

(2013) 05 DEL CK 0254

Delhi High Court

Case No: Writ Petition (C) 3748 of 2013

Sushil Kumar Singhal

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision: May 30, 2013

Acts Referred:

- Constitution of India, 1950 - Article 320(3)(c)

Hon'ble Judges: Gita Mittal, J; Deepa Sharma, J

Bench: Division Bench

Advocate: Jyoti Singh, Ms. Saahila Lamba and Ms. Tinu Bajwa, for the Appellant; Saqib, for the Respondent

Final Decision: Disposed Off

Judgement

Gita Mittal, J.

The short point that arises for consideration in the instant case is whether the imposition of punishment upon the petitioner by the disciplinary authority vide its order dated 4th October, 2010 can be sustained in the light of the admitted position that the advice of the UPSC which was obtained and relied upon by the disciplinary authority was given to the petitioner only with order dated 9th December, 2009 accepting the recommendations of the inquiry officer and imposing the penalty. The disciplinary proceedings were held against the petitioner on three charges and by an inquiry report dated 19th March, 2008, the inquiry officer found the petitioner guilty on all three accounts and recommended imposition of major penalty upon him. It appears that the respondents sought and obtained advice from the UPSC by its communication dated 1st December, 2009. This advice was not served upon the petitioner though he was given an opportunity to represent against the recommendation of the inquiry officer.

2. By the order dated 9th December, 2009, the disciplinary authority aggrieved with the findings of the inquiry officer so far as the petitioner's culpability qua the three

charges was concerned. The disciplinary authority has noted receipt of advice from the UPSC and which was accepted by it on the following terms:-

9. AND WHEREAS the Union Public Service Commission vide their letter No. F. 3/302/2008-SI dated 01 December, 2009 (Copy enclosed) have advised that the ends of justice would be met in this case if the penalty of "Compulsory Retirement" is imposed on Shri SK Singhal, AEE (Civil) (Now EE (Civil) (GO-2300A).

10. AND WHEREAS, the Disciplinary Authority, after careful consideration of the charges framed against Shri SK Singhal, AEE (Civil) (Now EE (Civil) (GO-2300A), the analysis and findings made by the Inquiry Officer, the representation dated 23rd May, 2008 made by Shri SK Singhal, AEE (Civil) (Now EE (Civil) (GO-2300A), advice of UPSC and other documents including prosecution and defence documents of the case, has come to the conclusion that Article I and II of the charges framed against him is conclusively proved and Article III is partially proved since as per charter of duties, Shri SK Singhal, AEE (Civil) (Now EE (Civil) (GO-2300A), the CO, being the Engineer-in-Charge of the Contract Agreement in the Article of Charge, failed to supervise the duties assigned to him which has resulted in loss to the exchequer to the Government as also compromised with the quality and quantity of the works. The CO, as a Government servant having responsibilities to perform duties of such a constructive and strategic importance, is supposed to safeguard the interests of the public and contributes a lot to the development of the Country. On the contrary, the CO displayed his indifferent attitude towards his assigned duties which amounts to misconduct under Rule 3(1)(i) and (ii) of the CCS (Conduct) Rules, 1964.

11. NOW THEREFORE, in exercise of the powers conferred by Rule 15(4) of Central Civil Service (Classification Control and Appeal) Rules, 1965, and in consultation with the Union Public Service Commission, the President hereby imposes the penalty of "compulsory retirement from service" on Shri SK Singhal, AEE (Civil) (Now EE (Civil) (GO-2300A) with immediate effect. The order regarding quantum of compulsory Retirement pension and gratuity payable to Shri SK Singhal, AEE (Civil) (Now EE (Civil) (GO-2300A) will be issued separately.

3. The above extraction would show that the disciplinary authority imposed the penalty of compulsory retirement upon the petitioner based on the advice dated 1st December, 2009 received by it.

4. It is noteworthy that while imposing the charge of compulsory retirement from service vide order dated 9th December, 2009, the disciplinary authority had directed that an order regarding the quantum of compulsory retirement pension and gratuity payable to the petitioner would be issued separately.

5. On this aspect of the matter, the disciplinary authority again sought advice from the UPSC which was tendered vide its letter dated 13th January, 2010. The advice of the UPSC on this issue was in the following terms:-

3. In this regard, it would be pertinent to say that Commission had advised the Ministry to impose a penalty of compulsory retirement on the CO vide its letter of even No. dated 01.12.09. No advice regarding quantum of cut in pension or gratuity had been made by the Commission. Hence, the CO may be granted full compensation pension and gratuity admissible to him on the date of his compulsory retirement, under Rule 40(i) of the CCS (Pension) Rules, 1972.

6. The disciplinary authority disagreed with the advice given by the UPSC and on the 4th of October, 2010, passed the following order:-

In continuation of Border Roads Development Board, order No. BRDB/02(174)/2005-GE. II dated 09th December, 2009 I am directed to say that the matter has been considered carefully by the Department of Personnel and Training keeping in view all the facts and circumstances of the case and advice of the UPSC and the Competent Authority has noted the view of the Disciplinary Authority that apart from causing huge loss to the exchequer, the acts of the CO tarnished that image of the Department. Poor quality of work led to failure of roads, causing great inconvenience and hardship to the public of that area which also invited adverse criticism from various quarters. Considering the magnitude of negligence/misconduct on the part of the Charged Officer proved in the inquiry proceedings, the Competent Authority has agreed with the Disciplinary Authority's proposal to award compensation pension and gratuity to Shri SK Singhal at the rate of 2/3rd of the full amount under Rule 40 of the CCS (Pension) Rules, in disagreement with the advice of the Commission to grant the CO full compensation pension/gratuity.

2. Now, therefore, the President hereby award compensation pension and gratuity to Shri SK Singhal EE (Civil) (Retired) (Ex. GO No. 2300A) at the rate of 2/3rd of the full amount under Rule 40 of the CCS (Pension) Rules, 1972.

3. A copy of the advice given by the UPSC along with the reasons for non acceptance of advice of UPSC by the disciplinary authority with regard to imposition of the penalty for grant of compensation pension and gratuity to Shri SK Singhal, EE (Civil) (Retired) at the rate of 2/3rd of the full amount under Rule 40 of the CCS (Pension) Rules, 1972 are enclosed as Annexure "A" and "B" respectively.

7. Perusal of the record shows that this advice of the UPSC was not forwarded to the petitioner who was deprived of an opportunity to rely upon the same.

8. Ms. Jyoti Singh, learned Senior counsel for the petitioner contends that even though the order dated 4th October, 2010 in para 3 records that a copy of the advice given by the UPSC along with the reasons for non acceptance by the disciplinary authority was annexed with this communication, however, no copy was annexed or ever served upon the petitioner. The petitioner was thus compelled to make an application dated 7th December, 2010 under the Right to Information Act seeking a copy of this communication of the above advice. The said communication was made

available only under the covering letter dated 4th January, 2011.

9. Learned Senior counsel for the petitioner has also drawn our attention to the principles laid down by the Supreme Court in Union of India (UOI) and Others Vs. S.K. Kapoor, which the court ruled as follows:-

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 v. Union of India and Ors. Civil Appeal No. 642 of 2004 decided on 30th January, 2004

10. In the instant case, the respondents have admittedly relied upon the UPSC advice tendered vide their letter dated 1st December, 2009, while passing the order dated 9th December, 2009. Therefore, in the light of the principles laid down by the Supreme Court in Union of India and Others vs. S.K. Kapoor (Supra), respondent no. 3 is bound to make available the copy to the petitioner. So far as advice dated 13th January, 2010 is concerned, it is found, strictly speaking, the respondents have urged that the advice was not relied upon and in fact the disciplinary authority disagreed with the same, it was in the interests of justice that a copy of the same be furnished to the petitioner, specially when the petitioner states that he could have relied upon the same to make submissions in the matter on the issue of compensation pension and gratuity. In the instant writ petition, the petitioner does not assail the order dated 9th December, 2008 and has assailed only the order dated 4th October, 2010 passed by the respondents to the extent it awards compensation, pension and gratuity to the petitioner at the rate of 2/3rd of the full amount. The petitioner has received copies of the advice rendered by the UPSC.

In view of the above discussion, we direct as follows:-

(i) the order dated 4th October, 2010 is hereby set aside and quashed.

(ii) the petitioner shall be reinstated to service for the purposes of completing the disciplinary proceedings without any back wages and other service benefits. His entitlements, if any, would be adjudicated by the authorities depending upon the

result of the disciplinary proceedings.

(iii) So far as the disciplinary proceedings against the petitioner are concerned, the matter shall proceed from the stage of service of the UPSC's advise on the petitioner.

(iv) Inasmuch as the petitioner has been served a copy of the advice of the UPSC under cover of the letter dated 4th January, 2011, therefore, no further copy thereof is required to be furnished to the petitioner.

(v) The petitioner shall make a representation, if any on the issue of compensation pension and gratuity, to the disciplinary authority with regard to the UPSC advise dated 13th October, 2010 within a period of six weeks from today.

(vi) It shall be open to the disciplinary authority to proceed in the matter and take a fresh view on the aforesaid issue. The order of the disciplinary authority shall be communicated to the petitioner who shall be free to proceed in the matter in accordance with law.

(vii) We make it clear that we have not expressed any opinion on the merits of the case.

This writ petition is disposed of in the above terms.