

41b

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION No.222/2013
Date of Decision: 28/6/2019

CORAM: Dr.Bhagwan Sahai, Member (A)
R.N. Singh, Member (J)

Shri Hari Babu Pardeshi,
Age 61 years, Ex-Sub-Divisional
Engineer, Office CGMT, Maharashtra
Circle, B.S.N.L., Santacruz, Mumbai,
Residing at 403, Venu Society, Bhanu
Sagar, Kalyan (W), Pin-401 302.

...Applicant.

(By Applicant Advocate: Shri S.V. Marne).

Versus.

1. Union of India, Through
The Secretary, Ministry of
Telecommunications,
Information & Technology,
Department of Telecommunications,
Sanchar Bhavan,
20 Ashoka Road,
New Delhi-110 117.
2. The Member (Services),
Telecom Commission,
Ministry of Communications & IT,
Department of Telecommunications,
Sanchar Bhavan,
20 Ashoka Road,
New Delhi 110 117.

... Respondents

(Respondents by Advocate Shri R.R. Shetty).

Reserved on : 12.03.2019.

Pronounced on : 28.06.2019

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 may graciously be pleased to call for the records of the case from the Respondents and after examining the same quash and set aside the impugned orders dated 04.06.2010 & 12.03.2012 with all consequential benefits.

(b). Costs of the application be provided for.

(c). Any other and further order as this Hon’ble Tribunal deems fit in the nature and circumstances of the case be passed.”

2. The facts of the case as contended by the Applicant are that the applicant was initially appointed on 19.05.1972 as Telephone Operator. He was further promoted to the post of Junior Telecom Officer in 1976 and as Sub-Divisional Engineer in 1996. He has not been absorbed either in MTNL or in BSNL because of pendency of disciplinary proceedings against him

and has remained employee of Department of Telecom till passing of the impugned removal order.

3. On 08.05.2003 (Annex A-4), the applicant was served with Memorandum of Charge-sheet under Rule 14 of CCS (CCA) Rules, 1965 on the following articles of charges:-

ANNEXURE-I

Statement of articles of charge framed against Shri Hari Babu Pardeshi, SDE, Jintur.

Article-I

Shri Hari Babu Pardeshi, SDE, Jintur, while functioning as Sub-Divisional Engineer (External-III), Purna, Bhiwandi during the period 1999-2000 committed gross misconduct with malafide intention in as much as he neither verified the genuineness of the subscribers nor collected bonafide documents for installation of 99 new telephone connections sanctioned vide list at Article-I of Annexure-II for CPM Market, Mhatre Compound, Old Anjur Road, Purna Val, Bhiwandi nor obtained the certificate from the subscribers of the above said telephone connections. Thereby Shri Hari Babu Pardeshi, SDE intentionally and deliberately violated the orders No.2-2/86-PHA dated 26th June, 1995 issued from DOT, Newdelhi, No. GMT/KYN/X MISC.2000/1 dated 5th March 2000 by GMT, Kalyan and No.1-1/99-Vig.Tech dated 16-2-2000 by Sr.D.D.G(Vig), DOT, Newdelhi. If Shri Hari Babu Pardeshi, SDE would have followed the

guidelines as per above said orders, huge revenue loss to the tune of Rs. Five crores (aprox) caused to the BSNL could have been avoided.

The aforesaid act on the part of Shri Hari Babu Pardeshi, then Sub-Divisional Engineer (External-III), Purna, Bhiwandi, shows that, while functioning as such, he exhibited lack of devotion to duty and acted in a manner unbecoming of a Government Servant and thereby contravened Rule 3(1) (ii) & 3(1) (iii) of C.C.S. (Conduct) rules, 1964.

Article-II

Shri H.B.Pardeshi had put up the work order No.2336 for the signature of his D.E. for distribution cable laying work to M/s. Om Enterprises for laying 100 pair cable, without date and showing wrong pillar name with malafide intention. Subsequently when preparing the bill it was shown as 20-2-2002, which was quiet before the execution of work and thereby facilitated the contractor to get monetary gain.

The aforesaid act on the part of Shri Hari Babu Pardeshi, then Sub-Divisional Engineer (External-III), Purna, Bhiwandi, shows that, while functioning as such, he did not maintain absolute integrity, exhibited lack of devotion to duty and acted in a manner unbecoming of a Government Servant and thereby contravened Rule 3 (1) (i), 3(1) (ii) & 3(1) (iii) of C.C.S (Conduct) rules, 1964.

Article-III

Shri H.B.Pardeshi issued 350 meters of 100 pair cable to M/s Om Enterprises for cable laying work at Anjur Arihant Pillar vide material issue slip of stores Bhiwandi at Purna

No.1026 dated 23.05.2000, with his signature but without the signature of the receiver, whereas entries available in the ACE-8 Register for the year 2000 of SDE (Extl.) Purna shows that as 439 mtrs and also in the bill it is shown as 370 mtrs. Thereby caused misappropriation of stores.

The aforesaid act on the part of Shri Hari Babu Pardeshi, then Sub-Divisional Engineer (External-III), Purna, Bhiwandi, shows that, while functioning as such, he did not maintain absolute integrity, exhibited lack of devotion to duty and acted in a manner unbecoming of a Government Servant and thereby contravened Rule 3 (1) (i), 3(1) (ii) & 3(1) (iii) of C.C.S. (Conduct) rules, 1964.

Article-IV

Shri Pardeshi issued 73 telephone instruments to Shri.V.U. Kapate, Phone Mechanic, subsequent to the commissioning of the telephone connections among the 99 aforesaid telephone connections.

Thus by the aforesaid acts on the part of Shri Hari Babu Pardeshi, then Sub-Divisional Engineer (External-III), Purna, Bhiwandi, shows that, while functioning as such he did not maintain absolute integrity, exhibited lack of devotion to duty and acted in a manner unbecoming of a Government Servant and thereby contravened Rule 3 (1) (i), 3 (1) (ii) & 3(1) (iii) of C.C.S. (Conduct) Rules, 1964."

4. The applicant denied the charges by his representation dated 14.05.2003. The Disciplinary Authority appointed Shri D.P. Patil, DE, Mumbai as an Inquiry Officer and Shri Paul Ponni, DE, Kalyan as Presenting Officer. It is

stated that after a period of two years, the Disciplinary Authority changed the Inquiry Officer and Presenting Officer and Shri K.C.G.K. Pillai, General Manager (Finance), Pune TD was appointed as the Inquiry Officer and Shri Y.S. Burde was appointed as the Presenting Officer. The applicant demanded certain documents but on 27.11.2006, the Presenting Officer expressed inability to produce three documents i.e. undelivered telephone bills of 99 telephones connections, F&G Report File of the year 1999-2000 and Gate Pass for issuing Slip No.1026 dated 23.05.2000 stating that the said documents were not available. The Inquiry Officer submitted his report on 07.04.2008 holding that all the four charges had been proved against the applicant. The final conclusion of the report reads as under:-

" **Final Conclusion**

From the analysis and assessment of documentary and oral evidence as discussed above, I have come to the conclusion that the article of charges framed against Shri H.B. Pardeshi in Articles I to IV of Annexure 1 of Charge Sheet Memo No.X-1/Conf/HBP/03-04/2 dated 8/5/03 issued by the General Manager Telecom, Prabhani under rule 14 of Central Civil Services

(Classification, Control and Appeal 1965) stands to be proved."

5. On receipt of the aforesaid report of the I.O., the applicant submitted his reply on 24.08.2009 (Annex A-12). The Disciplinary Authority thereafter passed the order dated 04.06.2010 holding the applicant guilty of all the charges and imposed on him the penalty of removal from service which reads as under:-

"No.8-33/2009-Vig.II
Government of India
Ministry of Communication & IT
Government of Telecom

Room No. 915
Sanchar Bhawan
20. Ashoka Road
New Delhi-110117.

Dated the 4th June, 2010

ORDER

Shri Hari Babu Pardeshi, the then SDE (Extl.II), Purna, Bhiwandi, now SDE, Kalyan, was proceeded under Rule 14 of CCS (CCA) Rules, 1965 vide memorandum No.X-1/Conf./HBP/03-04/2 dated 8.5.2003 for the following articles of charge:-

Article-I

Shri Hari Babu Pardeshi, SDE, Jintur, while functioning as Sub-Divisional Engineer (External-III), Purna, Bhiwandi during the period 1999-2000 committed gross misconduct with malafide intention in as much as he neither verified the genuineness of the subscribers nor collected bonafide documents for installation of 99 new telephone connections sanctioned vide

list at Article-I of Annexure-II for CPM Market, Mhatre Compound, Old Anjur Road, Purna Val, Bhiwandi nor obtained the certificate from the subscribers of the above said telephone connections. Thereby Shri Hari Babu Pardeshi, SDE, intentionally and deliberately violated the orders No.2-2/86-PHA dated 26th June, 1995 issued from DOT, New Delhi, No.GMT/KYN/X.MISC.2000/1 dated 5th March, 2000 by GMT, Kalyan and No.1-1/99-Vig.Tech dated 16.2.2000 by Sr. D.D.G. (Vig), DOT, New Delhi. If Shri Hari Babu Pardeshi, SDE would have followed the guidelines as per above said orders, huge revenue loss to the tune of Rs.Five crores (approx) caused to the BSNL could have been avoided.

The aforesaid act on the part of Shri Hari Babu Pardeshi, then Sub Divisional Engineer (External-III), Purna, Bhiwandi, shows that, while functioning assuch, he exhibited lack of devotion to duty and acted in a manner unbecoming of a Government Servant and thereby contravened Rule 3(1) (ii)&3(1) (iii) of CCS (Conduct) Rules, 1964.

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Shri H.B. Pardeshi had put up the work order No.2336 for the signature of his DE for distribution cable laying work to M/s Om Enterprises for laying 100 pair cable, without date and showing wrong pillar name with malafide intention. Subsequently when preparing the bill it was shown as 20.2.2002, which was quiet before the execution of work and thereby facilitated the contract or to get monetary gain.

The aforesaid act on the part of Shri Hari Babu Pardeshi, then Sub Divisional Engineer (External-III), Purna, Bhiwandi, shows that, while functioning as such he did not maintain absolute integrity, exhibited lack of devotion

to duty and acted in a manner unbecoming of a Government Servant and thereby contravened Rule 3(1)(i),3(1)(ii)&3(1)(iii) of CCS (Conduct) Rules, 1964.

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The aforesaid act on the part of Shri Hari Babu Pardeshi, then Sub-Divisional Engineer (External-III), Purna, Bhiwandi, shows that, while functioning as such, he did not maintain absolute integrity, exhibited lack of devotion to duty and acted in a manner unbecoming of a Government Servant and thereby contravened Rule 3(1)(i),3(1)(ii)&3(1)(iii) of CCS (Conduct) Rules, 1964.

Article-IV

Shri Pardeshi issued 73 telephone instruments to Shri V.U. Kapate, Phone Mechanic, subsequent to the commissioning of the telephone connection among the 99 aforesaid telephone connections.

Thus by the aforesaid acts on the part of Shri Hari Babu Pardeshi, then Sub-Divisional Engineer (External-III), Purna, Bhiwandi, shows that, while functioning as such he did not maintain absolute integrity, exhibited lack of devotion to duty and acted in a manner unbecoming of a Government Servant and

thereby contravened Rule 3 (1) (i), 3(1) (ii) & 3(1) (iii) of CCS (Conduct) Rules, 1964.

2. As the charges were denied by the said Shri H.B. Pardeshi, an oral inquiry was ordered to be held by Shri K.C.G.K. Pillai, DDG (PF), BSNL, Corporate Office, New Delhi, who was appointed as the Inquiring Authority. The Inquiring Authority das submitted its report dated 7.4.2008 holding all the articles of charge as proved. of Inquiry Officer's report was forwarded to the Charged Officer (CO) to enable him to make such representation as he wished to make. The CO has submitted that his representation dated 248.2009. The CO has submitted that the Inquiry Officer has not said that the charges are proved beyond doubt. There is doubt about the conclusion but the benefit of doubt should be given with regards to natural justice. The case is delayed for more than 9 years during which witnesses expired, absconded and not traceable. Hence he could not produce any defence witness. The three state witnesses, i.e. SW-7, 8 & 9, were not produced and hence could not be cross-examined. It was possible to get the truth from them. The CO has requested to go through the investigation only on presumption and which had been agreed by SW-1, DE and that during raid they could not find anything at the place of raid. All other state witnesses were examined and crossed-examined. The said witnesses could not be produced despite several notices sent to them and hence dropped. Investigation report was examined in consultation with CC before initiation of disciplinary proceedings against the CO. Therefore, there is no need to examine investigation report again. Based on documentary and oral evidences of witnesses, the IO has discussed and scrutinized whole case from all angles and conclude that all the articles of charge are proved. Reply submitted by the CO is not convincing and thus not accepted.

3. The competent disciplinary authority has carefully considered the records of the case, the submissions

made by Shri H.B. Pardeshi in his written statement of defence dated 24.8.2009, and all other facts and circumstances relevant to this case. Considering the circumstances in totality and on an objective assessment of the entire case, I, S.C. Misra, Member (Services), Telecom Commission hereby remove the said Shri H.B. Pardeshi from service with immediate effect.

4. The receipt of this Order shall be acknowledged by Shri H.B. Pardeshi.

(S.C. MISRA)
MEMBER (SERVICES)
TELECOM COMMISSION

Shri H.B. Pardeshi,
SDE, Kalyan.

(Through CGM Telecom, Maharashtra Telecom Circle, Mumbai)."

6. Thereafter the applicant preferred an appeal dated 02.09.2010 to the Respondent No.1 wherein it was stated that the CBI had closed the case owing to his non-involvement in the matter. It was stated that documents were not supplied to him and he was removed from service at a stage where he had put in 39 years of service. Moreover, the UPSC advice was not provided to the applicant. In response to the aforesaid the applicant received an order dated 12.03.2012 (Annex A-15) from the Appellate Authority rejecting the appeal filed by him. But the copy of UPSC advice was not given to the applicant

before deciding the appeal by the Appellate Authority.

7. The applicant has taken six grounds in the present OA to contend that the impugned orders dated 04.06.2010 and 12.03.2012 are absolutely illegal, void and deserve to be quashed and set aside. The ground for setting aside the impugned orders is closure of criminal case against the applicant by the CBI. It is stated that after noticing that there was no evidence to prove any charges against the applicant, the CBI made an application before the Special Judge, Mumbai for closure of the case and permission was granted on 10.02.2002.

8. The applicant has placed reliance on the judgment of Hon'ble Supreme Court in the case of *G.M. Tank Vs. State of Gujarat* and *Capt.M. Paul Anthony vs. Bharat Gold Mines* contending that the findings recorded in the departmental enquiry cannot be allowed to stand in the light of closure of the criminal case. The impugned orders are liable to be quashed and set aside on the ground of inability of the department to produce cogent evidence in support

of the charges. The entire proceedings of departmental enquiry are vitiated for the reason of non-supply of vital documents to the applicant. The proceedings are vitiated because of delay in initiation and conclusion of disciplinary proceedings. The incident pertains to the year 1999-2000, the charge-sheet was issued to the applicant after the delay of 3-4 years, that too after closure of the criminal case. The departmental enquiry was delayed and finally order was passed on 04.06.2010, after 10-11 years of the incident. There is no justification for this inordinate and unexplained delay.

9. Moreover, the penalty of removal from service imposed on the applicant is grossly disproportionate to the misconduct alleged. It is further stated that the applicant had worked with the respondents for 39 years and was about to retire on 31.07.2011. The applicant has not received any of the retiral benefits because of the impugned orders. As such the penalty imposed on the applicant is required to be reduced considering the long delay, non-seriousness of

charge and non-availability of record leading to denial of reasonable opportunities.

10. 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 file rebuttal of it. It is contended on behalf of the applicant that the copy of UPSC advice was not given to the applicant before deciding the appeal by the Appellate Authority, which is bad in law and hence the order passed on the appeal is liable to be quashed and set aside. Hence this OA.

11. Opposing the claim of the applicant, the respondents have filed reply stating therein that the Competent Appellate Authority has also followed the prescribed procedure and rules before deciding the appeal of the applicant and the delay was due to administrative reasons and it was not intentional. It is contended that CBI (ACB), Mumbai registered a case against the

applicant on 13.11.2000 vide Crime No.RC/BA1/2000/A, under section 120-B r/w 420 IPC, Sec.3, 6(1A) of Indian Wireless Telegraph Act, 1933, Sec.20 of Indian Telegraph Act, 1885, Rule 440 of Indian Telegraph Rules 1951, 13 (2) r/w 13 (1) (d) of Prevention of Corruption Act, 1988. The applicant was also placed under suspension vide order dated 29.12.2000. Disciplinary proceedings were initiated against the applicant vide Memo dated 08.05.2003, for the alleged gross misconduct with malafide intention during the period 1999-2000.

12. It is contended that closure of the case by the CBI for want of evidence cannot be taken as a pretext to close the departmental proceedings. The departmental enquiry was conducted in accordance with the prescribed procedure and the applicant has been given adequate opportunity at every stage to defend his case. The Inquiry Officer submitted his report on 07.04.2008 holding that all the four charges had been proved against the applicant. The applicant submitted his reply to the Inquiry Officer's report on 24.08.2009. The Disciplinary

Authority thereafter passed the order dated 04.06.2010 holding the applicant guilty of all the charges and imposed the penalty of his removal from service. Thereafter, the applicant preferred an appeal dated 02.09.2010, which was rejected by the Appellate Authority vide order dated 12.03.2012. They have further contended that the applicant is not entitled for any relief and the OA is devoid of any substance and merits, and it is liable to be dismissed.

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

14. We have gone through the O.A. along with its Annexes A-1 to A-15, Reply of the respondents and Rejoinder filed on behalf of the applicant.

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

Findings

16. The basic facts of the case are not in dispute by either of the parties. However, the advice of the UPSC on the basis of which, the punishment to the applicant was upheld by the appellate authority vide order dated 12th March, 2012 (Annexure A-2) was not communicated to the applicant prior to passing of the impugned appellate 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* were considered.

17. 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 the 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.

18. 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*.

19. 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."

20. 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"

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 to submit his response before passing the final punishment order. Undisputedly, in the present case the copy of the UPSC advice which was relied upon by the respondent authority concerned, as mentioned in the impugned order itself was not supplied to the applicant before passing the punishment order. 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.

22. In view of the above, without going into any other aspect and leaving all the grounds open, we are of the considered view that the impugned appellate order dated 12.03.2012 has been passed by the appellate 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 DOPT O.M. dated 06.01.2014. Hence the impugned order dated 12.03.2012 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 this order and if such representation the applicant shall be 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.

23. Accordingly, the O.A. is disposed of in the aforesaid terms. There shall be no order as to costs.

(R.N. Singh)
Member (J)

(Dr. Bhagwan Sahai)
Member (A)

Ak/-

TD
3/7/19