

Central Administrative Tribunal
Principal Bench: New Delhi

OA No. 4204/2013

Reserved on: 09.12.2015
Pronounced on: 04.03.2016

**Hon'ble Mr. Justice Syed Rafat Alam, Chairman
Hon'ble Dr. B.K. Sinha, Member (A)**

Ram Singh s/o late Sh. D.B. Singh
R/o 1/4412, Ram Nagar,
Shahdara, Delhi – 110 032.Applicant
(By Advocate: Sh. Amit Anand)

Versus

1. Union of India through
Secretary,
Ministry of Home Affairs,
North Block, New Delhi.
2. The Secretary,
Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi.Respondents

(By Advocate: Sh. Subhash Gosain)

O R D E R

By Justice Syed Rafat Alam, Chairman:

The applicant is aggrieved with the order dated 24.07.2013 whereby he has been removed from service, and the order dated 22.10.2013 passed by the appellate authority rejecting his appeal against the aforesaid order.

2. It appears that one Satish Singh made a complaint to the Chief Vigilance Officer, Ministry of Home Affairs, through letter dated 09.04.2009 alleging that the applicant had demanded Rs.2.50 lakhs from him to get a job of constable to one Bhawani Singh, his son's brother-in-law. It was further alleged that he paid the amount of

Rs.2.50 lakhs in two instalments, but the job of constable had not been given to his son's brother-in-law nor the money was returned despite repeated requests. It was also alleged that a cheque of Rs.1.46 lakh given by the applicant also bounced. On the basis of the aforesaid complaint, a proceeding under rule 14 of the CCS (CCA) Rules, 1965 was initiated against the applicant who was working as Private Secretary in the Ministry of Home Affairs vide memorandum dated 18.04.2010 for the following charge:

“Article-I”

That Sh. Ram Singh, Private Secretary, Ministry of Home Affairs has taken Rs.2.50 lakh from Shri Satish singh for offering a job of Constable to one Shri Bhawani Singh, brother-in-law of son of Shri Satish Singh in May, 2008, during his posting with Additional Secretary (CS) MHA. The money given to him was not returned to Shri Satish Singh. Shri Ram Singh gave a cheque No.033118 dated 8.11.2008 for an amount of Rs.1,46,000/- of IDBI Bank, Dwarka Branch, New Delhi which was bounced two times. In the month of December, 2008, Shri Ram Singh deposited a sum of Rs.24,000/- in the account of Shri Satish Singh and also paid a sum of Rs.11,000/- to Shri Satish Singh in January, 2009. Thereafter Shri Ram Singh gave two cheques of State Bank of Patiala No.608338 and 608337 dated 30.5.2009 and 30.6.2009 respectively for Rs.75,000/- each to Shri Satish Singh which were again bounced due to insufficient fund in his account.

Demanding and accepting of illegal gratification of money for providing a job shown lack of integrity, devotion to duty and an act unbecoming of a govt. servant thus violating Rule 3(1)(i) and (iii) of CCS (Conduct) Rules, 1965.”

2. The case of the applicant is that he had given a personal loan of Rs. 2.50 lacs to one Satish Kumar. However, the said Satish Kumar (complainant) made a false complaint dated 09.04.2009 alleging that the applicant had taken bribe from him for getting one of

his relatives employed with CISF when he was posted with one Anita Chaudhary, Additional Secretary (CS). The complainant further alleged that after repeated requests the applicant gave him a cheque bearing No. 033118 dated 08.11.2008 for a sum of Rs., 1,46,000/- drawn on the IDBI Bank, Dwarka Branch, New Delhi, which subsequently got bounced twice. The complainant also alleged that the applicant deposited a sum of Rs. 35,000/- into his account but declined to pay the rest of the amount. It is the case of the applicant that on the basis of the aforesaid false complaint, he was charge-sheeted vide Memo dated 18.04.2010 and departmentally proceeded against vide Memo dated 18.05.2010. The applicant submits that the complainant withdrew his complaint vide letter dated 08.03.2010 (Annexure A-7). However, despite withdrawal of the complaint by the complainant, enquiry proceeded against the applicant and the enquiry officer in his report dated 11.11.2011 held the charges against the applicant fully proved. The applicant represented against the enquiry report. It is the allegation of the applicant that the disciplinary authority, without due application of mind, imposed the penalty of removal from service vide order dated 24.07.2013. Aggrieved, the applicant filed an appeal against the order of the disciplinary authority on 23.08.2013 seeking to set aside the penalty order, which also came to be rejected vide appellate order dated 22.10.2013.

3. The applicant has adopted several grounds in support of his claim which include non-application of mind on part of the enquiry officer; enquiry being conducted at his back; non-noticing of discrepancies; bias on part of the enquiry officer against the applicant; non-noticing the fact that the complainant had withdrawn his complaint; and non-furnishing of the UPSC advice along with the enquiry report to him.

4. The respondents have filed a counter affidavit rebutting all the averments made in the OA. The learned counsel for the respondents, during the course of oral submissions, vehemently contended that the applicant had been given sufficient opportunities to represent his case. However, it is not disputed that the UPSC advice was furnished to him along with the penalty order.

5. The legal position in this regard is clear. It was never in dispute that the advice tendered by UPSC has to be furnished to the charged officer. A similar question that emerges is that when this advice has to be furnished to the charged officer. In this regard, the Hon'ble Supreme Court in ***State of U.P. Vs. Manbodhan Lal Srivastava*** [AIR 1957 (SC) 912] ruled the roost and held that provisions of Article 320 (3)(c) of the Constitution of India are not mandatory and they do not confer any right on a public servant so that the absence of consultation or any irregularity in consultation, would not afford him a cause of action in a court of law.

6. The above view is reiterated by the Hon'ble Apex Court in ***Ram Gopal Chaturvedi Vs. State of Madhya Pradesh*** [1969 (2) SCC 240] wherein in para 7 it has been observed as under:-

"It was argued that the impugned order was invalid as it was passed without consulting the State Public Service Commission under Article 320(3)(c) of the Constitution. There is no merit in this contention. The case of State of U.P. v. M.L. Srivastava 1958 SCR 533 decided that the provisions of Article 320(3)(c) were not mandatory and did not confer any rights on the public servant and that the absence of consultation with the State Public Service Commission did not afford him a cause of action."

7. In the meantime, the Central Civil Services (Classification, Control and Appeal) Rules, 1965 were framed, Rule 32 whereof reads as under:-

"32. Supply of copy of Commission's advice.

Whenever the Commission is consulted as provided in these rules, a copy of the advice by the Commission and where such advice has not been accepted, also a brief statement of the reasons for such non-acceptance, shall be furnished to the Government servant concerned along with a copy of the order passed in the case, by the authority making the order."

8. In case of *Union of India & Anr. V/s. T.V. Patel* [2007 (4) SCC 785], the Hon'ble Supreme held as under:-

"In view of the law settled by the Constitution Bench of this Court in the case of Srivastava (supra) we hold that the provisions of Article 320(3)(c) of the Constitution of India are not mandatory and they do not confer any rights on the public servant so that the absence of consultation or any irregularity in consultation process or furnishing a copy of the advice tendered by the UPSC, if any, does not afford the delinquent government servant a cause of action in a court of law."

9. In case of *Union of India V/s. S.K. Kapoor* [2011(4) SCC 589], the law has been clearly laid down after having considered the previous conflicting decisions in *Union of India & Anr. V/s. T.V. Patel*

(supra) and *S.N. Narula vs. Union of India & Ors.* [2011 (4) SCC 591].

The Hon'ble Supreme Court held as under:-

"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. Following the above, the Government of India had subsequently issued a Circular dated 06.01.2014 providing that the UPSC's advice is to be provided to the charged officer along with the enquiry report. For the sake of better clarity, the relevant portion of the aforesaid Circular is being extracted herein below:-

*2. Now, the Hon'ble Supreme Court in its judgment on 16.03.2011, while dismissing the Civil Appeal No.5341 of 2006 in the matter of *Union of India & Ors. Vs. S.K. Kapoor*, has held that it is a 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. The Hon'ble Court also observed that 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.

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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."

11. This position has also been reiterated by the Hon'ble Supreme Court in *Union of India Vs. R.P. Singh* [2014 (7) SCC 340] wherein their Lordships have noted previous decisions in *State of U.P. Vs. Manbodhan Lal Srivastava* (supra), *State Bank of India and others vs. D.C. Aggarwal and another* [AIR 1993 SC 1197], *Union of India Vs. T.V. Patel* (supra), *Union of India Vs. S.K. Kapoor* (supra), *S.N. Narula Vs. Union of India & Ors.* (supra) and DOP&T OM dated 06.01.2014 and 05.03.2014. For the sake of clarity, we extract the relevant part of the judgement as under:-

"23. We have referred to the aforesaid decision in extenso as we find that in the said case it has been opined by the Constitution Bench that non-supply of the enquiry report is a breach of the principle of natural justice. Advice from the UPSC, needless to say, when utilized as a material against the delinquent officer, it

should be supplied in advance. As it seems to us, Rule 32 provides for supply of copy of advice to the government servant at the time of making an order. The said stage was in prevalence before the decision of the Constitution Bench. After the said decision, in our considered opinion, the authority should have clarified the Rule regarding development in the service jurisprudence.

24. We have been apprised by Mr. Raghavan, learned counsel for the respondent, that after the decision in S.K. Kapoor's case, 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.

25. After the said Office Memorandum, a further Office Memorandum has been issued on 05.03.2014, which pertains to supply of copy of UPSC advice to the Charged Officer. We think it appropriate to reproduce the same:

"The undersigned is directed to refer to this Department's O.M. of even number dated 06.01.2014 and to say that it has been decided, in partial modification of the above O.M. that a copy of the inquiry report may be given to the Government servant as provided in Rule 15(2) of Central Secretariat Services (Classification, Control and Appeal) Rules, 1965. The inquiry report together with the representation, if any, of the Government servant may be forwarded to the Commission for advice. On receipt of the Commission's advice, a copy of the advice may be provided to the Government servant who may be allowed to submit his representation, if any, on the Commission's advice within fifteen days. The Disciplinary Authority will consider the inquiry report, advice of the Commission and the

representation(s) of the Government servant before arriving at a final decision."

12. From a perusal of the impugned order dated 24.07.2013, it is evident that the same is based upon the advice of UPSC and the same has been supplied to him along with the punishment order, and not with the inquiry report, and thus the applicant could not have availed the opportunity to rebut or to give explanation to the advice of the Commission before the punishment was meted out to him. Therefore, the order of punishment is vitiated in view of enunciation of law made by the Apex Court in ***Union of India v S. K. Kapoor*** (supra) wherein Their Lordships have held that the advice of UPSC, if utilized as a material against the delinquent officer, copy of the same should be supplied to the delinquent in advance, i.e., before inflicting punishment. The DOP&T also issued OM dated 16.01.2014 pursuant to the decision of the Apex Court in ***S. K. Kapoor's*** case and OM dated 05.03.2014 referred to above, which is admittedly not observed or complied with by the respondents. Hence, in our view the order of punishment has become laconic and cannot sustain.

13. In view of the above, we allow the OA with the following directions:

- (i) The impugned orders dated 24.07.2013 and 22.10.2013 are quashed and set aside;
- (ii) Since the copy of the UPSC's advice has been submitted to the applicant along with the punishment order, he will

submit his representation to the competent authority within one month from the date of receipt of certified copy of this order;

- (iii) The competent authority shall consider the representation of the applicant, if made, and take a view that whether the order of removal from service passed against the applicant shall be allowed to stand or need to be modified, within two months from the date of receipt of such representation.
- (iv) There shall be no order as to costs.

14. In the result, the Application stands finally disposed of, but without costs.

(Dr. B.K. Sinha)
Member (A)

/AhujA/

(Syed Rafat Alam)
Chairman