

Central Administrative Tribunal Principal Bench, New Delhi

O.A.No.3173/2013

Friday, this the 3rd day of February 2017

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

B P Mahaur
s/o late Mr. Ved Ram Mahaur
r/o C-7/202, Sector 8, Rohini
Delhi – 85

..Applicant

(Mr. Yogesh Sharma, Advocate)

Versus

1. Union of India through the Secretary
Govt. of India, Ministry of Home Affairs
North Block, New Delhi
2. The Under Secretary to the Govt. of India
Govt. of India, Ministry of Home Affairs
North Block, New Delhi
3. The Chief Secretary
Govt. of NCT of Delhi
Delhi Secretariat, Players Builders
IP Estate, New Delhi

..Respondents

(Mr. Gyanendra Singh, Advocate for respondent Nos. 1 & 2 –
Mr. Vijay K Pandita, Advocate for respondent No.3)

O R D E R (ORAL)

Justice Permod Kohli:

Disciplinary proceedings for major penalty under Rule 14 of CCS (CCA) Rules, 1965 were initiated against the applicant vide memorandum dated 12.11.2001 on various charges communicated to the applicant along with the aforementioned memorandum. On consideration of the reply, an inquiry was constituted. Inquiring Committee submitted its report dated 17.08.2005. The copy of the inquiry report was served upon the applicant

for his representation. The disciplinary authority also obtained the second stage advice of the Central Vigilance Commission (CVC), which was furnished to the charged officer for his representation. On attaining the age of superannuation, the applicant retired on 30.11.2001. The disciplinary authority also consulted the UPSC and on the basis of the report of UPSC dated 18.07.2013, the impugned order dated 31.07.2013 (Annexure A-1) has been passed imposing penalty of 20% cut in the monthly pension, otherwise admissible to the applicant, for a period of five years. It is this order, which is subject matter of challenge in the present O.A.

2. Apart from various other grounds raised in the O.A., one of the grounds urged in paragraph 4.13 of the O.A. is that the copy of advice of UPSC was not served upon the applicant for his comments/representation prior to passing of impugned order even though the disciplinary authority has relied upon the advice of the UPSC. This position is not disputed in the counter reply filed by the respondents.

3. It is settled proposition of law that the disciplinary authority is not under any obligation to seek advice of the UPSC. However, once the disciplinary authority, in its wisdom, decided to consult the UPSC, its advice is obtained and acted upon for purposes of imposing the penalty, it is mandatory for the disciplinary authority to serve the copy of the advice of UPSC for the representation/comments of the charged officer. Otherwise it would be in gross violation of principles of natural justice. In the instant case, admittedly, the advice of the UPSC was obtained but was served upon the applicant along with impugned penalty order, as is evident from paragraph 6 of the impugned order. From the perusal of the impugned

order, it is also evident that the advice of UPSC has been relied upon by the disciplinary authority.

4. Without going into the other issues raised in the O.A., the impugned order is liable to be set aside on this ground alone. The O.A. is accordingly allowed with the following directions:-

- (i) Impugned order dated 31.07.2013 imposing penalty of 20% cut in monthly pension for a period of five years is hereby set aside.
- (ii) Since the copy of the advice of UPSC is already available with the applicant, he is granted liberty to file his representation/response to the advice of UPSC within a period of four weeks from today.
- (iii) On receipt of the representation of the applicant in respect of UPSC advise, the disciplinary authority shall pass a fresh order within a period of two months thereafter and communicate the same to the applicant.

No order as to costs.

(K.N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

February 3, 2017
/sunil/