.11, it is stated that the Disciplinary Authority supplied copy of UPSC report to the applicant correctly alongwith the penalty order as per procedure only."

10. Even during the course of arguments, 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, although it was attached with the punishment order. But he urged, non-supply of the copy of the advice of the UPSC was not mandatory and will not have any adverse bearing on the case of the respondents.

11. 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.

12. 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.

13. 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”.

14. 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.

15. 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”.

16. 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".

17. 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.

18. In the instant case, it is not a matter of dispute that 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.

19. 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.

20. 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 24.05.2011 conveyed to the applicant by way of memo/letter dated 08.06.2011 (Annexure A-1) is set aside.

21. 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 fresh order to be passed by the Disciplinary Authority, in that eventuality, he would 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)
09.11.2016**