

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A No.2905/2012

New Delhi, this the 6th day of April, 2016

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

Hon'ble Mr. K. N. Shrivastava, Member (A)

Shri K.N. Sharma

Aged about 69 years

S/o Shri Sita Ram Sharma

R/o BH-734 (East),

Shalimar Bagh,

Delhi-110088.

.. Applicant

(Argued by: Mr. S.K. Gupta)

Versus

Union of India through

1. Secretary,
Ministry of Home Affairs,
North Block,
New Delhi.
 2. Secretary,
Union Public Service Commission,
Dholpur House,
Shahjahan Road,
New Delhi.
 3. Govt. of NCT of Delhi through
Its Chief Secretary,
Players Building,
I.P. Estate,
New Delhi.
 4. Director,
Directorate of Vigilance,
4th level, C-Wing,
Delhi Secretariate,
I.P. Estate,
New Delhi.
- ..Respondents

(By Advocates: Shri Rajeev Kumar for Respondent No.1

Shri Vijay Pandita for Respondents No.3&4)

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

The challenge in this Original Application (OA) filed by the applicant, Shri K.N. Sharma (since retired) is to the impugned punishment order dated 08.05.2012 (Annexure A-1), advice dated 01.05.2012 (Annexure A-2) of the Union Public Service Commission (for brevity "UPSC") and enquiry report dated 02.05.2005 (Annexure A-3).

2. The sum and substance of the facts and material, which need a necessary mention for a limited purpose of deciding the core controversy involved in the instant OA is that initially in the wake of departmental enquiry, a penalty of 10% cut in monthly pension for a period of 2 years, was imposed on applicant by the competent authority, by way of order 29.06.2009. The applicant had earlier filed OA bearing No.1887/2010 and the same was allowed vide order dated 14.11.2011 (Annexure A-4) by this Tribunal. The operative part of the order reads as under:-

"6. The Commission, despite the fact that the applicant was held guilty only of signing the SC certificate and absolved of all major charges, has, however, held that delinquency of the applicant would amount to grave misconduct.

7. Disciplinary authority in an ultimate analysis has held that the applicant has failed to discharge his duties properly and diligently and also failed to ensure that his subordinates completed all due processes before signing the certificate. Disciplinary authority has also held that the misconduct indulged in by the applicant would constitute grave misconduct. Even though in the findings given by the UPSC and the disciplinary authority, there is no reason as to why, despite the applicant may have been exonerated on the main charges, the delinquency proved

against the applicant would still amount to grave misconduct. At this stage, we may not substitute our reasons to hold that the extent of delinquency proved against the applicant would amount to grave misconduct or not. In our view, a specific finding as to the nature of the misconduct indulged in by the applicant on the basis of proved facts has to be given by the disciplinary authority.

8. Inasmuch as, no reasons have been given as to how the allegations proved to the extent, as mentioned above, against the applicant would amount to grave misconduct, we set aside the order and remit the matter to disciplinary authority to pass fresh order in the light of observations made above. Let the exercise, as ordained above be completed within a period of three months from the date of receipt of certified copy of this order. If no order is passed within the stipulated time, the applicant shall be restored his full pension and the amount already deducted shall be refunded to him”.

3. Again in pursuance of the order of this Tribunal, a fresh Annexure A-1 penalty order dated 08.05.2012 (impugned) was passed in the following manner by the competent authority:-

“F.No.14033/8/2006-Delhi-II
Government of India
Ministry of Home Affairs

New Delhi, dated the 8th May, 2012

ORDER

WHEREAS a penalty of 10% cut in monthly pension for a period of two years was imposed on Shri K.N. Sharma, Ad-hoc DANICS Officer (Retd.), Govt. of NCT of Delhi vide Ministry of Home Affairs Order of even number dated the 29th June, 2009.

AND WHEREAS aggrieved by the aforementioned order of penalty, the said Shri K.N. Sharma filed O.A. No.1887/2010 in the Central Administrative Tribunal (Principal Bench).

AND WHEREAS while disposing of O.A. No. 1887/2010, the Hon'ble Tribunal vide order dated 14th November, 2011 has noted that no reasons have been given as to how the allegations proved against the Petitioner would amount to grave misconduct. The Hon'ble Tribunal has accordingly, set aside the order of penalty and has remitted the matter to Disciplinary Authority to

pass fresh order in the light of the observation made by it within a period of three months from the date of receipt of certified copy of the order.

AND WHEREAS the President has considered the matter in consultation with the Union Public Service Commission (copy of the advice No.F.3/327/2011-SI dated 1.5.2012 received from UPSC enclosed) in the light of the above order of the Hon'ble Tribunal. It has been observed that:

(i) Though the said Shri K.N. Sharma was exonerated of the charge of issuing the false certificate in consideration of pecuniary benefit and also that the charge of collusion with his subordinates was not conclusively proved against him, his culpability in as much as he signed the false certificate, which was issued without due process, cannot be denied and his plea of workload etc. could not suffice to absolve him entirely of the charge against him although these may have some mitigating impact on the magnitude of his lapse.

(ii) When it comes to accountability, the plea of lapse on the part of his subordinates cannot be of much avail. The fact still remains that the lapses and misconduct found to have been proved against the said Shri K.N. Sharma are also not such as can be termed minor or purely procedural or technical. It may be true that he has not been found guilty of acting in collusion with his subordinates or being motivated by the pecuniary benefit, but that does not mean that his essential accountability as the officer issuing the false caste certificate and his culpability for his irregular act, was condonable and the stand in treating misconduct proven on the part of the said Shri K.N. Sharma as "grave" was well considered and fully justified. The penalty imposed is also commensurate with the lapse found on his part – had all the charges been proved against him, the penalty imposed would have been far greater.

NOW, THEREFORE, the President, in view of her above findings, reiterates, the earlier decision to impose the penalty of 10% cut in the monthly pension payable to the said Shri K.N. Sharma for a period of two years, as

ordered vide Ministry of Home Affairs Order of even number dated the 29th June, 2009 and orders accordingly”.

4. Aggrieved thereby, the applicant has preferred the instant OA challenging the impugned punishment order (Annexure A-1), advice of the UPSC (Annexure A-2) and report of the Enquiry Officer (Annexure A-3) by invoking the provisions of Section 19 of the Administrative Tribunals Act, 1985.

5. The case set-up by the applicant, in brief, insofar as relevant is that although UPSC has partially exonerated the applicant in respect of pecuniary benefits, even then the disciplinary authority reiterated its earlier order and a penalty of 10% cut in monthly pension for a period of 2 years was again passed in a very casual manner, which according to him, is not in consonance with law and the indicated order of this Tribunal.

6. The contesting respondents have refuted the allegations of the applicant and filed the reply, wherein it was pleaded that the punishing authority has placed reliance on the advice of UPSC and rightly passed the impugned order in accordance with the direction contained in the order of this Tribunal and as per law. It will not be out of place to mention here that the contesting respondents have stoutly denied all the allegations contained in the OA and prayed for its dismissal.

7. After hearing the learned counsel for the parties, going through the record with their valuable help and after considering the entire matter deeply, we are of the considered view that the instant OA deserves to be allowed for the reasons mentioned herein below.

8. What cannot possibly be disputed here is that the Disciplinary Authority has relied upon the advice No.F.3/327/2011-SI dated 01.05.2012 (Annexure A-2) received from UPSC while passing the impugned penalty order. Even the copy of the advice of the UPSC was enclosed with the impugned punishment order. It is not a matter of dispute that the Disciplinary Authority did not supply the copy of the advice of the UPSC in advance to the applicant before passing the impugned penalty order to enable him (applicant) to explain his conduct, which indeed would amount to violation of principle of natural justice.

9. The Hon'ble Apex Court in the case ***U.O.I. & Others Vs. S.K. Kapoor 2011(4) SCC 589*** has ruled that 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. It was also held that if the Disciplinary Authority do consult and rely on the report of UPSC for taking disciplinary action, then the principle 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, otherwise, there will be violation of principle of natural justice. The reliance in this regard can also be place on the judgment of Hon'ble Supreme Court in the case of **S.N. Narula Vs. U.O.I. 2011(4) SCC 591.**

10. Sequelly, the principle laid down in **S.K. Kapoor's case** (supra) was approved by the Hon'be Apex Court in subsequent judgment in the case of **U.O.I. and Others Vs. R.P. Singh 2014 (7) SCC 340.** Not only that, in pursuance of the law laid down in **S.K. Kapoor's case** (supra), the Government of India, Ministry of Personnel, PG & Pensions, Department of Personnel & Training vide Office Memorandum dated 06.01.2014 has issued the following directions:

“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 favor 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”.

11. Meaning thereby, it was obligatory on the part of the Disciplinary Authority to supply the copy of advice of UPSC to enable the applicant to file his representation to rebut any adverse comments/observations contained in it. Thereafter, the Disciplinary Authority would be obliged to consider the reply/representation of the applicant and then only pass the final punishment order, which admittedly has not been done in the instant OA. Therefore, the impugned punishment order passed in complete violation of the law laid down by the Hon'ble Apex Court in the cases of **S.K. Kapoor's case** (supra), **R.P. Singh's case** (supra) and against the principles of natural justice, cannot legally be sustained in the obtaining circumstances of the case.

12. No other point, worth consideration, has either been urged or pressed by the learned counsel for the parties.

13. In the light of the aforesaid reasons and without commenting further anything on merit, lest it may prejudice the case of either side while passing the fresh punishment order by the Disciplinary Authority, the OA is hereby allowed. The impugned punishment order dated 08.05.2012 (Annexure A-I) is set aside. The matter is remitted back to the

Disciplinary Authority with a direction to supply a copy of the advice of UPSC to the applicant to enable him to submit his representation against it. The Disciplinary Authority is further directed to pass a fresh punishment order, if it deems fit to do so, after taking into consideration the applicant's representation and in accordance with law within a period of 3 months from the date of receipt of a copy of this order. No costs.

(K.N. SHRIVASTAVA)
MEMBER (A)

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

Rakesh