

U/b

CENTRAL ADMINISTRATIVE TRIBUNAL,  
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. 781/2013

Date of Decision: 20<sup>th</sup> March, 2019

**CORAM: DR. BHAGWAN SAHAI, MEMBER (A)**  
**RAVINDER KAUR, MEMBER (J)**

J.G. Rana, retd. Superintending Engineer, residing at Nilkanth Bungalow, Opp: Adarsh Nagar, Dunetha, P.O. Nani Daman - 396 210 O/o. Administrator, UT of Daman & Diu, Secretariate Daman - 396 220. ... **Applicant**

( By Advocate Shri A.A. Manwani )

**Versus**

1. Union of India, through the Secretary, Ministry of Home Affairs, North Block, New Delhi - 110 001.
2. Administrator, Union Territory of Daman & Diu, Secretariat, Daman - 396 220. ... **Respondents**

( By Advocate Shri B.K. Ashok )

O R D E R (ORAL)  
Per : Ravinder Kaur, Member (J)

The present OA has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

*“8(a) That this Hon'ble Tribunal will be graciously pleased to call for the papers and proceedings leading to the passing of the impugned order dated 4<sup>th</sup> September, 2013 (Annexure A-1) and after going through the legality or otherwise thereof, this Hon'ble Tribunal will be graciously pleased to*

*quash and set aside order dated 4<sup>th</sup> September, 2013 (Annexure A-1), advice tendered by the UPSC (Annexure A-2) and the report of enquiry officer (Annexure A-3)*

*(b) That pending the hearing and final disposal of the OA, this Hon'ble Tribunal will be graciously pleased to grant stay of the impugned order dated 4<sup>th</sup> September, 2013 (Annexure A-1)*  
*(c) That the costs of this application be awarded in favour of the applicant and*  
*(d) That such other and further reliefs as are expedient be granted in favour of the applicant."*

**2.** The relevant facts are that the applicant was working as Assistant Engineer at Goa during the year 1978 when the then Government of Composite Union Territory of Goa, Daman & Diu gave a contract for construction of Damanganga Bridge to M/s. Quadricon Pvt. Ltd. for construction of a Bridge for connecting Moti Daman with Nani Daman. Vide separate contract M/s. STUP Consultants Ltd were engaged to check the stability of the existing structure of the aforesaid Bridge.

**2.1** In the year 1982, the applicant was transferred from Goa to Daman where he took charge of the post of Executive Engineer, PWD. At that point of time, 60% of the work of Damanganga Bridge had been completed by Shri Gajanand Padmanabhai, the predecessor of the applicant. In the year 1987, the

applicant was promoted to the post of Superintending Engineer from which he retired on superannuation on 31.12.1997. The aforesaid bridge was inaugurated in the year 1983. It is claimed that it was a temporary bridge with short span of life i.e. 10 years. It is stated that due to constant maintenance by the applicant and his subordinates, the said bridge was in a good condition even after 14 years.

**2.2** But on 28.08.2003, the bridge collapsed. The Commission of inquiry, headed by Mr. Justice Kochhar, a retired judge of Bombay High Court, was appointed to inquire into the causes leading to the collapse of the bridge. In these proceedings Daman Administration took the stand that requisite maintenance was being attended to by the PWD staff and that outside consultants were also appointed from time to time. The applicant was examined before the Commission of inquiry on the nature of maintenance and repair carried out to the bridge during his tenure. The Commission of inquiry submitted its report to the Government, blaming PWD staff for collapse of the bridge.

2.3 Consequently, the departmental proceedings under Rule 9 of CCS (Pension) Rules, 1972 were initiated against the applicant vide Memorandum dated 23.08.2007 with the following article of charge:-

ANNEXURE - I

*Statement of articles of charge framed against  
Shri J.G. Rana formerly Superintending Engineer,  
PWD, Daman.*

Article I

*"That the said Shri J.G. Rana while functioning as Assistant Engineer, Executive Engineer and Superintending Engineer, PWD, Daman during different periods of his official tenure, was associated as in-charge of the Damanganga River Bridge between Moti Daman and Nani Daman from 1982 to 1997, grossly failed in his duties in maintaining the bridge as per the best engineering practices and was thus responsible for ultimate collapse of the bridge on 28<sup>th</sup> August, 2003 leading to loss of 30 innocent human lives including 28 school going children.*

*Thus Shri J.G. Rana, Superintending Engineer, PWD, Daman showed gross negligence and dereliction of official duties, which lead to collapse of the bridge on August 28<sup>th</sup> 2003. He has also failed to maintain absolute integrity and devotion to duty causing huge loss of human lives and loss of property to the Government. Shri J.G. Rana while holding a supervisory post failed to take all possible steps to ensure the integrity and devotion to duty of all Government servants under his control and authority. Thus he has acted in a manner which is unbecoming of a Government servant and thereby violated the provisions of Rule 3(1) and Rule 3(2)(i) of the CCS(Conduct) Rules, 1964.*

sd/-  
(P.K. Gupta)  
Administrator

**ANNEXURE-II**

*Statement of imputations of misconduct or misbehavior in support of the articles of charge framed against Shri J.G. Rana formerly Superintending Engineer, PWD, Daman.*

**Article I**

*That the said Shri J.G. Rana while functioning as Assistant Engineer, Executive Engineer and Superintending Engineer, PWD, Daman during different periods of his official tenure, was associated with the maintenance and upkeep of the bridge over river Damanganga connecting between Moti Daman and Nani Daman, between the years 1982 and 1997. The said bridge collapsed on 28<sup>th</sup> August, 2003 claiming 30 innocent human lives out of which 28 were school going children. Considering the gravity of the tragedy, the Government of India by notification dated 29<sup>th</sup> July, 2004 appointed a Commission of Inquiry consisting of Justice R.J. Kochhar, under the Commission of Inquiry Act, 1952. The terms of reference before the Commission include the following:*

- (i) Whether there was any inherent defect in the original design of construction of the bridge which contributed to its collapse;*
- (ii) Whether the original construction of the bridge was carried out in accordance with the approved plans, designs and specifications;*
- (iii) Whether extensive repairs in the form of retrofitting of the bridge carried out in the year 2001 were undertaken properly and as per the technical specifications recommended by the Consultant;*
- (iv) Whether the decision taken to extend the life span of the bridge retrofitting was in conformity with the best engineering practices.*
- (v) Whether after these extensive repairs, the day to day maintenance was carried out properly, regularly and in conformity with the requirements.*
- (vi) Whether there was any negligence in assessing the roadworthiness of the bridge from time to time.*
- (vii) Fix responsibility on officials for their acts of omissions and commissions, if any.*

As per the findings of the Commission, it is revealed that Shri J.G. Rana being part of the departmental engineering team to maintain the bridge has failed in carrying out his duties and responsibilities on several counts as :

(a) At no point of time, any day to day maintenance was carried out properly, regularly and in conformity with the requirement. There was no proper assessment of the road worthiness of the bridge from time to time. Who were supposed to maintain the bridge, namely the Executive / Superintending Engineers, they had failed in their duties to maintain the bridge according to the bridge engineering practices as per the IRC Code and various circulars issued in the MOST/MORTH and that has resulted in this great calamity, taking the lives of 30 innocent human beings, out of whom 28 were the innocent school children.

(b) Shri J.G. Rana being responsible for the bridge maintenance not only himself failed to follow but also failed to direct his subordinates to follow the Ministry of Surface Transport (MOST) circulars No.RW/33037/1/87/NH (Std.) dated 23.09.1987 and No.I.33054/33/89-DO II 29.03.1989, which are the most important and exhaustive circulars, which have also been referred to and relied upon by IRC Code No.24, and which were circulated by Government of India. Further Shri J.G. Rana did not follow the complete authentic publication of CPWD manual on the repairs and rehabilitation of the bridge published from time to time. Shri J.G. Rana did not even take care to direct his subordinates to maintain primary registers viz. Log book inspection register, maintenance registers, etc., nor did he had inspection kit or apparatus ordinarily needed for inspection of a bridge. He neither bothered to procure "essential equipments" needed for bridge inspection, "testing" and "repairs" and to verify qualitatively the fitness of the bridge from time to time.

(c) Since commissioning of the Damanganga Bridge in 1983, Shri J.G. Rana being in-charge of the bridge had hardly taken any steps for any maintenance carried out by the PWD as per the best engineering practices. Neither he had will to

maintain, knowledge to maintain, equipments to maintain, nor did he inspect the bridge periodically as prescribed. There is no record to substantiate any claim of routine maintenance.

Thus Shri J.G. Rana, Superintending Engineer, PWD, Daman showed gross negligence and dereliction of official duties, which led to collapse of the bridge on August, 28<sup>th</sup> 2003 causing loss of 30 innocent human lives. He has also failed to maintain absolute integrity and devotion to duty thereby causing huge loss of human lives and loss of property to the Government. Further, Shri J.G. Rana while holding a supervisory post failed to take all possible steps to ensure the integrity and devotion to duty of all Government servants under his control and authority. Thus he has acted in a manner which is unbecoming of a Government servant and thereby violated the provisions of Rule 3(1) and Rule 3(2)(i) of the C.C.S. (Conduct) Rules, 1964."

**2.4** The applicant denied all the charges levelled against him vide his letter dated 17.10.2008. The report of Inquiry Officer was served upon the applicant vide letter dated 23.10.2009. The applicant made his detailed representation dated 30.11.2009. Vide order dated 04.09.2013, the Disciplinary Authority while taking into consideration the UPSC advice imposed penalty of 'withholding of 10% monthly pension admissible to the applicant for a period of three years'.

**2.5** The applicant has challenged the impugned order of penalty dated 04.09.2013, the advice tendered by the UPSC and the report of Inquiry Officer on the following grounds that :

- (a) the detailed defence submitted by the applicant was not considered by the Inquiry Officer, UPSC as well as Disciplinary Authority;
- (b) no disciplinary proceedings could be initiated against him six years after his retirement;
- (c) all the authorities have in mechanical and pre-determined manner held the charges as proved against the applicant and imposed the penalty of reduction of his pension at 10% for a period of 3 years;
- (d) all the authorities have failed to appreciate that Damanganga Bridge built in the year 1983 was meant for restricted traffic, two wheelers and light weight vehicles of not more than 5 tones whereas in the course of time it was being used by heavy weight vehicles and the administration did not prevent such use of the bridge;

(e) all the authorities have failed to appreciate that except for the report of Koacher commission, no independent evidence was collected by the department to prove the charge against the applicant;

(f) the report of Inquiry Officer is perverse, based on no evidence whatsoever; and

(g) the Inquiry Officer committed grave irregularity in the conduct of inquiry proceedings as he allowed the Presenting Officer to examine the applicant and that questions were also put to the applicant in the form of cross examination which is impermissible in law.

**3.** The respondents have filed detailed affidavit in reply.

**4.** We have heard arguments of Shri A.A. Manwani, learned counsel for the applicant and Shri B.K. Ashok, learned counsel for the respondents and gone through the material available on record.

**5.** During the course of arguments, learned counsel for the applicant has pointed out that the Disciplinary Authority

while imposing punishment had taken into consideration the UPSC advice, though its copy was not supplied to the applicant in advance and he was not given any opportunity to make his representation on the said UPSC advice before the Disciplinary Authority imposed the punishment vide impugned order dated 04.09.2013.

6. Learned counsel for the respondents has admitted that the Disciplinary proceedings were concluded in consultation with UPSC and consequently the punishment order was issued by the Disciplinary Authority.

7. Though the applicant has challenged the impugned order on several grounds, however, at this juncture the short question to be decided in the present OA is as to whether the action of the Disciplinary Authority / the respondents in not supplying the copy of UPSC advice to the applicant and seeking his representation thereon before imposing punishment vide impugned order dated 04.09.2013, was justified.

8. The Hon'ble Apex Court has dealt with the similar issue in the following cases:-

1) *Union of India & Others Vs. S.K. Kapoor, (2011) 1 SCC (L&S) 725*

2) *S.N. Narula Vs. Union of India and Others, 2011(1) SCC (L&S) 727*

3) *Union of India & Others Vs. R.P. Singh, Civil Appeal No.6717/2008 decided on 22.05.2014.*

9. The Hon'ble Apex Court has dealt with the issue of non-supply of UPSC advice to the delinquent in the case of S.K. Kapoor (supra). The Hon'ble Apex Court while discussing its view in the case of Union of India Vs/ T.V. Patel reported in (2007) 4 SCC 785 made the following observations:-

*"7. In the aforesaid decision, it has been observed in SCC 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.*

It is further held in the case of S.K. Kapoor (Supra) as follows:-

*"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 employee concerned. However, if it is relied upon, then a copy of the same must be supplied in advance to the employee concerned, otherwise, there will be violation of the principles of natural justice. This is also the view taken by this Court in *S.N.Narula vs. Union of India & Others.*"

**10.** In the case of *S.N. Narula (Supra)* the Hon'ble Apex Court again dealt with the issue of non-communication of UPSC report accepted by the Disciplinary Authority to delinquent employee. The relevant paragraphs of the judgment are para 2,3 and 7 which are reproduced as follows:-

*"2. Thereafter, the proceedings were sent for opinion of the Union Public Service Commission and the Union Public Service Commission gave an opinion to the effect that the appellant's pension shall be reduced to the minimum and he shall not be granted any gratuity. The disciplinary authority accepted the proposal of the Union Public Service Commission and imposed the said punishment.*

*3. It is to be noticed that the advisory opinion of the Union Public Service Commission was not communicated to the appellant before he was heard by the disciplinary authority. The same was communicated to the appellant along with final order passed in the matter by the disciplinary authority.*

.....

*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. The Hon'ble Apex court has also dealt with the issue of non-supply of UPSC advice to the delinquent in the case of Union of India Vs. R.P. Singh, Civil Appeal No.6717/2008 decided on 22.05.2014.

In this case before the Hon'ble Apex Court, the UPSC advice was made available to the delinquent officer alongwith the order imposing punishment. The Hon'ble Apex Court made the following observations in paras 23, 26 and 27 of the judgment:-

"23. At this juncture, we would like to give our reasons for our respectful concurrence with S.K. Kapoor (*supra*). There is no cavil over the proposition that the language engrafted in Article 320(3)(c) does not make the said Article mandatory. As we find, in the T.V.Patel's case, the Court has based its finding on the language employed in Rule 32 of the Rules. It is not in dispute that the said Rule from the very inception is a part of the 1965 Rules. With the efflux of time, there has been a change of perception as regards the applicability of the principles of natural justice. An Inquiry Report in a disciplinary proceeding is required to be furnished to the delinquent employee so that he can make an adequate representation explaining his own stand/stance. That is what precisely has been laid down in the B.Karnukara's case. We may reproduce the relevant passage with profit:-

"Hence it has to be held that when the enquiry officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the enquiry officer's report before the

disciplinary authority arrives at its conclusions with regard to the guilt or innocence of the employee with regard to the charges levelled against him. That right is a part of the employee's right to defend himself against the charges levelled against him. A denial of the enquiry officer's report before the disciplinary authority takes its decision on the charges, is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice."

24.....  
25.....

26. 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. In the present case, Annex A-1 is the impugned order dated 04.09.2013 and paragraphs relevant for the disposal of the present OA are reproduced as under:-

"AND WHEREAS the President after considering all the facts and circumstances of the case came to a tentative conclusion that end of justice would be met if 10% pension of Shri J.G. Rana is withheld for a period of 1 year and referred the matter to the Union Public Service Commission

for its advice.

AND WHEREAS the Union Public Service Commission for the reasons mentioned in its letter No.F.3/338/2012-S.I dated 22.08.2013 that the charges established against the Charged Officer constitute grave misconduct on his part and consider that the ends of justice would be met in this case if the penalty of 'withholding of 10% monthly pension admissible to him for a period of three years' is imposed on the CO, Shri J.G. Rana. The gratuity admissible to him may be released, if not required to be withheld otherwise.

AND WHEREAS, the President, keeping in view the aforesaid facts and circumstances of the case and advice rendered by the Union Public Service Commission, had come to the conclusion that the ends of justice would be met in this case if the penalty of 'withholding of 10% of monthly pension admissible to him for a period of three years' is imposed on the CO, Shri J.G. Rana. The gratuity admissible to him may be released, if not required to be withheld otherwise.

NOW, THEREFORE, the President hereby imposes a penalty of 'withholding of 10% of monthly pension admissible to Shri J.G. Rana, Superintending Engineer (Retired), PWD, Daman for a period of three years' and orders for a release of gratuity admissible to him, if not required to be withheld otherwise."

13. The above referred paragraphs of the impugned order are self-explanatory that though the Disciplinary Authority sought UPSC advice and considered it while imposing penalty upon the applicant. However, he was neither provided a copy of the same nor was given any opportunity to make his representation thereon, before the Disciplinary Authority could pass any order in the proceedings.

**14.** In view of the law laid down by the Hon'ble Apex Court in the judgments referred to above, since the Disciplinary Authority before imposing punishment on the applicant vide impugned order dated 04.09.2013 had made reference to the UPSC and sought its advice which was received and considered while imposing penalty upon the applicant. But it was done without even supplying a copy of the same to the applicant thereby giving him an opportunity to make his representation on it before the punishment was imposed upon him. This said act of Disciplinary Authority is violative of principles of natural justice and the law laid down by the Hon'ble Apex Court vide judgments discussed above.

**15.** If the UPSC advice had been communicated to the applicant, he would have been in a position to make an effective representation before the Disciplinary Authority as regards the proposed punishment. Hence, the impugned order being issued in violation of principles of natural justice is hereby set aside and the disciplinary proceedings shall revert to the

point at which the abovesaid error intervened. As admitted by the applicant, he has already received the copy of the UPSC advice from the respondents vide letter NO. F/3/338/2012-S.I dated 22.08.2013 alongwith order of penalty dated 04.09.2013, hence he is at liberty to submit his representation in this regard to the Disciplinary Authority within three weeks from the date of receipt of certified copy of this order. The Disciplinary Authority shall finally dispose of the matter within a period of three months thereafter and copy of the same be communicated to the applicant within a period of two weeks thereafter.

**16.** This order does not reflect upon the merits of the case in any manner.

**17.** The Original Application stands disposed of with the above directions. No order as to costs.

(Ravinder Kaur)  
Member (J)

(Dr. Bhagwan Sahai)  
Member (A)

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(J.W.)