

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI**

**ORIGINAL APPLICATION No.219/2013
Date of Decision: 30th April, 2019**

**CORAM: R. Vijaykumar, Member (A)
R.N. Singh, Member (J)**

Shri Akhlaque Ahmed,
Age 67 years,
Ex-Junior Telecom Officer,
Staff No.11547 (Group B)
M.T.N.L., Mumbai
Residing at : B-1301/1302, Crystal Palace,
Opposite Powai Police Station,
Behind Ram Ashram, Ram Baug,
Powai, Mumbai-400 076.

...Applicant.

(By Applicant Advocate: Shri A.I. Bhatkar).

Versus.

1. Union of India, Through
The Secretary, Government of India,
Ministry of Communication and
Information Technology,
Department of Telecommunication,
Sanchar Bhavan, 20, Ashoka Road,
New Delhi-110001.

2. The Member (Services)
Telecom Commission,
Ministry of Communication and
Information Technology,
Department of Telecommunication,
Sanchar Bhavan, 20 Ashoka Road,
New Delhi-110001.

3. The Chief General Manager,
Mahanagar Telephone Nigam Ltd.
Telephone House,
V.S. Marg Dadar (West)
Mumbai-400028.

... Respondents

(Respondents by Advocate Shri V.S. Masurkar,
Shri P. Khosla and Shri N.K. Rajpurohit).

Reserved on : 19.03.2019.

Pronounced on : 30.04.2019

ORDER

Per:- R.N. Singh Member (J)

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

"(a). This Hon'ble Tribunal will be graciously pleased to call for the records pertaining to the issuance of the impugned order dated 31st May 2012 passed by the President, i.e. the Disciplinary Authority, and after going through the legality and validity of the same, quash and set aside the same.

(b). This Hon'ble Tribunal will be graciously pleased to direct the Respondents to release the retirement benefits to the applicant on priority basis.

(c). This Hon'ble Tribunal will be graciously pleased to direct the Respondents to grant all consequential benefits as admissible under the rules.

(d). This Hon'ble Tribunal will be graciously pleased to pass such other and further orders as deemed fit in the facts and circumstances of the case.

(e). Cost of this application be provided for."

2. The facts of the case as contended by the Applicant are that the applicant was appointed in service of the Respondents as Phone Inspector in Bombay Telephones on 04.09.1970. Thereafter, he was promoted as Junior Telecom Officer in the year 1973. It is stated that after crossing the age of 45 years, he started suffering from diabetes and kidney stone problem as such he submitted an application dated 02.11.1992 (Annexure A-2) requesting for his transfer under GM (E) which is near to his residence.

3. On 21.01.1993 (Annexure A-3), the applicant was suddenly transferred to Malabar Hill w.e.f. 25.01.1993. The relieving order dated 25.01.1993 (Annexure A-4) is also issued accordingly. The applicant submitted an application dated 05.02.1993 (Annexure A-5) with a request to consider his earlier an application dated 02.11.1992, regarding his request for

transfer and to post him to GM (E) as early as possible. It is stated that he was suffering from Diabetes, Hypertension and kidney problem as such he requested for his transfer to GM (E), a unit near to his residence as his health did not permit him to resume duty at the office of GM (CM) at Malabar Hill. However, no heed was paid to his request. The applicant right from 05.02.1993 to February, 1995 kept requesting to all the authorities for revoking his transfer orders as his health condition did not permit him to travel from Powai to Malabar Hill. It is stated that in February, 1995 he was confined to his residence for about one and half year due to serious illness. However, in February, 1997 he approached the office of GM (CM) to resume his duty and at that time he came to know that this unit became non-existent. Thereafter, he approached the unit of AEJ (Powai) and visited several officers about his joining but there was no positive response from the respondents. Finally, in October, 1998 he decided to take voluntary retirement from service and submitted his request dated 05.10.1998 (Annexure A-6) to

GM (Admn.) through AEJ (Powai). In response to this he received letter dated 20.04.1999 (Annexure A-7) from AGM (T) directing him to join duty at the office of GM (CM).

4. It is stated that vide letter dated 28.08.1999 (Annexure A-8) the applicant informed the AGM (T) that he wanted to resume duty but could not trace out the unit of GM (CM) and requested for supply of complete address of the unit to resume duty. Thereafter, he received letter dated 17.09.1999 (Annexure A-9) to report at the office of GM (Admn.) to know the present situation of the office of GM (CM). The applicant submitted a letter dated 30.03.2000 (Annexure A-10) to the GM (Admn.) to supply him the complete address to the unit so that he may be able to resume his duties. In response to this he received a letter dated 25.04.2000 (Annexure A-11) informing him that the post of GM (CM) did not exist and was directed to join with GM (Trans.). Thereafter, he approached the office of GM (Trans.) on 22.05.2000 but was asked to wait and was not allowed to resume his duties as such he wrote a letter dated

10.06.2000 to GM (T) informing all the facts. Again on 17.08.2000 (Annexure A-13) he sent another letter to GM (Admn.) that he reported to the office of GM (Trans.) to resume duty but he was not allowed to join his duties. Thereafter, Respondent No.3 issued a letter dated 06.10.2000 (Annexure A-14) to GM (IT) sending therewith all related papers for taking necessary action with regard to take him back in his unit for taking necessary action regarding regularization of service and voluntary retirement of the applicant. The applicant did not receive any information for reporting hence, he wrote a letter dated 23.11.2000 (Annexure A-15) to the office of GM (IT) explaining the entire facts. Finally, in response to the letter dated 12.12.2000, he resumed his duties on 22.12.2000, 02.01.2001, 08.01.2001, 11.01.2001 and 18.01.2001. It is stated that thereafter he received a letter dated 19.01.2001 (Annexure A-17) mentioning that he resumed duties on 22.12.2000 and also asked to explain why disciplinary action should not be initiated against him.

5. It is further stated that vide letter dated 23.01.2001 (Annexure A-19) the applicant informed the DE (IT), MTNL that he was sick during the period 25.1.1993 to 04.10.1998 and on being fit from 05.10.1998 to resume duties, he was unable to locate the office of GM (CM). It is also stated that the respondents themselves admitted that the post of GM (CM) was abolished as such he could not resume his duties. He has also written a letter dated 25.01.2001 (Annexure A-20) to GM (IT) for sanctioning of medical leave enclosing all the medical certificates issued by the Doctor. Thereafter, several correspondences were made between the applicant and the respondents with regards to his transfer, medical leave, and for its regularization etc.

6. Finally, a charge-sheet dated 19.04.2002 (Annexure A-37) was issued to the applicant with the following charges:-

" No.DDC/GO/966/2001-2002/8

Date: 19/4/2002

MEMORANDUM

1. The undersigned proposes to hold an inquiry against Shri Akhlaque Ahmed, Junior Telecom Officer, Staff No.

11547, MTNL, Mumbai, under Rule 14 of the CCS (CCA) Rules, 1965. The substance of the imputations of misconduct or misbehaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement of article of charge (Annexure-I). A statement of the imputations of misconduct or misbehaviour in support of the article of charge is enclosed (Annexure-II). A list of documents by which, and a list of witnesses by whom the article of charge are proposed to be sustained are also enclosed (Annexure-III & IV).

2. Shri Akhlaque Ahmed, Junior Telecom Officer, Staff No-11547 MTNL Mumbai, is directed to submit within 10 days of the receipt of this memorandum a written statement of his defence and also to state whether he desires to be heard in person.

3. He is informed that an inquiry will be held only in respect of the article of charge as is not admitted. He should, therefore, specifically admit or deny the article of charge.

4. Shri Akhlaque Ahmed, Junior Telecom Officer, Staff No. 11547, MTNL, Mumbai, is further informed that if he does not submit his written statement of defence on or before the date specified in para 2 above or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with provisions of Rule 14 of the CCS (CCA) Rules, 1965 or the orders/directions issued in pursuance of the said Rule, the inquiring authority may hold the inquiry against him ex-parte.

5. Attention of Shri Akhlaque Ahmed, Junior Telecom Officer, Staff No 11547 MTNL, Mumbai is invited to Rule 20 of the CCS (Conduct) Rules, 1964 under

which no Government Servant shall bring or attempt to bring, any political outside influence to bear upon any superior authority to further his interest in respect of matters pertaining to his service under the Government. If any representation is received on his behalf from another person in respect of any matter dealt with in these proceedings, it will be presumed that Shri Akhlaque Ahmed, Junior Telecom officer, Staff No. 11547, MTNL., Mumbai is aware of such a representation and that it has been made at his instance and action will be taken against him for violation of Rule 20 of the CCS (Conduct) Rules, 1964.

6. Receipt of this Memorandum shall be acknowledged.

(I.C. Srivastava)
CHIEF GENERAL MANAGER
MTNL, MUMBAI

To
Shri Akhlaque Ahmed
Junior Telecom Officer, Staff No. 11547
(Through General Manager (IT))

7. The applicant submitted his reply dated 04.06.2002 (Annexure A-38) against the charges levied against him. The applicant also received brief dated 18.06.2003 (Annexure A-40) from the Presenting Officer and submitted his brief on 14.08.2003 (Annexure A-41). It is stated that the applicant has received Enquiry Report under Memorandum dated 06.09.2004

(Annexure A-42) disagreeing with the Enquiry Officer's report which reads as follows:-

" No.8-113/2004-Vig.II
Government of India
Ministry of Communications &
Information Technology
Department of Telecommunications
(Vigilance II Section)

Sanchar Bhawan, Room No 915,
20, Ashok Rd. New Delhi -110001

Dated:6.09.2004

MEMORANDUM

A copy of the Inquiry Report given by Shri G.K. Kulkarni, Inquiry Officer & AVO (HQ-E), in connection with inquiry under Rule, 14 of CCS (CCA) Rules, 1965 against Shri Akhalaque Ahmed, JTO, St. No. 11547, MINI, Mumbai, is enclosed.

The Disciplinary Authority disagrees with the I.O.'s report to the following extent:-

"As per the records, it is clear that the Charged Officer remained absent without permission for prolonged period deliberately and later on avoided to perform the duty on one pretext or the other which is a serious misconduct."

The Disciplinary Authority will take a suitable decision after considering the report.

If, Shri Akhalaque Ahmed, JTO, St. No.11547, MTNL, Mumbai, wishes to make any representation or submission, he may do so in writing to the Disciplinary Authority within 15 days of receipt of this Memorandum, failing which it will be presumed that he has no representation to make and further proceedings against him are liable to

be held ex-parte by the Disciplinary Authority.

The receipt of this Memorandum shall be acknowledged by Shri Akhalaque Ahmed, JTO, St. No.11547, MTNL, Mumbai.

Encls.: Inquiry Report

(A.K.SAXENA)
MEMBER (SERVICES),
TELECOM COMMISSION

Shri Akhalaque Ahmed
JTO, St. No. 11547
MTNL
Mumbai."

8. Thereafter, the applicant has submitted a representation dated 15.10.2004 (Annexure A-43) in reply to the Memorandum dated 06.09.2004 stating therein that the Enquiry Officer has not held him guilty of the charges of absent without prior intimation, permission or sanction of leave and requested to drop the charges framed against the applicant. It is stated that thereafter the Disciplinary Authority passed an order dated 18.01.2005 (Annexure A-44) imposing the penalty of removal from service upon the applicant which reads as under:-

"No.8-113/2004-Vig.II
Government of India
Ministry
of Communications & Information
Technology
Department of Telecommunications
(Vigilance II Section)

Sanchar Bhawan, Room No. 915,
20, Ashok Rd., New Delhi 110 001.

Dated: 18.01.2005

ORDER

Shri Akhalaque Ahmed, JTO, St. No.11547, MTNL, Mumbai, was proceeded against under Rule, 14 of the CCS. (CCA) Rule, 1965 by the then Disciplinary Authority vide Memo. No. DDC/GO/966/2001-2002/18 dated 19.4.2002 on the following Articles of charge:

ARTICLE-I

That the said Shri Akhalaque Ahmed, Junior Telecom Officer, Staff No 11547 while functioning as Junior Telecom Officer, the period w.e.f. 10.8.88 to 25.01.93 in the office of Assistant Engineer (Junction) Powai and from 26.01.93 to till date in the office of GM (CM)./GM (IT), has been absenting himself from duty from 01.10.92 to till date without prior intimation, permission or sanction of leave. Thus, by his aforesaid act, the said Shri Akhlaque Ahmed violated the provision contained in the Rule 62 and 162 of P&T Manual Volume - III.

Thus, by his aforesaid act, the said Shri Akhalaque Ahmed, Junior Telecom Officer, Staff No.11547 committed grave misconduct inasmuch as exhibited lack of devotion to duty and acted in a manner unbecoming of a Government Servant, thereby contravening Rule 3 (1) (i) & (iii) of CCS (Conduct) Rules 1964.

On denial of the charges by the C.O., Shri G.K. Kulkarni, AVO (HQ-E) and Shri K.N. Perumal, AVO (HQ-E) were appointed as Inquiring Authority and Presenting Officer, respectively.

The Inquiry Officer has submitted his Inquiry Report on 16.9.2003 and has concluded that (i) it is proved that the C.O. remained absent from 1.10.92 till date (19.4.2002) and (ii) it is not proved that there was not

prior intimation, permission or sanction of leave for the said period of absence.

The Disciplinary Authority disagrees with the I.O.'s report to the following extent:-

"As per the records, it is clear that the Charged Officer remained absent without permission for prolonged period deliberately and later on avoided to perform the duty on one pretext or the other which is a serious misconduct."

Accordingly, Memo. No.8-113/2004-Vig.II dated 06.09.2004, was issued to him with a view to give him an opportunity to represent the case. The C.O. submitted his representation to Disciplinary Authority on 27.10.2004 through V.O. (HQ). Disciplinary Authority in consultation with Circle Office, Mumbai considered his representation and found that the charges levelled on the CO., as correct.

Taking into account the findings of the Inquiring Authority, and records of the case and on an objective assessment of the facts and circumstances of the case in its entirety, I, A.K. Chaturvedi, Adviser (HRD), Telecom Commission, hereby impose the penalty of **"Removal from service"** with immediate effect on Shri Akhalaque Ahmed, JTO, St. No.11547, MTNL, Mumbai.

The receipt of this Order shall be acknowledged by Shri Akhalaque Ahmed, JTO, St. No. 11547, MTNL, Mumbai.

(A, K. CHATURVEDI)
ADVISER (HRD),
TELECOM COMMISSION

Shri Akhalaque Ahmed,
JTO, (St.No.11547),
MTNL,
Mumbai."

9. Thereafter, the applicant preferred an appeal dated 18.03.2005 (Annexure A-45) followed by reminder dated 15.04.2006 (Annexure A-46). In response to the aforesaid the applicant received an order dated 17.01.2007 (Annexure A-47) from the Appellate Authority rejecting the appeal filed by him.

10. The applicant has taken six grounds in the present OA. The applicant strongly placed reliance on the ground 5.6 wherein it has been stated that the Disciplinary Authority accepted the advice of the UPSC and awarded the penalty. However, the UPSC has not been able to point out how the findings of the Enquiry Officer, which are based on the various communications between the applicant and the respondents from 1992 till the date of issue of the charge-sheet, are not proper. Even the UPSC has not been able to hold that the absence of the applicant was wilful. Moreover, the copy of UPSC advice was not given to the applicant before passing of the final order by the Disciplinary Authority. The applicant has also placed reliance on the judgment of Hon'ble Supreme Court in the case of

Union of India & Others vs. S.K. Kapoor reported in 2011 (1) SCC (L&S) 725 wherein it has been held that the copy of the advice of the UPSC must be supplied in advance to the employee concerned so that he may have an opportunity to rebuttal. It is stated by the applicant that copy of the advice of the UPSC has been given to the applicant along with the copy of the impugned order dated 31.05.2012 which is bad in law and is liable to be quashed and set aside. Hence this OA.

11. On behalf of the applicant the learned counsel has contended that the entire gratuity has been withheld by passing the impugned order and the same is contrary to the provisions of the CCS (Pension) Rules, 1972 and also in view of the law laid down by the Hon'ble Apex Court in *D.V. Kapoor's* case wherein the Hon'ble Apex Court has ruled as under:-

"Rule 9 of the rules empowers the President only to with-hold or withdraw pension permanently or for a specified period in whole or in part or to order recovery of pecuniary loss caused to the State in whole or in part subject to minimum. The employee's right to pension is a statutory right. The measure of deprivation therefore, must be correlative to or commensurate with the gravity of the grave misconduct or

irregularity as it offends the right to assistance at the evening of his life as assured under Art.41 of the Constitution. The impugned order discloses that the President withheld on permanent basis the payment of gratuity in addition to pension. The fight to gratuity is also a statutory right. The appellant was not charged with nor was given an opportunity that his gratuity would be withheld as a measure of punishment. No provision of law has been brought to our notice under which, the President is empowered to withhold gratuity as well, after his retirement as a measure of punishment. Therefore, the order to withhold the gratuity as a measure of penalty is obviously illegal and is devoid of jurisdiction.

12. The learned counsel for the applicant has also argued that the disagreement note vide Memorandum dated 25.11.2011 (Annexure A-15) the disciplinary authority has given the disagreement note however, the same is nothing but a mere formality inasmuch as in the said Memorandum the Disciplinary Authority has concluded that the charges against the applicant of absenting himself w.e.f. 01.10.1992 till date without prior intimation, permission and sanction of leave stand proved and the same is bad in view of the judgment of Full Bench of this Tribunal in *Raja Ram (supra)* wherein the Full Bench has held as under:-

"2. The issue before us in the instant case is regarding the nature of the

note of disagreement. Rule 15 (2) provides that the Disciplinary Authority may record his tentative reasons for disagreeing with the Enquiry Authority. The question has often arisen regarding the use of appropriate words when the reasoning given by the Disciplinary Authority can be considered to be tentative and also the use of words, terms or phrases, which may give to the note of disagreement the colour of finality when it ceases to be tentative. It is precisely on this issue that a Division Bench of this Tribunal has referred the matter for the consideration of a Larger Bench. The reference reads thus:

"4. In our view the issue needs to be referred to a Larger Bench for definitive pronouncements on as to when the note of disagreement would cease to be tentative and assume the form of final pronouncement of the guilt of the Charged Officer."

8. The Honourable Supreme Court, in *Yoginath D. Bagde (supra)*, had held the decision of the disciplinary committee of the High Court to be wrong, not because it had proposed penalty in the note of disagreement but because a final view about the guilt of the Charged Officer had been taken. It is clear from the observation of the Supreme Court that findings were final; what was tentative was the punishment. In our view this only be interpreted as saying that the findings should be tentative. The observation of the Supreme Court in *K.L. Shepherd (supra)* is significant that once a decision is taken, it is more likely than not to be upheld and the changed merely on consideration of the representation. During the course of arguments the learned counsel for the Government of NCT of Delhi wondered as to what the Disciplinary Authority should record, if it cannot record that the charges stand proved by the reasoning given by the Disciplinary Authority. The correct

procedure in our view is for the Disciplinary Authority to record that the Disciplinary Authority does not agree with the conclusions of the Enquiry Authority on the grounds, which may then be stated. The grounds can thereafter be mentioned, without concluding that the charge(s) is/are proved. The Charged Officer will then have an opportunity to repel the reasoning of the Disciplinary Authority. Only after going through the representation of the Charged Officer against conclusion about the charges being proved or not proved. If the Disciplinary Authority comes to the conclusion about the guilt of the Charged Officer without hearing him, it would show an inbuilt bias and the cause of the Charged Officer will suffer. In essence, inferring of guilt without giving an opportunity to the Charged Officer to be heard would be in gross violation of the principles of natural justice that an employee should be given full opportunity to defend himself before being held to be guilty. The Article 311 of the Constitution also mandates that no employee would be dismissed, removed or reduced in rank without being given a reasonable opportunity of being heard. The CCS (CCA) Rules have been framed under the proviso to the Article 309 of the Constitution and these are thus statutory rules and cannot be trifled with lightly. The rules have to be followed in letter and spirit. Therefore, if the rules provide that the Disciplinary Authority has to give tentative reasons for disagreeing with the Enquiry Authority, it is definitely precluded from expressing definite and positive finding of guilt in the note of disagreement and thereby giving only a post-decisional hearing to the Charged Officer.

9. In the light of the above we hold that a note of disagreement would not

be tentative if it states that the charges against the Charged Officer stand proved. Mere expression of such view would make the note of disagreement bad in law and liable to be quashed and set aside. The reference is thus answered. The O.A. is remanded to the DB."

13. The learned counsel for the applicant has also contended that the alleged absence from duty was not wilful and therefore the same cannot be construed as misconduct and in this regard he has relied upon the judgment of Hon'ble Apex Court in **Krushnakant B. Parmar vs. Union of Indian & Another**, reported in (2012) 3 SCC 178. The para-14 whereof reads as under:-

"14. Rule 3(1)(ii) and Rule 3(1)(iii) of Central Civil Services (Conduct) Rules, 1964, relates to all time maintaining integrity, devotion to duty and to do nothing which is unbecoming of a Government servant and reads as follows:

"Rule 3 - General.

(1) Every Government servant shall at all times--

(i) maintain absolute integrity;

(ii) maintain devotion to duty; and

(iii) do nothing which is unbecoming of a Government servant."

20. In the present case the Inquiry Officer on appreciation of evidence though held that the appellant was unauthorisedly absent from duty but failed to hold the absence is wilful; the Disciplinary Authority as also the Appellate Authority, failed to appreciate the same and wrongly held the appellant guilty.

25. In the result, the appeal is allowed. The impugned orders of dismissal passed by Disciplinary Authority, affirmed by the Appellate Authority; Central Administrative Tribunal and High Court are set aside. The appellant stands reinstated. Taking into consideration the fact that the Charged Officer has suffered a lot since the proceeding was drawn in 1996 for absence from duty for a certain period, we are not remitting the proceeding to the Disciplinary Authority for any further action. Further, keeping in view the fact that the appellant has not worked for a long time we direct that the appellant be paid 50% of the back wages but there shall be no order as to costs."

14. Opposing the claim of the applicant, the respondent nos.1 and 2 have filed joint reply whereas respondent No.3 has filed reply separately stating therein that the applicant has challenged the order dated 31.05.2012 vide which penalty of forfeiture of 50% of monthly pension on permanent basis and entire gratuity admissible to him. The Disciplinary Authority has passed the order dated 31.05.2012 by following the rules and prescribed procedure on the subject, and there is no violation of any rule. The disciplinary proceedings were initiated under Rule 9 of CCS (Pension) Rules, 1972 and suitable penalty has been imposed by the competent Disciplinary Authority, after seeking statutory advice of the UPSC. It is

stated that UPSC is an advisory body and their advice had been sought in the case in accordance with the requirement of consultation with them as laid down in Article 320 (3) (c) of the constitution read with regulation 5(1) of the UPSC (Exemption from Consultation) Regulations, 1958. The Commission's advice is not binding upon the Disciplinary Authority, who arrives at its own conclusions after taking into consideration the advice of the commission. The advice of the UPSC dated 09.05.2012 has been forwarded to the applicant along with penalty order dated 31.05.2012. It is further contended that the applicant seeks indulgence of this Tribunal to reassess the evidences on record and come to a conclusion, different that what the competent authority has decided and the same is not within the scope or power of judicial review of this Tribunal. The OA is devoid of any merit and deserves to be dismissed with cost. The learned counsel for the respondents has relied upon the law laid down by the Hon'ble Apex Court in **B.C.**

Chaturvedi vs. Union of India & Others
(supra), the Hon'ble Apex Court ruled as
under:-

"Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether the rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappraise the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to

make it appropriate to the facts of each case."

15. In the Rejoinder, the applicant has reiterated the averments made in the OA and denied the contentions made in the Counter-reply.

16. Learned counsels for respondent nos.1 to 3 have also filed Sur-Rejoinder reiterating the contentions rose in their earlier replies filed by them.

17. We have gone through the O.A. along with Annexures A-1 to A-51, Reply of the respondent nos.1 to 3, Rejoinder of the applicant along and Sur-rejoinders filed on behalf of the respondent nos.1 to 3.

18. We have heard the learned counsel for the applicant and the learned counsels for the respondents and carefully considered the facts and circumstances, law points and rival contentions in the case.

Findings

19. The facts of the case are not disputed by either of the parties. The advice of the UPSC

on the basis of which, the punishment to the applicant was awarded was not communicated to the applicant prior to passing of the impugned order. The learned counsel for the applicant has also relied upon the judgment of the Hon'ble Apex Court in the case of *Union of India and others Vs. S. K. Kapoor* reported in 2011 (4) SCC 589 wherein the cases of *S. N. Narula Vs. Union of India and Others* reported in 2011 (4) SCC 591 and *Union of India & Ors. Vs. T.V. Patel* reported in (2007) 4 SCC 785 have been considered.

20. Now the issue which requires determination is whether the UPSC advice is required to be served upon the delinquent employee before passing the order of penalty or not more particularly when it is also pointed out that impugned penalty order has been passed keeping in view the advice of the UPSC, but the copy thereof, was not supplied to the applicant before passing the impugned punishment order.

21. According to the proposition of law as laid down in the case of *Union of India and others Vs. S.K. Kapoor (Supra)* and in the case

of **S.N. Narula Vs. Union of India and others (Supra)**, a copy of advice rendered by the UPSC is required to be made available to the delinquent officer in order to give him proper opportunity before passing the final punishment order. Undisputedly, the copy of the UPSC advice which was relied upon by the authority concerned, as mentioned in the impugned order itself was not supplied to the applicant before passing the punishment order.

22. In accordance with law settled on the point by the Hon'ble Apex Court, to supply a copy of UPSC advice is a condition precedent.

23. In the case of **Union of India and others Vs. S.K. Kapoor (supra)**, the Hon'ble Apex Court observed as under:-

"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 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**.

24. In the case of **S.N. Narula Vs. Union of India and others (supra)**, the Hon'ble Apex Court observed 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 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."

25. Moreover, after the decision of the Hon'ble Supreme Court in the case of **Union of India & Ors. Vs. S.K. Kapoor (supra)** the DoP&T has also issued an OM dated 06.01.2014 which is as follows:-

" No. 11012/8/2011-Estt. (A)
Government of India Ministry of
Personnel, PG & Pensions
Department of Personnel & Training

North Block, New Delhi

January 6, 2014

OFFICE MEMORANDUM

Subject: Rule 32 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965- Advice of the Union Public Service Commission (UPSC) to be communicated to the delinquent Government servant along with the final order of penalty- Amendment - regarding

The undersigned is directed to refer to the provisions of the Rule 32 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 and to say that the nature of consultation with the Union Public Service Commission (UPSC) and the manner of communication of the advice of the UPSC to the delinquent Government servant have been subject matter of litigation in some cases in CAT/High Courts etc. The Hon'ble Supreme Court in the T. V. Patel case, delivered on 19.04.2007, held that the Disciplinary Authority is not required to furnish a copy of the advice tendered by the Union Public Service Commission to the Charged Officer before the final order of penalty is passed. Accordingly, vide Office Memorandum No. 11012/10/2007- Estt. (A) dated 07.01.2008, the Ministries/ Departments/ Offices were requested to comply with the existing provisions of CCS(CCA) Rules, 1965 and bring the contents of the O.M. to the notice of all concerned for adopting a uniform stand.

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.

3. The matter has been examined in consultation with Department of Legal Affairs and it has been decided that in compliance of the judgement of the Hon'ble Supreme Court in S.K. Kapoor case, a copy of the advice of UPSC, in all cases where the Commission is consulted, may be provided to the Charged Officer, notwithstanding the provisions of Rule 17 and Rule 32 of CCS (CCA) Rules, 1965 before a final decision is taken by the Disciplinary Authority (DA).

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.

5. A flow chart indicating the present and revised procedure is annexed for ready reference.

6. All Ministries/ Departments/ Offices are requested to bring the above guidelines to the notice of all Disciplinary Authorities under their control. All cases, where final orders have not been issued may be processed as per these guidelines.

7. Formal amendment to CCS (CCA) Rules will follow.

8. Hindi version will follow.

(J.A. Vaidyanathan)
Director (E)
Telefax:23092179"

26. Without going in any other aspect and leaving all the grounds open, we are of the considered view that the impugned order dated 31.05.2012 has been passed by the authority in violation of the law laid down by the Hon'ble Apex Court in **S.K. Kapoor's (Supra)** and in the

case of **S.N. Narula** (*supra*) as well as O.M. dated 06.01.2014. In view of the above, the impugned order dated 31.05.2012 deserves to be quashed and the same is accordingly quashed with liberty to the Competent Authority to afford an opportunity to the applicant to file his objection/representation on the UPSC advice within three weeks of receipt of a certified copy of the order and in such representation the applicant shall at liberty to take all the legal grounds available to him under law and rules and on receipt of such representation, the Competent Authority shall pass a reasoned and speaking order within a period of 12 weeks from the date of receipt of such representation.

27. Accordingly, the O.A. is disposed of in the aforesaid terms. No order as to costs.

(R.N. Singh)
Member (J)

(R. Vijaykumar)
Member (A)

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