

U.O.I Vs. N.Mohammad

U.O.I Vs. N.Mohammad

SooperKanoon Citation : sooperkanoon.com/50384

Court : Delhi

Decided On : Apr-15-2015

Judge : Kailash Gambhir

Appellant : U.O.I

Respondent : N.Mohammad

Advocate for Def. : Mr. Raghavan

Judgement :

\$~3 * + IN THE HIGH COURT OF DELHI AT NEW DELHI Date of hearing and Order :

15. h April 2015. W.P.(C) 7341/2007 U.O.I Through: Petitioner Ms.Saroj Bidawat, Advocate versus N.MOHAMMAD Through: Respondent Mr. Sanjay Poddar, Senior Advocate with Ms. Saahila Lamba, Mr. Govind Kumar, Ms. Pavni Poddar, Advocates

ORDER

1504.2015 % KAILASH GAMBHIR, J.

(ORAL) This matter is listed today, as 14th April 2015 was declared as holiday. W.P. (C) No.7341/2015 and C.M. Appl. No.3618/2015 (disposal of petition) 1. By this application (C.M. Appl. No.3618/2015) filed under Section 151 of the CPC, the respondent seeks disposal of the present writ petition in the light of the recent

decision of the Honble Supreme Court in Union of India vs. R.P. Singh (2014) 7 SCC340 Mr. Sanjay Poddar, Senior Advocate appearing on behalf of the respondent submits that earlier there was a conflict of two decisions of the Honble Supreme Court in the cases of Union of India vs. T.V. Patel, (2007) 4 SCC785 and Union of India vs. S.K. Kapoor (2011) 4 SCC589 on the issue of supply of copy of advice of UPSC and recently, the Honble Supreme Court in R.P. Singh (supra) has resolved the conflict between the aforesaid two judgments and taken a view that the law laid down by Honble Supreme Court in S.K. Kapoors case (supra) that the advice of UPSC is required to be supplied to the delinquent officer, in advance i.e. before imposing a penalty upon him in a case where the advice of UPSC is relied upon by the department to initiate disciplinary action. Counsel thus submits that in view of the clear pronouncement of the Honble Supreme Court in the case of R.P. Singh (supra), the penalty order dated 31.08.2005 passed by the disciplinary authority is liable to be quashed.

2. On the last date, Ms. Mansi Gupta, Advocate appearing for Ms. Saroj Bidawat, Advocate took time to take instructions in the matter. Today, Ms. Saroj Bidawat, Advocate for petitioner seeks more time to take instructions in the matter. The learned counsel for the petitioner has however not disputed the legal position as has been canvassed by the respondent in his application.

3. We have heard the submissions made by the learned counsel for the petitioner and the learned counsel for the respondents and have gone through the judgment of the Honble Supreme Court relied upon by the respondent in his application.

4. By the impugned order dated 13.02.2007, the Original Application preferred by the respondent challenging the penalty order dated 31.08.2005 was allowed by the learned Tribunal and the order of penalty was set aside. Feeling aggrieved by the order of the learned Tribunal, the petitioner - Union of India has preferred the present writ petition.

5. One of the main issues raised by the respondent before the learned Tribunal was that it was the UPSCs advice which weighed in the mind of the disciplinary authority to impose a punishment upon him and the copy of the said advice was not made available to the respondent.

6. Indisputably, the advice of the UPSC was tendered to the respondent alongwith the final order and as per the respondent, this led to denial of reasonable opportunity to him to assail or challenge the said advice given by the UPSC. It is also an indisputable fact that the UPSCs advice was taken into consideration by the Disciplinary Authority before imposing the penalty order of compulsory retirement. The relevant para of the order dated 13.02.2007 are reproduced as under:

44. In the light of above, it is trite that when disciplinary authority records a finding, it has to agree with the inquiry officer. This recording of reasons is dispensed with. However, when the finding of the inquiry officer is non-reasoned or where the defence has not been considered and this finding has not been directly put to the concerned employee, UPSCs advice is an additional evidence, which weighs in the minds of the disciplinary authority to impose a punishment upon the government servant holding Group A post. In such view of the matter, the decision of the Apex Court in Union of India v. Charanjit Singh Khurana (SLP-9816/2002) clearly ruled that when there is a disagreement between the disciplinary authority and the USPC or vice versa, the advice of UPSC has to be tendered by the disciplinary authority before imposition of punishment. In the present case, though the disciplinary authority has given benefit of doubt to the applicant on article 2 of the charge, yet the UPSC has taken a different view and on disagreement establishing the charge, recommended a penalty of compulsory retirement. As the advice of the UPSC has not been admittedly tendered to the applicant along with the final order, there has been a deprivation to the applicant of reasonable opportunity, as this additional material of disagreement by the UPSC has weighed in the minds of the disciplinary authority to impose upon the applicant penalty of compulsory retirement. As it is difficult to segregate from the composite charge as to which charge has been culminated into its gravity to entail extreme punishment, the applicant has certainly been prejudiced in the matter of defence, which vitiates the impugned order. Decision cited by the applicant in S.N. Narulas case (supra) has also reiterated the aforesaid view and being binding on us is accordingly followed.

45. Disciplinary authority when confronted with a representation of the concerned employee to the inquiry report, which constituted additional material, Rule 15 of 1965 Rules provides an order to be passed by the disciplinary authority on imposition of the punishment and as the Government of India's instructions issued from time to time, supplements the rule as per DOPT's OM of 13.7.1981 and 5.11.1985 while passing a final order, the disciplinary authority has to record reasons on the basis of the decision of the Apex Court referred to above. As being part of principles of natural justice and in compliance of accord of reasonable opportunity, reasons are essence and relevant as for want of reasons the appellate authority would be prejudiced in evaluating the correctness of the order and also it entails miscarriage of justice when the orders are challenged in the Courts. For want of reasons, the bent of mind and the decision making process of the disciplinary authority would not be known and it would not facilitate into proper adjudication of the controversy. The Apex Court in Director (Marketing) Indian Oil Corporation Limited & another v. Santosh Kumar, 2006 (6) SCALE 358 ruled that disciplinary and appellate authorities should record reasons in support of the order, as reasons show application of mind. Reasons are recorded in the course of decision making process when after evaluating the conclusion arrived at by the inquiry officer and the defence contentions raised by the delinquent and on weighing and balancing the contentions, the reasons would have to certainly indicate as an implication of mind at least a discussion, mention and adjudication of the important points raised.

46. From the perusal of the order passed by the President, what we find is that the factual matrix upto the advice of the UPSC has been incorporated and in the penultimate paragraph, consolidating all the allegations against the applicant, the charge has been established with entailment of penalty of compulsory retirement. We do not find in the order any agreement either to inquiry officers report or to the UPSC's advice when the only condition precedent for dispensing with the reasons in the disciplinary authority's order is an agreement to the inquiry officers report or the UPSC's advice. Without any agreement in its literal sense shown in the order, we do not find any valid compliance made by the respondents. Accordingly, we have no hesitation to hold that having not dealt with the contentions of the applicant, order passed by the President is without application of mind and is a

bald one without recording reasons, which cannot be sustained in law. Accordingly, the inquiry as well as the consequent orders are vitiated on the grounds that extraneous material has been considered and the applicant has been deprived of a reasonable opportunity, as the respondents have withheld certain important piece of material from him. PW1 in his testimony has sought time to consult and to file report from discussion after discussion with revenue and land authorities. The aforesaid report in 2003 when filed has not been put for rebuttal to the applicant. As he has been deprived of a reasonable opportunity to cross examine this witness, who was called later on in the inquiry and non-rebuttal of the material taken on his back, is certainly a deprivation of reasonable opportunity and prejudice has been caused, as this piece of material has been relied upon to proof the charge against the applicant.

7. In the said case of R.P. Singh (supra), as cited by the respondent the Apex Court has taken a view that the advice of the UPSC when utilised as a material against the delinquent officer, the same should be supplied in advance. Rule 32 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 as has been referred by the Apex Court in the judgment is reproduced hereunder:

Learned Counsel for the Appellants has placed reliance on Rule 32 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (for brevity "the CCS Rules"). The said Rule reads as under:

32. Supply of copy of Commission's advice. Whenever the Commission is consulted as provided in these rules, a copy of the advice by the Commission and where such advice has not been accepted, also a brief statement of the reasons for such non-acceptance, shall be furnished to the Government servant concerned along with a copy of the order passed in the case, by the authority making the order. Relying upon the aforesaid Rule, it is contended that when the only prescription in the Rule is that a copy of the advice is to be furnished at the time of making of the order, it is not obligatory in law to supply it prior to imposition of punishment requiring a representation or providing an opportunity of hearing to the delinquent officer. 9, In support of the said submission, our attention has been drawn to the decision in Union of India and Anr. v. T.V. Patel (2007) 4

SCC785 wherein a two Judge Bench, appreciating the Rule position, has held as follows: Rule 32 of the Rules deals with the supply of a copy of Commission's advice. Rules as read as it is mandatory in character. Rule contemplates that whenever a Commission is consulted, as provided under the Rules, a copy of the advice of the Commission and where such advice has not been accepted, also a brief statement of the reasons for such non-acceptance shall be furnished to the Government servant along with a copy of the order passed in the case, by the authority making the order. Reading of the Rule would show that it contemplates two situations; if a copy of advice is tendered by the Commission, the same shall be furnished to the government servant along with a copy of the order passed in the case by the authority making the order. The second situation is that if a copy of the advice tendered by the Commission has not been accepted, a copy of which along with a brief statement of the reasons for such non-acceptance shall also be furnished to the government servant along with a copy of the order passed in the case, by the authority making the order. In our view, the language employed in Rule 32, namely "along with a copy of the order passed in the case, by the authority making the order" would mean the final order passed by the authority imposing penalty on the delinquent government servant. Be it noted, in the said case, interpretation placed by this Court Under Article 320(3)(c) of the Constitution in *State of U.P. v. Manbodhan Lal Srivastava* AIR 1957 SC912 has been placed reliance upon and, in that context, it has been opined thus: In view of the law settled by the Constitution Bench of this Court in the case of *Srivastava (supra)* we hold that the provisions of Article 320(3)(c) of the Constitution of India are not mandatory and they do not confer any rights on the public servant so that the absence of consultation or any irregularity in consultation process or furnishing a copy of the advice tendered by the UPSC, if any, does not afford the delinquent government servant a cause of action in a court of law. It is also necessary to mention here that the learned Judges distinguished the pronouncements in *D.C. Aggarwal and Anr. (supra)* and *MD, ECIL v. B. Karunakar* (1993) 4 SCC727

8. In the operative para of the aforesaid judgment, the Apex Court also took a view that they are in respectful agreement of the earlier decision rendered in *S.K. Kapoor's case (Supra)*. The relevant portion of the said judgment is reproduced as under:

We have been apprised by Mr. Raghavan, learned Counsel for the Respondent, that after the decision in S.K. Kapoor's case, the Government of India, Ministry of Personnel, PG & Pensions, Department of Personnel & Training vide Office Memorandum dated 06.01.2014 has issued the following directions:

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. After the said Office Memorandum, a further Office Memorandum has been issued on 05.03.2014, which pertains to supply of copy of UPSC advice to the Charged Officer. We think it appropriate to reproduce the same: The undersigned is directed to refer to this Department's O.M. of even number dated 06.01.2014 and to say that it has been decided, in partial modification of the above O.M. that a copy of the inquiry report may be given to the Government servant as provided in Rule 15(2) of Central Secretariat Services (Classification, Control and Appeal) Rules, 1965. The inquiry report together with the representation, if any, of the Government servant may be forwarded to the Commission for advice. On receipt of the Commission's advice, a copy of the advice may be provided to the Government servant who may be allowed to submit his representation, if any, on the Commission's advice within fifteen days. The Disciplinary Authority will consider the inquiry report, advice of the Commission and the representation(s) of the Government servant before arriving at a final decision. In our considered opinion, both the Office Memoranda are not only in consonance with the S.K. Kapoor's case but also in accordance with the principles of natural justice which has been stated in B. Karunakar's case.

9. In the light of the aforesaid authoritative pronouncement of the Apex Court in Union of India vs. R.P. Singh (supra), and considering the facts of the present case that the respondent was not provided with copy of the UPSCs report, which was taken into consideration by the disciplinary authority and the same was only supplied to him at the time of final penalty order, therefore the ratio of the said decision squarely applies to the facts of the present case. Accordingly, we find no infirmities or perversity in the impugned order dated 13.02.2007 passed by the learned Tribunal, therefore the same is upheld and the present petition filed by the petitioner is dismissed being devoid of any merit.

10. We have been informed that the respondent already stands superannuated in June 2008. Resultantly, the respondent will be entitled to all the pensionary and other consequential benefits. Accordingly, the petitioner is directed to release all the pensionary and other consequential benefits to the respondent that are admissible to him as per law, within a period of three months from the date of this order.

11. With aforesaid directions, the present petition stands disposed of. KAILASH GAMBHIR, J I.S. MEHTA, J APRIL15 2015 pkb

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com