

(2013) 07 DEL CK 0377

Delhi High Court

Case No: Writ Petition (C) No. 7288 of 2012 and CM No. 6053 of 2013

C.P. Gupta

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision: July 12, 2013

Citation: (2013) 202 DLT 108 : (2013) 4 ILR Delhi 2859 : (2014) 1 SLJ 326

Hon'ble Judges: J.R. Midha, J; Gita Mittal, J

Bench: Division Bench

Advocate: Jyoti Singh and Ms. Tina Bajwa, for the Appellant; Sachin Dutta, for the Respondent

Judgement

Gita Mittal, J.

By way of the present writ petition, the petitioner has assailed the disciplinary proceedings conducted against him pursuant to a memorandum of charges issued on 7th December, 2005; the findings of the inquiry officer dated 29th January, 2009; the order dated 26th August, 2010 issued by the disciplinary authority accepting the recommendations and findings of the inquiry officer and imposing the punishment of dismissal of service which shall ordinarily be a disqualification for future Government employment. It is contended by the petitioner that the order of penalty upon the petitioner is not sustainable for the reason that as per the impugned order dated 26th August, 2010, the disciplinary authority had sought the advise of the Union Public Service Commission (UPSC) which recommended the imposition of the penalty of "Dismissal from Service" upon the petitioner. It is urged that the advise of the UPSC was served upon the petitioner along with the order dated 26th August, 2010 passed by the disciplinary authority which accepted and acted upon the advise of the commission. Reliance is placed on the judicial pronouncements of the Supreme Court reported at [Union of India \(UOI\) and Others Vs. S.K. Kapoor](#), & [S.N. Narula Vs. Union of India \(UOI\) and Others](#), . and two pronouncements of this court being the decision dated 13th January, 2012 in WP (C) No. 265/2012 Union of India Vs. Yogita Swaroop & Anr. and the decision dated 24th January, 2012 in WP (C) No.

2. It is urged that in the light of these precedents, the petitioner was legally entitled to a copy of the advice of the UPSC and was required to be given an opportunity to make a representation against the advise and to submit his point of view. The submission is that such representation of the petitioner was required to be considered by the disciplinary authority before accepting the recommendations of the inquiry officer and imposing the punishment upon him.

3. So far as the legal position is concerned, the same is crystalised by the observations of the Supreme Court in the judgment in Union of India & Ors. Vs. S.K. Kapoor (supra) wherein in paras 5 & 8, the Supreme Court has reiterated the settled position thus:-

5. It is 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.

xxx xxx xxx

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 v. Union of India.

The other judicial pronouncements placed before us reiterate or rely upon the above legal position.

4. It is, therefore, well settled that in case a disciplinary authority was to seek the advice of the UPSC and rely upon the same, it is incumbent upon it to make available a copy thereof to the delinquent employee and afford an opportunity for representation against the same.

5. Our attention is drawn to Page 304 of writ petition which is the penalty order. Para 7 shows that UPSC advice was enclosed with penalty order. Para 8 of the order dated 26th August, 2010 shows that the Disciplinary Authority before imposing the penalty considered the representation of the petitioner dated 8th June, 2009 and relied upon the advice of the UPSC and held that the charges against him are conclusively proved. The same has admittedly not been done in the instant case rendering the order dated 26th August, 2010 contrary to law.

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

(i) The order dated 26th August, 2010 is hereby set aside and quashed.

(ii) The petitioner shall be reinstated into 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) In as much as the petitioner has been served a copy of the advise of the UPSC along with the order dated 26th August, 2010, therefore, no further copy thereof is required to be furnished to the petitioner.

(v) The petitioner shall make a representation, if any, to the disciplinary authority with regard to the UPSC advise 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 thereon. 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.

C.M. No. 6053/2013

In view of the orders passed in the writ petition, these applications do not survive for adjudication and are accordingly dismissed.