

Reportable
* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ WP (C) No. 9468 of 2007

% *Reserved on : May 16, 2008*
Pronounced on : July 04, 2008

Union of India . . . Petitioner

through : Mr. R.V. Sinha with
Mr. A.S. Singh, Advocates

VERSUS

L.K. Puri & Anr. . . Respondents

through : Mr. Vivek Chib, Advocate
for the respondent No.1.
Ms. Jyoti Singh, Advocate
for the respondent No.2.

CORAM :-

THE HON'BLE MR. JUSTICE A.K. SIKRI
THE HON'BLE MR. JUSTICE J.R. MIDHA

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J.

1. Union of India is not satisfied with the outcome of the OA filed by the respondent No.1, Mr. L.K. Puri, before the Central Administrative Tribunal inasmuch as the said OA of the respondent No.1 has been allowed by the Tribunal vide its impugned judgment dated 24.1.2007 and the decision of the Government imposing the penalty of reduction of pay by two stages vide orders dated 24.6.2005 has been set aside. The petitioner maintains that such a decision was

properly taken without any infirmity therein and the Tribunal should not have set aside the same.

2. A brief factual matrix transpires that the respondent No.1 was served with charge memo dated 29.11.2002 under Rule 14 of the CCS (CCA) Rules, 1965 levelling the charge relating to handling the matter of procurement of 1000 computers for MPCM project for the year 2000-01 in his capacity as Deputy Director General (Tech.) and Sr. Deputy Director General (CPT). It was alleged that he failed to maintain absolute integrity and acted against public interest, causing undue favour to M/s. Compaq Computers, inasmuch as after finalization of the Notice Inviting Tender, he effected changes in it in the specifications to suit the requirement of M/s. Compaq Computers and his initiation of proposal dated 15.3.2001 led to a decision on 16.3.2001, whereby without proper examination of various options in terms of cost effectiveness etc. it had been proposed to purchase computers instead of taking those computers on lease, from which act M/s. Compaq Computers benefited unjustifiably.
3. The Inquiry Officer, after holding the inquiry, returned his findings establishing Articles (i) and (iv) of the charges as proved and holding that Article of charge No. (ii) was not proved and Article (iii) was partly proved. The findings of the Inquiry Officer were referred to the Central Vigilance Commission (for short, 'CVC') for their second stage advice. CVC vide its ID Note dated 4.2.2004 advised imposition of suitable major penalty on the respondent No.1. The

said Inquiry Report, along with CVC's second stage advice, was supplied to the respondent No.1 for making representation, if any. The respondent No.1 wrote back letter dated 8.3.2004 seeking extension of time by 15 days to submit the reply. He also demanded copy of the views of the department conveyed to CVC while seeking second stage advice. Though the respondent No.1 was allowed further time, the department refused to supply copy of its comments sent to CVC on the ground that there was no provision in the Rules for this purpose. The respondent No.1 accordingly submitted his representation. Thereafter, order dated 24.6.2005 was passed by the President of India imposing the penalty of reduction in pay by two stages, i.e. from Rs.24,500/- to Rs.23,450/- in the time scale of pay of Rs.22400-525-24500 with immediate effect with further direction that he would not earn any increment in his pay till his retirement which was due on 31.10.2005.

4. Challenging that order, the respondent filed the aforesaid OA. Primary ground to challenge the order was that there was negation of principles of natural justice in not supplying the copy of views sent by the department to CVC. This contention has been accepted by the Tribunal and the entire discussion in this aspect is contained in para 9 of the impugned judgment, which reads as under :-

“9. On careful consideration of the rival contentions of the parties and on perusal of the material on record, we are of the considered view that the CVC has issued OM dated 28.9.2000 in the light of the decision of the Apex Court in *State Bank of India v. D.C. Aggarwal*, AIR 1993 SC 497, wherein the Apex Court ruled that copy of the CVC's recommendation which has been prepared behind the back of the concerned employee

and its non-supply would deprive one an opportunity to confront the material. Accordingly, it is mandated to serve, before imposition of punishment, a copy of the CVC's recommendation. In the aforesaid OM, which has complied with in true letter and spirit the dicta of the Apex Court in paragraph-5 and under paragraph 12.4.4 of special chapter on Vigilance Management, it is made clear that the DA, on examination of the enquiry report, shall communicate its views to the Commission, which, in turn, shall be followed by the advice of the Commission. The above advice along with its views of the DA may be made available to the concerned employee and on receiving the representation a penalty may be imposed. Accordingly, we have no hesitation to hold that the guidelines of CVC have been issued in compliance of the decision of the Apex Court and as there is no provision under the CCS (CCA) Rules for supply of the report of CVC, the aforesaid instructions, being supplementary to the Rules, are binding on the respondents. When applicant has asked for the views of the department conveyed to the CVC to effectively defend the tentative view of the DA the respondents having turned down such a request on the ground that there is no provision in the Rules despite existence of OM of CVC dated 28.9.2000 makes it clear that acting as a quasi-judicial authority the discretion vested in them has been exercised without any judicious object, which cannot be countenanced, in the light of the decision of the Apex Court in *Union of India v. Kuldeep Singh*, 2004 (2) SCC 590. Though rules do not provide but the mandatory instructions provide for views of the Department conveyed to the CVC to be served upon the charged officer, which would, in turn, facilitate an effective representation to the tentative views, as these tentative views would be further presented before the UPSC for their advice and in turn on their advice in the present case President has imposed a major penalty. Had these views been made available, applicant would have been in a better position to effectively defend and present his point of view, which could have been, in turn, considered by the UPSC while sending its recommendations. As the advice of the UPSC has been agreed upon by the DA, applicant has been deprived of a reasonable opportunity to effectively put forth his defence, which has indeed prejudiced him in the manner of defence in the disciplinary proceedings, which is an infraction to the principles of natural justice and inter alia of the cardinal principle of *audi alteram partem*.”

5. It is clear from the above that referring to the judgment of the Supreme Court in *D.C. Aggarwal* (supra), the Tribunal opined that it was necessary to supply copy of CVC advice as non-supply thereof would deprive the delinquent officer an opportunity to confront the

material. Taking clue therefrom, the Tribunal went further in opining that when such delinquent officer asks for the views of the department conveyed to the CVC to effectively defend the tentative view of the DA, the same should be supplied as it would facilitate the effective representation of the tentative views. The Tribunal also referred to the judgment of the Supreme Court in *Kuldeep Singh* (supra).

6. We may note that the case of *D.C. Aggarwal* (supra) regarding supply of CVC advice came up for consideration before the Supreme Court in a recent judgment in the case of *Union of India & Anr. v. T.V. Patel*, (2007) 4 SCC 785. According to the petitioner, in view of the legal position explained in *T.V. Patel* (supra), there is no longer any requirement to supply a copy of the CVC advice. On the other hand, plea of learned counsel for the respondent No.1 was that *T.V. Patel* (supra) does not water down the principle laid down in *D.C. Aggarwal* (supra). However, it is not even necessary to go into this issue in detail in the present case inasmuch as it is not in dispute that the respondent No.1 was supplied the copy of CVC advice. However, reference to the aforesaid two judgments would be made in the context of the issue raised, namely, whether there is any further requirement on the part of the department to supply the copy of its comments also which it sent to the CVC. Before we come to this core issue, we deal with the question as to whether *T.V. Patel* (supra) departs from *D.C. Aggarwal* (supra).

7. The opening sentence of *D.C. Aggarwal* (ibid) sets out the issue involved therein, which reads – “*Can Disciplinary Authority while imposing punishment, major or minor, act on material which is neither supplied nor shown to the delinquent is the only issue, of substance, which arises for consideration in this appeal....*”. In that case, in the charge sheet served upon the respondent, 13 charges were framed. The Inquiry Officer found charges I(i) and II(i) only as proved and remaining charges were not found to have been proved. The Inquiry Officer recommended that the respondent be exonerated as the charges found to be proved were minor and of procedural nature. The appellant, instead of acting on these recommendations, directed the Inquiry Officer to submit the report through CVC. CVC examined the report and recorded its own findings on each of the charges and sent its recommendations, running into nearly 50 pages, to the Bank. CVC not only disagreed with the Inquiry Officer and found that charges I, II, III, IV, VIII, XI to XIII had been proved, it also advised imposition of major penalty not less than removal from service. After the disciplinary authority received the Inquiry Report and recommendations of the CVC, it passed an elaborate order recording finding against the respondent and coincidentally agreeing on each charge which CVC had found against him, but disagreed on the quantum of punishment. The respondent filed writ petition in the High Court, which was allowed and punishment order quashed on the ground that it was in violation of the principles of *audi*

alteram partem, inasmuch as the report of the CVC had not been supplied to the respondent and, therefore, it could not furnish any basis for the order passed by the disciplinary authority. Punishment was also found to be disproportionate. The Division Bench dismissed the appeal filed by the Bank summarily against which appeal was preferred by the Bank before the Supreme Court.

8. Before the Supreme Court, the argument of the Bank was that disciplinary authority had applied its own mind while recording its finding on each charge and did not pass the order mechanically on the basis of CVC's recommendation, which was clear from the fact that he disagreed with the CVC's recommendation on punishment. It was also argued that, in any case, the disciplinary authority having passed detailed order discussing every material on record and the respondent having filed appeal thereagainst, there was no prejudice caused to him. The Supreme Court did not accept this submission observing that order of the disciplinary authority was not vitiated because of mechanical exercise of power or non-supply of inquiry report, but for relying and acting on material which was not only irrelevant, but could not have been looked into. In the opinion of the Supreme Court, non-supply of CVC recommendation, which was prepared behind the back of the respondent without his participation and was examined and relied upon by the disciplinary authority, would be contrary to fair and just inquiry. The Court also did not accept the plea that correspondence with CVC was a privileged

communication. It would be apt to quote the following observations of the Apex Court in this behalf :-

“5.....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.”

9. In *T.V. Patel* (ibid), on the charge that the respondent was found to have been involved in providing telephone connection in contravention of the P&T Manual thereby causing huge avoidable financial loss to the department. Article of Charges was framed against him. The Inquiry Officer held that the charges were not proved. The disciplinary authority disagreed with the said report and issued a notice to the respondent therein providing its reasons for disagreement and calling upon him to make representation, if any. He made the representation, which was rejected. Thereafter, the disciplinary authority sought the advice of the UPSC and after consideration of the said advice imposed a penalty. A copy of the advice tendered by the UPSC was sent to the respondent along with the copy of final order imposing penalty. The respondent challenged the order before the Tribunal. The Tribunal quashed the penalty order on the ground that UPSC advice was not made available to the respondent before passing the order and was sent along with the penalty order. The High Court also affirmed the order of the Tribunal. Union of India preferred appeal before the Supreme Court.

The Supreme Court allowed the appeal. It was held that where the disciplinary authority sought advice of the UPSC before imposition of penalty on the delinquent, it was not necessary for the disciplinary authority to make available a copy of the advice tendered by the UPSC to the charge sheeted officer so as to enable him to make an effective representation to the punishment proposed. In this behalf, provisions of Article 320(3)(c) of the Constitution of India were referred to hold that they are not mandatory and do not confer any right on the public servant. Thus, the absence of consultation or any irregularity in the consultation process or in 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.

10. The Apex Court also noted the provisions of Rule 32 of the CCS (CCA) Rules which deals with the supply of copy of Commission's advice. The Supreme Court opined that this was mandatory in character and it only stipulated that UPSC advice was to be sent *"along with a copy of the order passed in the case, by the authority making the order"*, which would mean that it was not necessary to supply copy of such advice before hand. The interpretation furnished by the Supreme Court *qua* Rule 32 is germane. For our purpose, relevant portion containing discussion on this aspect may be reproduced below :-

"17. As already noticed, Rule 32 of the Rules deals with the supply of a copy of Commission's advice. Rule read as it is, is mandatory in character. The 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.”

The respondent had advanced argument, based on *D.C. Aggarwal* (supra), that non-supply of copy of the advice tendered by the UPSC before the final order was passed deprived him of making an effective representation and, therefore, it vitiated the order. This argument and answer thereto can be found in para 23 of the judgment, which is to the following effect :-

“23. Counsel for the respondent contended that non-supply of a copy of the advice tendered by UPSC before the final order was passed deprived the delinquent officer of making an effective representation and therefore it vitiates the order. To support his contention he referred to the decision of this Court rendered in *State Bank of India v. D.C. Aggarwal*, (1993) 1 SCC 13, where this Court held that the disciplinary authority, while imposing punishment, major or minor, cannot act on material which is neither supplied nor shown to the delinquent. Imposition of punishment on an employee, on material which is not only not supplied but not disclosed to him, cannot be countenanced. Procedural fairness is as much essence of right and liberty as the substantive law itself.”

11. It is clear from the above that the Supreme Court did not hold that *D.C. Aggarwal* (ibid) was wrongly decided and rather explained the said judgment by accepting the principle that imposition of

punishment on an employee on material which is not supplied or disclosed to him cannot be countenanced as procedural fairness demanded this. It is also clear that the principle laid down in *D.C. Aggarwal* (ibid) is neither overruled (nor could it be as the judgment in *T.V. Patel* (ibid) is also by a Two Judge Bench like that of *D.C. Aggarwal*) nor the principle laid down therein is watered down. At the same time, we find that this principle was inapplicable in the fact situation prevailing in *T.V. Patel* (ibid). Moreover, *T.V. Patel* (ibid) is decided on Rule 32 of the CCS (CCA) Rules and as per the interpretation given to that Rule, purpose would be served if the copy of the UPSC advice is given along with the penalty order, which means that it may not be necessary to furnish copy of such an advice before the penalty order is passed.

12. How to reconcile the dicta in the two judgments? When we consider the facts of the two cases minutely, we would be able to find the answer. In *D.C. Aggarwal* (supra), the Inquiry Officer had held that except two minor charges other charges had not been proved. Copy of that report was sent to CVC, which recorded its own detailed findings holding that most of the charges stood proved. The disciplinary authority applied its mind only after the Inquiry Report as well as the comments of the CVC were provided to it. It had, in these circumstances, relied upon those comments and recorded same findings as arrived at by the CVC *albeit* by its own detailed order. It was in these circumstances the Supreme Court held in *D.C. Aggarwal*

(supra) that when the disciplinary authority acted on and was influenced by the said material, namely, advice of CVC, in recording its findings, it should have supplied the copy of that advice to the delinquent official before arriving at its own conclusions to enable the delinquent official to get an opportunity to report against the CVC's advice. In that sense, non-supply of the said copy was treated as violation of principles of natural justice and lack of fair play.

In *T.V. Patel* (supra), on the other hand, after receiving the copy of the Inquiry Report, as per which charges were not proved, the disciplinary authority did not send it to UPSC. Instead, it applied its own mind and formed tentative opinion disagreeing with the said report. Thereafter, he sent copy of the report as well as its reasons for disagreement to the delinquent official eliciting his representation thereupon, if any. Thus, while recording its findings, though contrary to the findings of the Inquiry Officer, the disciplinary authority was not influenced by any report of UPSC as no such advice of UPSC was sought at that stage. By supplying the copy of Inquiry Report and note of disagreement before passing the punishment, the principles of natural justice were complied with in terms of the decision of the Supreme Court in *M.D., ECIL v. B. Karunakar*, (1993) 4 SCC 727. The UPSC advice was sought only on the imposition of penalty. It is this advice tendered by the UPSC which was not supplied to the concerned official before the imposition of penalty and the Court held that non-supply of such a

report would not violate principles of natural justice having regard to the provisions of Rule 32 of the CCS (CCA) Rules.

13. The principle of law, on the conjoint reading of the two judgments, as aforesaid, would be that in case there is such material, whether in the form of comments/findings/advice of UPSC/CVC or other material on which the disciplinary authority acts upon, it is necessary to supply the same to the charge sheeted officer before relying thereupon and imposing the punishment, major or minor, inasmuch as cardinal principle of law is that one cannot act on material which is neither supplied nor shown to the delinquent official. Otherwise, such advice of UPSC can be furnished to the Government servant along with the copy of penalty order as well as per Rule 32 of the CCS (CCA) Rules.
14. Coming back to the facts of this case, as already pointed out above, the CVC advice was furnished to the respondent herein. It is the comments sent to CVC which were not given. We are of the opinion that there is no requirement of furnishing such comments. These were only comments on the Inquiry Report which do not constitute as '*material*' in the sense described by *D.C. Aggarwal* (ibid). Principles of natural justice cannot be stretched to absurd limits. The tentative decision of the President of India on the Inquiry Officer's report had been conveyed to the respondent and, therefore, it was not a case where it can be said that any prejudice was caused to the

respondent. We may also find that the matter was referred to CVC for second stage advice regarding imposition of suitable major penalty and CVC's advice was on that aspect. The situation is, therefore, akin to *T.V. Patel* (ibid) and Rule 32 of the CCS (CCA) Rules would, therefore, be applicable in such a situation.

15. One more aspect of the matter remains to be dealt with, namely, OM dated 28.9.2000 of CVC. The Tribunal while referred to this OM has observed that the said OM makes it clear that copies of the views of the department conveyed to the CVC should be supplied. However, what is ignored is that as per the said OM advice is given to the statutory banks and it does not deal with the cases relating to Government servants. The OM refers to *D.C. Aggarwal* (ibid), which was the case of a bank and on that basis certain guidelines are provided. This OM, therefore, could not have been made basis of the decision in the instant case in view of specific provision contained in Rule 32 of the CCS (CCA) Rules. Moreover, such an OM would be only directory in nature and not mandatory {See – *The Chief Commercial Manager, South Central Railway, Secunderabad & Ors. v. G. Ratnam & Ors.*, JT 2007 (10) SC 378}. As aforesaid, OM is based on *D.C. Aggarwal* (ibid), whereas we find that the present case is covered by the principle laid down in *T.V. Patel* (ibid).

16. In view of our aforesaid discussion, we are of the opinion that the Tribunal's verdict does not stand judicial scrutiny. The respondent was not entitled to the comments sent by the department to CVC.

This writ petition is accordingly allowed and the judgment of the Tribunal is hereby set aside. Consequently, the OA filed by the respondent before the Tribunal stands dismissed.

No costs.

(A.K. SIKRI)
JUDGE

(J.R. MIDHA)
JUDGE

July 04, 2008
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