CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

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O.A.NO.2286/2003

New Delhi, this the 24th day of August, 2004

HON BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON BLE SHRI S.A.SINGH, MEMBER (A)

Mr. K.M. Anees-Ul-Haq
Deputy Director
All India Radio
Parliament Street
New Delhi. ... Applicant

(By Advocate: Sh. B.S.Mainee)

Versus

Union of India through

1. The Secretary
Ministry of Information & Broadcasting
Shastri Bhawan
New Delhi.

2. The Chief Executive Officer
Prasar Bharati
PTI Building
Parliament Street
New Delhi. .. Respondents

(By Advocate: Sh. S.M. Arif)

O R D E R(Oral)

Justice V.S. Aggarwal:-

Applicant (K.M.Anees-Ul-Haq), who is a Deputy Director General in Doordarshan Kendra, had been served with the following chargesheet:

> "That the said Shri K.M. Anees-Ul-Haq, while functioning as a public servant, in the capacity of Director and subsequently as Deputy Director General at Doordarshan Kendra, Bangalore, between December 1991 and March, 1995, had committed grave misconduct by approving certain sponsored serials without following the laid down procedure and thereby showed undue favours to the Producers of the serials who were able to utilize the Free Commercial Time, provided to them by the DDK.
>
> By the above acts, the said K.M. Anees-Ul-Haq failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Govt. servant

and thus violated Rule 3(1)(i), 3(1)(ii) and 3(1)(iii) of the Central Civil Services (Conduct) Rules, 1964."

2. On basis of the same, disciplinary proceedings had been initiated against him. The disciplinary authority thereafter imposed a penalty of reduction in the pay by two stages for a period of one year with stipulation that he will not earn increment during the period of reduction and that on expiry of such period, reduction will not have the effect of postponing his future increments.

3. By virtue of the present application, applicant seeks to assail the order imposing the said penalty.

4. Some of the other facts can also be delineated for the appreciation of the question in controversy. The applicant was working as Director and thereafter as Deputy Director General, Doordarshan Kendra, Bangalore between December, 1991 and March, 1995. He is alleged to have committed misconduct while approving certain sponsored serials without following the laid down procedure and thereby showed undue favours to the producers of the serials. While forwarding the case file of the applicant to Respondent No.1, the Central Bureau of Investigation (for short 'CBI') recommended for initiation of major penalty proceedings against the applicant and the Central Vigilance Commission (for short 'CVC') while tendering their first stage advice, also approved the recommendations of the CBI. Thereafter the chargesheet was served on the applicant. The charges were denied by the applicant. Regular departmental

inquiry was initiated. The inquiry officer submitted a report that the charges were not proved. Thereafter, it was sent to the CVC for second stage advice. The disciplinary authority disagreed with the findings of the inquiry officer and accepted the advice of the CVC for imposition of a suitable major penalty. Note of disagreement was sent to the applicant. After receiving the representation of the applicant, the case was again examined and his representation was rejected. The matter was referred to Union Public Service Commission for advice. In the light of the findings and taking into account all factors, the above said penalty had been imposed.

5. The application is being contested.

6. Besides other arguments, learned counsel for the applicant has contented that in the present case, the inquiry officer had exonerated the applicant. When the matter went to the UPSC, it had also held that there were no mala fides in the act of the applicant. However, the disciplinary authority controverted the same and concluded that there were mala fides in the act of the applicant to show undue favour to the producers. Therefore, according to the learned counsel before imposing the penalty, the respondents should have made available the advice of the UPSC for proper representation and consideration.

7. Admittedly, the advice of the UPSC had not been given to the applicant before the impugned order was passed. In the facts of the present case, the contentions of the applicant cannot be ignored. The UPSC in its advice had stated:

> "3.7 The Commission observe that it cannot be proved from the available facts that the CO has shown any undue favour to any producer during his tenure as Director/DDG in the Kendra. However, it is proved that he had allowed the telecast of some of the sponsored serials/programmes without following the proper procedure laid down by the Department and thus may be unintentionally favoured some of the producers of the serials who were able to utilize the free commercial time provided to them by the DDK. The Commission observe that since no malafides have been established against the CO and charge is proved to the extent of not following the procedures laid down by the Deptt."

8. The disciplinary authority while passing the impugned order held:

> "(v) It is proved from available records that Shri Anees-Ul-Haq had allowed telecast of some sponsored serials/programmes in utter disregard of the procedure and norms laid down by the Department. The Director of the Kendra supervises the working of the Kendra in all respects and no programme can be telecast without explicit approval of the Director, Transmission Centre (DTC). However, that does not imply that the Director of a Kendra would have full authority to approve and telecast any programme by-passing the prescribed procedure. By approving certain sponsored serials, Shri Haq thereby showed 'undue' favours to the producers of the serials who were able to utilize the free commercial times provided to them by the DDK."

9. It is obvious from the aforesaid that while the UPSC was of the opinion that there were no mala fides attributed to the applicant, the disciplinary authority felt that it was being done to

do undue favour to the producers. On one hand, the impugned order recites that this is being passed accepting the advice of the UPSC while the contents of the impugned order, as referred to above, has a different story to tell. When such is the situation, the advice of the UPSC should be made available.

10. In the case of **STATE BANK OF INDIA AND OTHERS** v. **D.C.AGGARWAL AND ANOTHER**, 1993 SCC (L&S) 109, there was a little difference. The concerned officer was being dealt with misappropriation of bank funds. The inquiry officer had exonerated him. The report of the Central Vigilance Commission had not been supplied. The Supreme Court held that it should have been supplied. The findings read:

> "5. ..... It was urged that copy of the inquiry report having been supplied to the respondent the rule was complied with and the High Court committed an error in coming to conclusion that principle of natural justice was violated. Learned Additional Solicitor General urged that the principle of natural justice having been incorporated and the same having been observed the Court was not justified in misinterpreting the rule. The learned counsel urged that the Bank was very fair to the respondent and the disciplinary authority after application of mind and careful analysis of the material on record on its own evaluation, uninfluenced by the CVC recommendation passed the order. It was emphasised that if the exercise would have been mechanical the disciplinary authority would not have disagreed with CVC recommendations on punishment. Learned counsel submitted that, in any case, the disciplinary authority having passed detailed order discussing every material on record and the respondent having filed appeal there was no prejudice caused to him. None of these submissions are of any help. The order is vitiated not because of mechanical exercise of powers or for non-supply of the inquiry report but for relying and acting on material which was not only irrelevant but could not have been looked into. Purpose of

supplying document is to contest its veracity or give explanation. Effect of non-supply of the report of Inquiry Officer before imposition of punishment need not be gone into nor it is necessary to consider validity of sub-rule (5). But non-supply of CVC recommendation which was prepared behind the back of respondent without his participation, and one does not know on what material which was not only sent to the disciplinary authority but was examined and relied on, was certainly violative of procedural safeguard and contrary to fair and just inquiry. From the letter produced by the respondent, the authenticity of which has been verified by the learned Additional Solicitor General, it appears the Bank turned down the request of the respondent for a copy of CVC recommendation as "The correspondence with the Central Vigilance Commission is a privileged communication and cannot be forwarded as the order passed by the appointing authority deals with the recommendation of the CVC which is considered sufficient". Taking action against an employee on confidential document which is the foundation of order exhibits complete misapprehension about the procedure that is required to be followed by the disciplinary authority. May be that the disciplinary authority has recorded its own findings and it may be coincidental that reasoning and basis of returning the finding of guilt are same as in the CVC report but it being a material obtained behind back of the respondent without his knowledge or supplying of any copy to him the High Court in our opinion did not commit any error in quashing the order. Non-supply of the Vigilance report was one of the grounds taken in appeal. But that was so because the respondent prior to service of the order passed by the disciplinary authority did not have any occasion to know that CVC had submitted some report against him. The submission of the learned Additional Solicitor General that CVC recommendations are confidential, copy of which, could not be supplied cannot be accepted. Recommendations of Vigilance prior to initiation of proceedings are different than CVC recommendation which was the basis of the order passed by the disciplinary authority."

11. Similarly in the case of **MANAGING DIRECTOR, ECIL, HYDERABAD AND OTHERS** v. **B. KARUNAKAR AND OTHERS**, 1993 SCC (L&S) 1184, it was held that the

report of the inquiry officer should be supplied. It is an essential part of the reasonable opportunity to contest. The Supreme Court held:

> "26. The reason why the right to receive the report of the enquiry officer is considered an essential part of the reasonable opportunity at the first stage and also a principle of natural justice is that the findings recorded by the enquiry officer form an important material before the disciplinary authority which along with the evidence is taken into consideration by it to come to its conclusions. It is difficult to say in advance, to what extent the said findings including the punishment, if any, recommended in the report would influence the disciplinary authority while drawing its conclusions. The findings further might have been recorded without considering the relevant evidence on record, or by misconstruing it or unsupported by it. If such a finding is to be one of the documents to be considered by the disciplinary authority, the principles of natural justice require that the employee should have a fair opportunity to meet, explain and controvert it before he is condemned. It is negation of the tenets of justice and a denial of fair opportunity to the employee to consider the findings recorded by a third party like the enquiry officer without giving the employee an opportunity to reply to it. Although it is true that the disciplinary authority is supposed to arrive at its own findings on the basis of the evidence recorded in the inquiry, it is also equally true that the disciplinary authority takes into consideration the findings recorded by the enquiry officer along with the evidence on record. In the circumstances, the findings of the enquiry officer do constitute an important material before the disciplinary authority which is likely to influence its conclusions. If the enquiry officer were only to record the evidence and forward the same to the disciplinary authority, that would not constitute any additional material before the disciplinary authority of which the delinquent employee has no knowledge. However, when the enquiry officer goes further and records his findings, as stated above, which may or may not be based on the evidence on record or are contrary to the same or in ignorance of it, such findings are an additional material unknown to the employee but are taken into consideration by the

disciplinary authority while arriving at its conclusions. Both the dictates of the reasonable opportunity as well as the principles of natural justice, therefore, require that before the disciplinary authority comes to its own conclusions, the delinquent employee should have an opportunity to reply to the enquiry officer's findings. The disciplinary authority is then required to consider the evidence, the report of the enquiry officer and the representation of the employee against it."

12. More recently, the Supreme Court in the case of **S.N. NARULA** v. **UNION OF INDIA & ORS.**, Civil Appeal No.642/2004, decided on 30.1.2004 also held:

> "..... 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. 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 Paragraph 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."

13. Two decisions of this Tribunal also can be taken note of in the cases of **M. GOPAL KRISHNA MURTHY** v. **UNION OF INDIA AND ORS.**, 2001 (3) ATJ 279 and **SHRI S.K. PANDEY** v. **THE UNION OF INDIA AND ORS.**, 2003 (1) ATJ 538, wherein similar view had been taken.

14. We find no reason to take a different view. This is for the reason that before a penalty was imposed, the report of the Union Public Service

Commission had not been supplied. In the preceding paragraphs, we have revealed that while UPSC held that there were no mala fides, the disciplinary authority recorded to the contrary. When such is the situation, it tantamounts to non-application of mind in a proper manner because there is a material difference between the actions taken to cause undue favour and actions taken without mala fides.

15. Resultantly in all fairness, to give a reasonable opportunity to the applicant, a copy of the advice of the UPSC should have been supplied to him because when it is not supplied, he could complain that prejudice was caused to him.

16. Accordingly, following the decision of the Supreme Court in the case of **S.N. Narula (Supra)** and keeping in view the fact that now the advice of the UPSC has been given to the applicant, we allow the present OA by passing the following order:

a) The impugned order is quashed.

b) The opinion of the UPSC has since been communicated. On basis of the same, the applicant may make a fresh representation to the disciplinary authority within three weeks and the disciplinary authority thereafter would pass an appropriate speaking order in

accordance with law considering the totality of the facts and circumstances.

(S.A.Singh)
Member (A)

(V.S. Aggarwal)
Chairman

/NSN/