

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A. No.4478 of 2013

Orders reserved on : 10.1.2019.

Orders pronounced on : 21.1.2019

Hon'ble Ms. Nita Chowdhury, Member (A)

Hon'ble Mr. S.N. Terdal, Member (J)

Shri G.S. Dhodi (Aged about 63 years)
S/o Late Sh. Harbans Singh,
R/o WZ-271/C-4, Gali No.18,
Neelkanth Apartments,
Krishna Park Extension,
New Delhi-110018.

....Applicant

(None present)

VERSUS

1. Lt. Governor,
Govt. of NCT of Delhi,
6, Raj Niwas Marg,
New Delhi-110054.
2. Union of India,
Through Secretary, Home, Govt. of India,
Ministry of Home Affairs,
North Block,
New Delhi-110001.
3. Govt. of N.C.T. of Delhi,
Through Chief Secretary,
Players Building, Delhi Secretariat,
I.P. Estate, New Delhi-110002.
4. The Director (Vigilance),
Directorate of Vigilance, GNCTD
4th Level, C-Wing, Delhi Secretariat,
New Delhi-110002.

.....Respondents

(By Advocate : Shri Vijay Pandita)

ORDER

Ms. Nita Chowdhury, Member (A):

This matter was adjourned to 24.9.2018 on the request of applicant, who appeared in person. On another date, 16.11.2018, again the applicant sought an adjournment and on this date, it was made clear that as it is an old matter and it relates to the year 2013, he is given a last opportunity to present his case. Again when this matter came up for hearing today, nobody appears for the applicant and hence, this case is heard under Rule 15 of the CAT (Procedure) Rules, 1987. This Application has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

- “(i) set aside and quash the impugned order dated: 26.08.2013 (Annexure A-1);
- (ii) set aside and quash the charge-sheet dated: 25.03.2010 and the Inquiry report dated 5.12.2011.
- (iii) set aside and quash the appointment of Inquiry Officer & presenting officer orders dated 28.10.2010
- (iv) direct the respondents to restore, revise and release all the pensioner benefits along with 18% interest.
- (v) direct the respondents to restore the full monthly pension of the applicant and also to refund the penalty have already deducted from the pension of the applicant along with 18% interest.
- (vi) to pass structure against erring officials of Respondent No.4 for malafidely falsifying the facts in order to implicate the applicant.

- (vii) to pass any other order(s) as may be deemed fit and proper in the facts and circumstances of the case.
- (viii) Award cost.”

2. Brief relevant facts of the case are that the applicant was initially appointed as LDC under the respondents and was also reached to the level of Dy. Superintendent (Internal) in Central Jail. While he was working on the said post, he was issued major penalty proceedings articles of charge vide Memorandum dated 25.3.2010, which reads as under:-

“Article-I

That the said Shri G.S. Dhodi, while functioning as Dy. Supdt. (Internal) in Central Jail No.2, during the period 11.04.2006 to 11.08.2006 committed gross misconduct in as much as with mala-fide intention failed to ensure timely depositing of Rs.50,000/- (Rupees Fifty Thousand only) in the PP A/C No.191 of the under trial prisoner Manoj Singh, S/o Shri Mahender Singh. The said amount was retained by Shri G.S. Dhodi with himself with a malafide intention and was got deposited only after intervention of the DIG (Prisons) on receipt of complaint by Shri Manoj, under that prison.

Thus, the said Shri G.S. Dhodi, Adhoc DANICS officer, having acted with malafide intention in the matter, failed to maintain absolute integrity and devotion to duty and acted in a manner unbecoming of a Government servant thereby violating the provisions of Rule 3 of the Central Civil Services (Conduct) Rules 1964.”

3. When the applicant denied the aforesaid charge, IO and PO were appointed. The IO after completion of inquiry vide his report dated 5.12.2011 held that the charge leveled against

the applicant as proved. The copy of the said report was forwarded to the applicant on 9.2.2012 to enable him to represent against the same. The applicant submitted his representation on 28.2.2012. Consequent upon retirement of the applicant, the major penalty proceedings initiated on 25.3.2010 are deemed to have been continued under Rule 9 of CCS (Pension) Rules, 1972. This matter was also referred to the Union Public Service Commission for their advice. The competent authority having accepted the advice of the UPSC decided to impose the penalty of withholding of 10% (ten percent) of his monthly pension for a period of three years on the applicant. Being aggrieved by the chargesheet, inquiry report as well as impugned order dated 26.8.2013, the applicant has filed this OA seeking the reliefs as quoted above.

4. Applicant challenged the impugned inquiry officer's report as well as order dated 26.8.2013 on various grounds. However, it is the contention of the applicant that the impugned orders suffer from violation of principles of natural justice, inasmuch as the disciplinary proceedings have not been held as per the prescribed procedures. Further averment of the applicant is that impugned order dated 26.8.2013 also suffers from violation of principles of natural justice as this matter was referred to the UPSC for advice. However, the advice of the UPSC has not been provided to the applicant

before passing the order of punishment vide order dated 26.8.2013 as the same has been provided to the applicant along with the said impugned order. He placed reliance on the judgment of the Hon'ble Supreme Court in the case of ***Union of India and Others Vs. S.K. Kapoor***, 2011 (4) SCC 589, wherein it has been held that if any material is to be relied upon in departmental proceedings then its copy must be supplied in advance to charge sheeted employee so that he may have chance to rebut the same. Further, it has been stated therein that if the authorities consult UPSC and rely upon its report for taking disciplinary action, then copy must be supplied in advance to the employee concerned, otherwise it would amount to violation of principles of natural justice. However, if the disciplinary authority does not rely on the UPSCs advice copy of the same need not be supplied to the employee concerned. The relevant part of the said judgment reads as under:-

“5. 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.

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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.”

5. Counsel for the respondents submitted that there is no illegality in the procedures adopted by the respondents in conducting the disciplinary proceedings initiated against the applicant. However, he has not disputed the fact that a copy of UPSC advice was provided to the applicant along with the impugned punishment order dated 26.8.2013.

6. We find in favour of the contention of the applicant so far as non-observation of principle of natural justice while passing the impugned order dated 26.8.2013 by the respondents, as the UPSC advice dated 19.8.2013 was accepted but the applicant was not given an opportunity to represent against the said advice of the UPSC before passing the impugned order. The respondents have stated in their reply as under:-

“In reply to para 5.50, it is stated that the contents of which of record, however, copy of the UPSC advice was

given to the Charged Officer along with the order dated 26.8.2013”.

As such the impugned order dated 26.8.2013 is liable to be quashed in view of the judgment of the Hon’ble Supreme Court in the case of **S.K. Kapoor** (supra)

7. In view of the above facts and circumstances of this case, the impugned order dated 26.8.2013 is quashed. The respondents are directed to proceed in the matter from the stage of receipt of the advice of the UPSC in accordance with the observations of the Hon’ble Supreme Court in the case of **S.K. Kapoor** (supra). There shall be no order as to costs.

(S.N. Terdal)
Member (J)

(Nita Chowdhury)
Member (A)

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