

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

OA No.3432/2012

This the 2nd day of September, 2016

**Hon'ble Shri Justice Permod Kohli, Chairman
Hon'ble Shri K N Srivastava, Member(A)**

Shri Girdhar Singh
S/o Shri Bhim Sen
R/o Adarsh Colony, Shalla Garh
Palwal, Distt. Faridabad, Haryana.Applicant

(Through Advocate: Shri Padma Kumar S)

Versus

1. Union of India, through
The Chairman, Railway Board
Ministry of Railway
Rail Bhawan, Raisena Road
New Delhi.
2. General Manager
Northern Railway
Baroda House
New Delhi.
3. Controller of Stores
Northern Railway
Baroda House
New Delhi.Respondents

(Through Advocate: Shri R N Singh)

Order (oral)

Justice Permod Kohli, Chairman

While working as a Deputy Chief Materials Manager/System, the applicant was served with a Charge Memo dated 25.07.2007 under Rule 9 of Railway Servants (D&A) Rules, 1968 for major

penalty along with articles of charge etc. On consideration of his written statement of defence dated 03.09.2007, a departmental inquiry was ordered. The Inquiring Authority submitted its report dated 13.02.2010 (Annexure A-4) holding the charges against the applicant proved. The copy of the inquiry report was served upon the applicant seeking his response thereto. The applicant submitted his representation against the inquiry report on 22.12.2010 (Annexure A-5). The Disciplinary Authority i.e., the Railway Board, on consideration of the representation of the applicant to the inquiry report imposed the penalty of "reduction by two stages in the time scale of pay for a period of one year with cumulative effect" vide the impugned order dated 05.04.2011. The appeal preferred against the said order was also rejected vide order dated 19.04.2012 also impugned herein.

2. At the outset, learned counsel for the applicant has taken us through the appellate order wherein it is recorded that the UPSC's advice was received on 10.04.2012 whereas the penalty upon the applicant was imposed on 05.04.2011. Admittedly, the UPSC's advice was never served upon the applicant before the imposition of the penalty. The validity of the impugned order is primarily assailed on that ground.

3. From the order passed by the Disciplinary Authority dated 05.04.2011 imposing penalty, we find that the Disciplinary

Authority in its wisdom chose not to consult the UPSC and thus there was no occasion for it to rely upon the advice/opinion of the UPSC. The disciplinary proceedings were initiated under Rule 9 and once the inquiry proceedings are completed, the action on the Inquiry Report is required to be taken in terms of Rule 10 of the Railway Service (Discipline and Appeal) Rules, 1968. Insofar as consultation with the Commission is concerned, sub-rule (4) of Rule 10 provides as under:-

"10 (4) If the disciplinary authority having regard to its findings on all or any of the articles of charge, is of the opinion that any of the penalties specified in clauses (i) to (iv) of Rule 6 should be imposed on the Railway servant, it shall, notwithstanding anything contained in Rule 11, make an order imposing such penalty."

4. The only mandate of the Rule is that the Commission is required to be consulted on the inquiry report wherever it is necessary. The Disciplinary Authority as noted herein above, did not consult the Commission. However, we find that the Appellate Authority, before passing the impugned order dated 19.04.2012, did consult the UPSC as is evident from the following averments made in the Appellate Order:-

"After carefully considering the appeal dated 23.05.2011 of Shri Girdhar Singh, Deputy Chief Materials Manager/System, Northern Railway and records of the case, in consultation with Union Public Service Commission, President has decided to reject the said appeal...."

5. Even from the communication dated 19.04.2012 (page 40 of the paper book), it appears that the Appellate Authority has consulted the UPSC and based upon such consultation, applicant's appeal has been rejected. The Appellate Authority exercised appellate jurisdiction in terms of Rule 22 of the Railway Service (D&A) Rules, 1968. Proviso attached to Rule 22(2) reads as under:-

"22(2)(i) the Commission shall be consulted in all cases where such consultation is necessary;"

6. Under the aforesaid proviso, even the Appellate Authority has the discretion to consult the UPSC. In the present case, the Appellate Authority decided to consult the UPSC before deciding the appeal.

7. It is not necessary in every case to consult the UPSC, in terms of Article 320 of the Constitution of India. However, once the Disciplinary Authority or the Appellate Authority chose to consult the UPSC and on such consultation, rely upon the advice of the UPSC it becomes necessary rather obligatory upon the Disciplinary/Appellate Authority to inform the delinquent official about the opinion of the UPSC to enable him to respond to the same. This is in consonance with principles of natural justice. The controversy is no more *res integra* having been settled by the Hon'ble Supreme Court in the matter of ***Union of India and***

Ors. v. S K Kapoor [(2011) 4 SCC 589]. As regards the question of consultation of the UPSC, the Hon'ble Supreme Court has observed as under:-

"5. It is settled principle of natural justice that if any material is to be relied upon in departmental proceedings, a copy of the same must be supplied in advance to the charge-sheeted employee so that he may have a chance to rebut the same.

6. xxx xxx xxx

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 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* case is clearly distinguishable."

It is further observed by the Hon'ble Supreme Court that in the event the report of the UPSC is not relied upon by the Disciplinary Authority, it is not necessary to supply a copy of the same to the employee concerned. The relevant observations are contained in para 8, which is reproduced 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 employee concerned. However, if it is relied 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 this Court in *S.N. Narula v. Union of India.*"

The above judgment has been reiterated in a later judgment of the Supreme Court in the matter of ***Union of India and Ors. Vs. R.P. Singh***[(2014) 7 SCC 340].

8. In view of the dictum of the aforesaid judgments of the Hon'ble Supreme Court, we find that since the disciplinary authority did not consult the UPSC, there is no question of furnishing the advice of the UPSC to the applicant. As a matter of fact, no such advice was sought till the time of passing of the penalty order by the Disciplinary Authority. It was only at a later stage during the pendency of the appeal that the Appellate Authority decided to consult the UPSC, as is apparent from the communication dated 19.04.2012 as also the order of the Appellate Authority dated 19.04.2012. Despite the fact that the Appellate Authority consulted the UPSC and relied upon its report while passing the impugned order, the report/opinion of the UPSC was never served upon the applicant. It has definitely caused grave prejudice to the applicant, same being violative of principles of natural justice. In the above circumstances, the order of the Appellate Authority is not sustainable in law. The applicant in his prayer has sought quashing of the order passed

by the Disciplinary Authority dated 05.04.2011 as well as the Appellate Order dated 19.04.2012. Since we do not find any infirmity, legal or otherwise, in the order passed by the Disciplinary Authority, we propose not to interfere in the same. The order of the Appellate Authority having been passed in gross violation of the principal of natural justice is liable to be quashed. This OA is accordingly partially allowed with the following directions:-

- (1) The impugned order dated 19.04.2012 passed by the Appellate Authority is hereby set aside. The matter is remanded back to the Appellate Authority. The Appellate Authority shall furnish the advice of the UPSC to the applicant within a period of four weeks from the date of receipt of a copy of this order.
- (2) On being served with the advice of the UPSC, the applicant shall submit his representation/response thereto within four weeks thereafter.
- (3) On receipt of the representation/response of the applicant, the Appellate Authority shall pass fresh order, in accordance with law, and taking into consideration the representation/response of the applicant, within a period of two months thereafter.

(4) Needless to say that the Appellate Authority shall pass a reasoned and speaking order.

(K N Srivastava)
Member(A)

(Justice Permod Kohli)
Chairman

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