

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No.3667/2011

New Delhi this the 12th day of May, 2016

**HON'BLE MR. JUSTICE M.S. SULLAR, MEMBER (J)
HON'BLE MR. V. N. GAUR, MEMBER (A)**

Shri Vinod Kumar Ahirwar
Flat No.C-504, Satisar Appt.,
Plot No.6, Sector-7,
Dwarka, Delhi-110005.Applicant

(Argued by: Mr. M.K. Bhardwaj, Advocate)

Versus

Govt. of India & Others through:

1. The Secretary
Ministry of Finance,
Department of Revenue,
Govt. of India,
South Block,
New Delhi.
2. The Chairman,
Central Board of Excise and Customs,
Jeevan Deep Building,
Parliament Street,
Delhi.
3. The Member (P&B),
CBEC,
New Delhi.
4. The Commissioner of Customs (Admn.)
15/1, Strand Road, Customs House,
Kolkata.Respondents

(By Advocate : Shri R.V. Sinha)

ORDER (ORAL)

Justice M. S. Sullar, Member (J)

The challenge in this Original Application (OA), filed by the Applicant, Vinod Kumar Ahirwar, is to the impugned

order dated 30.03.2009 (Annexure A-1) whereby a penalty of reduction of pay by three stages for a period of 3 (three) years was imposed on him by the Disciplinary Authority (DA). He has also assailed the impugned order dated 11.07.2011 (Annexure A-2) by virtue of which his appeal was dismissed by the Appellate Authority (AA).

2. The epitome of facts, which needs a necessary mention for limited purpose to decide the core controversy involved in the instant OA, and emanating from the record, is that the applicant, while functioning as Appraiser of Customs at Kolkata port, was stated to have committed grave misconduct.

3. As a consequence thereof, applicant was served with Statement of Imputation of Misconduct and following Articles of Charge:-

“Article-1

That said Shri Vinod Kr. Ahirwar while functioning as Appraiser of Customs, Kolkata port under Kolkata Customs Commissionerate on 5.1.2002, deliberately and with ulterior motive acted upon allowing consignments of Ball Pens, Side Wheels covering 7 Shipping Bills for export under Drawback claim without observing the requisite procedure/formalities and/or despite having prior knowledge of the subject consignment as for export contained either junk goods and in less quantity/ abnormal value. The motive behind such dubious attempt was to misuse the drawback benefit with a view to avail much drawback, where the said Shri Ahirwar alongwith Shri Kalyan Dasgupta, Examiner were also in joint hands with the Exporter and/or his agent to get the consignment exported through Kolkata Port.

Article-2

That said Shri Ahirwar in course of his official duties on 5.1.2002 took up the above said goods under Drawback claim for appraisement. It is on record that, in the interest of proper & effective examination of the said exportable consignments, the

said Shri Ahirwar did not take precaution or safeguard in examining the pkgs. After examination necessary endorsements were made in the relevant Shipping Bills for allowing shipment. It is also on record that on a subsequent move, 100% examination of the goods was made in Vizag after off-loading containers from the ship. The examination report confirmed misdeclaration of the description/quantity/value of the goods, with a view to defraud the Govt. by claiming excess drawback than what is due.

Article-3

That said Shri Ahirwar also did not resume the relevant Shipping Bills for further action against the exporter for violation of provisions under CA'62/ Drawback Scheme, although it was known to him that 100% examination of the consignment had become inevitable on the basis of said irregularity, but he had failed to discharge his duty and responsibility by not forwarding the Shipping Bills and related documents with factual written report to the Deputy/Asstt. Commissioner (Export).

Article-4

That said Shri Ahirwar not only by passed al the prescribed norms and regulations for he appraisement of export consignments, but also thus failed to maintain absolute integrity and devotion to duty and had displayed a conduct unbecoming of a Govt. servant and thereby contravened the provisions of Rule 3(1)(i)(ii)(iii) of the CCS (conduct) Rules, 1964”.

4. In pursuance thereof, the Enquiry Officer (EO) was appointed. The EO recorded, evaluated the evidence of the parties and came to the conclusion that Articles of Charge No.2 to 4 stands proved whereas Article of Charge No.1 was partially proved vide his report dated 04.10.2006 conveyed on 15.01.2007 (Annexure A-5).

5. Having completed all the codal formalities, and agreeing with the findings of the EO, the DA imposed the indicated penalty on the applicant vide impugned order dated 30.03.2009 (Annexure A-1).

6. Sequelly, the appeal filed by the applicant was dismissed as well vide order dated 11.07.2011 (Annexure A-2) by the AA.

7. Aggrieved thereby, the applicant has preferred the instant OA challenging the impugned orders on variety of grounds mentioned therein. During the course of argument, learned counsel for applicant has only urged the issue of non-supply of copy of advice of UPSC and its effect. However, the impugned orders were termed to be illegal, arbitrary, without jurisdiction and against the principles of natural justice, invoking the provisions of Section 19 of the Administrative Tribunals Act, 1985.

8. The respondents have refuted the claim of the applicant, filed the reply stoutly denying all the allegations contained in the OA and prayed for its dismissal.

9. Controverting the pleadings in the reply filed by the respondents and reiterating the grounds contained in the OA, the applicant has filed his rejoinder. That is how we are seized of the matter.

10. Having heard the learned counsel for the parties and having gone through the relevant record and legal position with their valuable help, we are of the considered opinion that the instant OA deserves to be accepted, on the short mandatory ground of non-supply of advice of the Union Public Service Commission (UPSC) for the reasons mentioned herein below.

11. Ex-facie the argument of the learned counsel that although the AA has strongly relied upon the advice of UPSC but since a copy of the report of UPSC was not supplied to the applicant to enable him to file representation against it, so the impugned appellate order is liable to be set aside, has considerable force.

12. On the contrary, the contention of the learned counsel for respondents that as no prejudice has been caused to the applicant on account of non-supply of the advice of the UPSC, the impugned appellate order is legally maintainable, has no force.

13. What cannot possibly be disputed here is that although the AA accepted and relied upon the advice of UPSC, but its copy was not supplied to the applicant before passing the impugned appellate order dated 11.07.2011 (Annexure A-2). No cogent evidence is forthcoming on record even to suggest remotely, rather fairly acknowledged by learned counsel for respondents, that the copy of advice of UPSC dated 07.06.2011 was ever supplied to enable the applicant to file representation/objection to it before passing the impugned order by the AA.

14. 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”.

15. Therefore, it was mandatory duty of the AA to supply the copy of the advice of the UPSC before passing the impugned order. He has miserably failed to do so. It has caused a great deal of prejudice to the case of the applicant. This matter is no more res integra and is now well settled.

16. 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".

17. 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".

18. Meaning thereby, if the Appellate Authority intended to place 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 appellate order, which admittedly has not been done in the present case by the AA. Therefore, non-supply of the advice of the UPSC to the applicant was fatal to the case of department and vitiated the impugned orders as well. Hence, the impugned appellate order cannot legally be sustained in the obtaining circumstances of the case.

19. 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 hearing of the appeal, the OA is partly allowed. The impugned order dated 11.07.2011 (Annexure A-2) of the AA is set aside.

20. As a consequence thereof, the case is remitted back to the AA to decide the matter afresh after supplying the copy of the advice of the UPSC to enable the applicant 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. No costs.

Needless to mention, here is that, since this OA is disposed of on the limited point of non-supply of the advice

of the UPSC, so in case the applicant remains aggrieved with the order to be passed by the appellate authority, in that eventuality, he would at liberty to challenge the same on all the grounds contained in this OA.

**(V.N.. GAUR)
MEMBER (A)**

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

Rakesh