

**Central Administrative Tribunal
Principal Bench
New Delhi**

OA No.1726/2014

This the 2nd day of March, 2017

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

Dr. Madhup Mohta,
Director, M.E.A.,
A-108, Shivalik, Sector-35,
Noida-201301.

... Applicant

(By Advocate: Mr. Ashok Dhamija)

Versus

1. Union of India through its Foreign Secretary,
Ministry of External Affairs,
South Block, New Delhi.
2. Joint Secretary (CNV),
Ministry of External Affairs,
South Block, New Delhi.
3. Union Public Service Commission,
Dholpur House, New Delhi.

... Respondents

(By Advocates: Mr. Rajinder Nischal)

O R D E R

Justice Permod Kohli, Chairman :

The applicant was working as Director, Indian Council for Cultural Relations (ICCR) on deputation from Indian Foreign Service. An FIR No.RC-DAI-2008-A-0023 under section 120-B read with section 420 IPC and section 13(2) read with section 13(1)(d) of Prevention of Corruption Act, 1988 came to be registered against one

Shri Rakesh Kumar, IFS, the then Director General, ICCR and the applicant by the CBI. After investigation, CBI filed a closure report in absence of any criminality attributed to the applicant and the then Director General, ICCR. While seeking closure of the FIR, CBI also recommended initiation of departmental proceedings against the applicant, whereupon a memorandum of charge dated 13.04.2011 was issued to the applicant for initiation of major penalty proceedings under rule 14 of the CCS (CCA) Rules, 1965. On consideration of the representation of the applicant, the disciplinary authority instituted a departmental inquiry. The inquiring authority completed the inquiry proceedings and submitted its report to the disciplinary authority holding the charges proved. The disciplinary authority served copy of the inquiry report dated 30.01.2012 on the applicant for his representation. The applicant submitted his representation dated 05.04.2012. The disciplinary authority on consideration of the inquiry report, sought the advice of UPSC. UPSC gave its advice vide letter dated 30.12.2012 and recommended the penalty. The disciplinary authority vide the impugned order dated 09.05.2013 imposed the penalty of reduction to the lower stage in the time scale of pay by one stage for a period of two years with further direction that the applicant would not earn increments of pay during the period of reduction and on expiry of the period of two

years, the reduction would have the effect of postponing his future increments of pay.

2. In para 4.12 of the OA the applicant has alleged that he has not been provided opportunity to represent against the UPSC's advice before imposing the penalty. A similar plea has been raised in ground 'F' of the OA. In para 6 of the impugned order dated 09.05.2013 the disciplinary authority has mentioned as under:

"6. The Union Public Service Commission examined the case dispassionately vide its letter No.F.3/85/2012-SI dated 30.10.2012 (copy enclosed) in respect of each article of charge, and held these as proved to the extent proved in the departmental inquiry and advised that ends of justice would be met if penalty of "reduction to the lower stage in the time scale of pay by one stage for a period of two years with further directions that Dr. Madhup Mohta, Director, will not earn increments of pay during the period of reduction and on the expiry of this period of two years, the reduction will have the effect of postponing the future increments of pay" is imposed on Dr. Madhup Mohta, Director."

From the averments in the above para, we find that the copy of the UPSC's advice dated 30.10.2012 was enclosed along with the copy of the penalty order. In para 7 of the impugned order, the disciplinary authority has further referred to and relied upon UPSC's advice for imposing penalty upon the applicant. Even in the counter-affidavit filed by the respondents, in reply to para 4.12 it is admitted that copy of the UPSC's advice was provided to the applicant along with the punishment order. The respondents have, however, relied upon

DOP&T OM Nos.11012/8/2011-Estt.(A) dated 06.01.2014 and No.11012/8/2011-Estt.(A) dated 05.03.2014 to contend that service of the UPSC's advice prior to the imposition of the penalty was made mandatory only by the above mentioned DOP&T OMs, and prior to that there was no requirement of serving copy of the advice of UPSC to the delinquent official prior to imposition of the penalty. The fact that UPSC's advice was for the first time served upon the applicant along with the penalty order is an admitted position. The controversy is no more *res integra* having been settled by the Apex Court in case of *Union of India & others v S. K. Kapoor* [(2011) 4 SCC 589], wherein the Hon'ble Supreme Court held as under:

“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.”

3. OM dated 06.01.2014 is said to have been issued consequent upon the judgment in *S. K. Kapoor's* case (*supra*). From the dictum of the judgment in *S. K. Kapoor*, we find that the Hon'ble Supreme Court has interpreted the law and held that non-service of the UPSC's advice prior to imposition of penalty, if it is relied upon,

amounts to violation of the principles of natural justice. In absence of opportunity to the applicant to respond to the advice of UPSC, grave prejudice has been caused to him.

4. In this view of the matter, without going into other aspects of the case, this OA is allowed. The impugned order dated 09.05.2013 is hereby quashed. Since copy of the UPSC's advice has already been served upon the applicant, the applicant is granted liberty to make representation against the same within four weeks from today. On receipt of representation of the applicant, the disciplinary authority shall pass a fresh order by taking into consideration the representation of the applicant within a period of two months from the date of receipt of the representation. Needless to say that the disciplinary authority shall pass a reasoned and speaking order and communicate the same to the applicant.

(K. N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

/as/