

**CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH,
LUCKNOW.**

Original Application No. 436 of 2012

Reserved on 6.2.2019
Pronounced on 8th April, 2019

Hon'ble Ms. Jasmine Ahmed, Member-J
Hon'ble Mr. Devendra Chaudhry, Member-A

Lallan Ram, aged about 63 years, S/o late Murat Ram, R/o House No. 563/59 Chitragupta Nagar, Lucknow.

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Applicant

By Advocate : Sri Praveen Kumar

Versus.

1. Union of India through Secretary, Ministry of Railways, Rail Bhawan, Lucknow.
2. Secretary, Ministry of Railways, Rail Bhawan, New Delhi.
3. Director Establishment (D&A) Railway Board, New Delhi.
4. The Chief Commercial Manager, Northern Railway, Hd. Qrs. Office, Baroda House, New Delhi.
5. The Senior Divisional Commercial Manager, Northern Railway, Divisional Railway Manager's Office, Hazrartganj, Lucknow.

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Respondents.

By Advocate : Sri Rajendra Singh

O R D E R

Per Ms. Jasmine Ahmed, Member-J

By means of this O.A., the applicant seeks the following main relief(s) which has been amended through order dated 18.9.2013.

“In view of the aforesaid, it is most humbly prayed that this Hon'ble Central Administrative Tribunal may graciously be pleased to issue order direction commanding Opposite parties to quash the punishment order dated 24.10.2011 communicated through order Vig/C/LCS/2000-88 (M) dated 11.11.2011 contained in Annexure nos. 1 & 3 respectively to this Original Application and may be further pleased to direct Opposite parties to grant all consequential service benefits including payment of arrears with the interest thereon.”

2. In nutshell, the facts of the case are that the applicant was initially appointed on the post of Coaching Clerk and subsequent he was promoted to the post of Chief Booking Supervisor. While the applicant was working on the post of Chief Booking Supervisor, he was issued a major penalty charge-sheet dated 6.1.2009 (received on 7.1.2009) at the

verge of retirement (31.1.2009). The charge leveled in the charge-sheet against the applicant was that he prepared three special tickets for booking of special coaches and granted 50% concession on the same. It is averred that para 305 of Coaching Traiff no. 25 Part I Vol. 1(RUD-4) provides that no concession in fare will be granted in case of special coach booking. It was also clarified therein that full fare for the carrying capacity of coach must be collected from the party and the special coach should be booked on full Tariff Rate (in short FTR). The applicant submitted reply to the aforementioned charge-sheet on 14.1.2009 denying the charges leveled against him. Thereafter without considering the reply of the applicant, the respondent no.5 appointed Enquiry Officer for conducting the enquiry. During the course of enquiry, the applicant demanded for supplying copy of Tariff No. 25 Part I Vol. I, but the same was not supplied by the Enquiry officer. However, the disciplinary proceedings were concluded and the Enquiry report was submitted to the disciplinary authority on 19.11.2009, who in turn, called the reply of the applicant against the findings of Enquiry Officer through letter dated 27.11.2009, which was replied by the applicant on 9.12.2009. Thereafter, the applicant filed O.A. No. 129 of 2010, which came to be disposed off finally vide judgment and order dated 19.4.2010 directing the respondents to dispose of representation of the applicant against the findings of the Enquiry Officer in the disciplinary proceedings drawn up within a period of two months. In compliance thereof, the representation of the applicant has been decided vide order dated 25.6.2010 by communicating the reasons in respect of finalization of D&AR case. Thereafter, on behalf of the President, Director Establishment (D&A) Railway Board, after consultation with the UPSC, has passed the order dated 24.10.2011 stating therein that the President has held the charge framed against the applicant as partly proved and by agreeing the advice of UPSC dated 12.9.2011, the President has further held that the charge leveled against the applicant has been established and since there was grave misconduct on the part of the applicant, the President has decided that the penalty of 10% cut in monthly pension be imposed upon the applicant for a period of five years by enclosing the advice rendered by the UPSC. Hence, this O.A.

3. The respondents have contested the claim of applicant by filing a detailed Counter Reply wherein the respondents have stated that the applicant while working as Chief Booking Supervisor, Lucknow prepared three Special tickets for booking of coaches by violating the rules enumerated vide para 305 of Coaching Tariff no.25 Part I V Vol. 1 and allowed 50% concession to all the above three persons, though as per para 305 of Coaching Tariff No. 305 Part I Vol. I no concession in fare should be granted in case of special coach booking. The aforesaid act was detected by the Vigilance team of Railway Board on 8.9.2006 and consequently the applicant was served with SF-5 dated 6.1.2009. The applicant submitted his reply on 14.1.2009. Before completion of enquiry, the applicant retired from service on 31.1.2009. However, the enquiry proceedings were completed and submitted its report on 19.11.2009 and in terms of RUD's examination/cross examination of PW's by proving the charges leveled against the applicant. A copy of Enquiry Officer was served upon the applicant on 30.11.2009 requiring him to submit his written representation, if any, within 10 days before the disciplinary authority. Against the findings of Enquiry officer, the applicant submitted his representation on 9.12.2009 and thereafter filed O.A. no. 129 of 2010, which was finally disposed off vide judgment and order dated 19.4.2010 with a direction to the respondents to dispose of the pending representation of the applicant against the findings of Enquiry Officer in the disciplinary proceedings drawn up against him within a period of two months. In compliance of the order of this Tribunal the representation of the applicant has been considered and decided by a detailed order dated 25.6.2010, which was duly communicated to the applicant. It is also pleaded in the Counter Reply that on behalf of President, the Director Establishment (D&A), Railway Board, after consultation with UPSC, has passed the order whereby the charges framed against the applicant as partly proved, as brought out in the UPSC advice dated 12.9.2011, by observing that the charge established against the applicant constitutes grave misconduct on his part by imposing the penalty of 10% cut in monthly pension for a period of five years. Lastly, the respondents have stated that the applicant is not entitled for any relief and the O.A. is liable to be dismissed.

4. The applicant has filed Rejoinder refuting the contentions so made by the respondents in the Counter Reply while reiterating the averments already made in the O.A. and nothing new has been added.

5. During the pendency of the aforementioned O.A., the applicant has moved amendment application by means of which he sought to amend the main relief, which has been sought in the O.A., and the same has been allowed vide order dated 18.9.2013 and accordingly the applicant has amended the relief clause, which has been mentioned in para no.1 of this order.

6. During the course of hearing, learned counsel for the applicant has placed reliance upon the decision rendered by this Hon'ble Tribunal in O.A. No. 218 of 2011 (Cyril Solomon Vs. Union of India & Others) decided on 27.10.2014.

7. We have heard the learned counsel for the parties and have also carefully perused the materials available on record.

8. The moot question involved in this O.A. is whether the supply of advice of UPSC is mandatory before passing the final punishment order or not?. The facts of the case are not in dispute. In the instant case, the copy of advice of UPSC has been furnished to the applicant alongwith the punishment order, though it ought to have been given to the applicant before passing the punishment order as has been held in the case of **Union of India & Others Vs. S.K. Kapoor reported in 2011 (4) SCC 589** and **S.N. Narula Vs. Union of India & Others reported in 2011 (4) SCC 591** and also in the case of **Union of India & Others Vs. R.P. Singh reported in 2014 (7) SCC 340** and as such the applicant has been materially prejudiced in not submitting the effective reply against the findings of UPSC advice. It is noteworthy to mention that the detailed procedure has been provided in the case of **R.P. Singh (supra)** by mentioning that on receipt of Inquiry Report, the Disciplinary authority may examine the same and forward it to the Commission with his observations and on receipt of Commission's report, the disciplinary authority 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, but such procedure has not been followed in the case, in hand. As a consequence thereof, the impugned

order is bad in the eyes of law as it has been passed against the dictum of Hon'ble Supreme Court in catena of decisions on the issue particularly in the case of R.P. Singh (supra). It is also noticed that though the impugned order has been passed after considering the advice rendered by the UPSC, but copy thereof was not furnished before passing the punishment order.

9. In the case of **S.K. Kapoor** (supra), the Hon'ble Supreme Court has held that a copy of advice rendered by the UPSC should be made available to the delinquent officer in order to enable him proper opportunity before passing the punishment order. In the said case (S.K. Kapoor), the Hon'ble Supreme Court has observed as under:-

"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 CIVIL APPEAL NO. 5341 OF 2006 same must be supplied in advance to the concerned employee, otherwise, there will be violation of the principles of natural justice.

10. In the case of **S.N. Narula (Supra)**, the Hon'ble Supreme Court has observed as under:-

"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 para 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.

11. Like-wise, in the case of **R.P. Singh (supra)**, the Hon'ble Supreme Court has held as under:-

"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. 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 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.

27. 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. We have carefully perused the judgment cited by the learned counsel for the applicant and we find that the issue involved in the case, in hand, is squarely covered by the decision of this Tribunal in O.A. no. 218 of 2011 wherein after examining the case, in detail, and also after referring the case laws of Hon'ble Supreme Court, referred to above, has held that non-supply of advice of UPSC to the applicant before passing the punishment order is violative of principles of natural justice.

13. In the conspectus of the case, we find that the applicant has made out a case for interference of this Tribunal. Accordingly, we quash the impugned orders dated 24.10.2011 and 11.11.2011. The applicant is entitled to all the consequential benefits after quashing of orders, referred to above. There shall be no order as to costs.

(Devendra Chaudhry)
Member-A

(Ms. Jasmine Ahmed)
Member-J