

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **WP(C) No.5432/2007**

% **Date of Decision: 26.04.2011**

Sukhbir Singh Petitioner

Through Mr.Ashish Nischal, Advocate

Versus

Union of India Respondent

Through Mr.Jaswinder Singh, Advocate

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

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1. The petitioner has challenged the order dated 31st October, 2006 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in OA No.1054 of 2005, titled as 'Sukhbir Singh v. Union of India, through Secretary, Ministry of External Affairs' dismissing the OA filed by the petitioner against the penalty order dated 17th June, 2003 and the order of the reviewing authorities dated 25th/26th September, 2003 and 20th September, 2004 imposing a penalty of reduction to a lower scale in the time scale of pay for a period of three years.

2. Relevant facts to comprehend the grievance of the petitioner are that he was deployed as Under Secretary (Coordination) in the Ministry of External Affairs as the Desk Officer to process the request for flight clearances received from M/s Sam Aviation/GST Acro. It was brought to the notice of the Ministry of External Affairs that by Office Memorandum No.1286/COORD/2002 dated 22nd March, 2002 Diplomatic Clearance for Civilian Aircraft was given pursuant to Note Verbale No.8/4-2002 dated 22nd March, 2002 received from the Embassy of Kazakhstan. The said Office Memorandum was issued under the signatures of the petitioner addressed to the Civil Aviation Department with a request that the clearance number be communicated to the Embassy of Kazakhstan.

3. The Director General, Civil Aviation (DGCA) had laid down specific guidelines stipulating that a request for clearance should be sent three working days before entry in the case of overflight/technical landing and seven days before entry for passenger/cargo traffic. On a request by the Embassy of the Republic of Kazakhstan dated 22nd February, 2002 to the Ministry of External Affairs to give permission at the earliest, for the operation of its cargo charter flight to Almaty-Delhi-Samarkand-Almaty on 26th February, 2002, the Joint Secretary, Central Asia on 26th February, 2002 had categorically indorsed that the Coordination Division should impress upon all Foreign Missions,

especially Embassy of Kazakhstan to give adequate time for such clearances in future. These instructions were reiterated on the request received from the Embassy of Kazakhstan on 13th March, 2002 for the operation of its chartered flight on March 14th -16th with flight No.BMK 1130/31 and on March 14th, 16th, 18th & 20th with flight No.BMK 1140/41 route Dubai-Delhi-Dubai. On 14th March, an endorsement was made by the Joint Secretary (Coordination) on the said request to examine the same.

4. According to the respondent, the petitioner did not follow up on these instructions, nor were any reasons given for the failure to take action. Instead the request was further forwarded by the petitioner in a routine way and it was further alleged that neither did the petitioner follow any system of recording the proper notes on the files indicating the nature of clearances nor did he abide by the proper procedure as laid down in the manual of Office procedures.

5. The respondent had also contended that a forged Note Verbale dated 22nd March, 2002 was received and on account of not following the instructions by the petitioner, it led to the grant of clearance on the forged Notes of the Embassy of Kazakhstan. The allegation was made that had the petitioner followed the instructions by liaising with the Kazakhstan Embassy, the case of the forged Notes received from Embassy would have been detected at the initial state itself and the

petitioner by his said act, exhibited lack of devotion to duty and conduct and thus, violated Rule 3 (1) (ii) & (iii) of the CCS (Conduct) Rules, 1964 and a decision was taken to initiate departmental proceedings under Rule 16 of the CCS (CCA) Rules, 1965.

6. A charge sheet dated 23rd August, 2002 was therefore, issued against the petitioner and he was asked to submit his representation within ten days of receipt of the memorandum. The statement of imputation categorically recorded the negligence on the part of the petitioner, the then Under Secretary (Coordination) in not scrupulously adhering to the instructions and the guidelines issued by the DGCA and the instructions of Joint Secretary (Coordination) that was conveyed to the petitioner on 26th February, 2002 and which was also reiterated on a Note dated 13th March, 2002. It was recorded that there was no system of recording proper note by the Under Secretary (Coordination) on the files indicating the nature of clearance i.e. whether required for overflight/technical landing or for passenger/cargo traffic, nor all the required parameters had been appropriately indicated. It was further asserted that as Desk officer, it was the responsibility of the petitioner to ensure that the Government's instructions on the subject were duly recorded in the processing note and it was also his responsibility to process cases as per laid down procedures, by clearly pointing out whether the requisite information had been provided.

7. The petitioner submitted his statement of defence by his letter dated 9th September, 2002 contending that the concerned territorial division was solely responsible for processing the request of the concerned Embassy as Coordination Division was not consulted in the instant case. The petitioner denied that it was his responsibility to have acted on the instructions of Joint Secretary (CA) which were conveyed to him regarding the mandatory notice period to be given by the Mission while forwarding the cases for flight clearances. It was also asserted that it was for the CA Division itself to process such cases and follow the instructions of DGCA as well as JS(CA). According to the petitioner he had done his duty in Coordination Division consciously and he had followed all instructions and established procedure and practice in the Coordination Division. He categorically stated that as the Under Secretary (Coordination) his only responsibility was to forward the flight clearance proposal received to the respective territorial divisions and also to convey approval after receipt from the respective authorities and it was for the Head of Territorial Division to check with the respective Embassies by inviting attention of the concerned Head of Diplomatic Mission to the fact that the Mission was not adhering to the time scheduled laid down by the DGCA.

8. The disciplinary authority considered the statement of defence of the petitioner and on the basis of the case records and the evidence, inferred that the petitioner had not communicated the instructions of

the Head of the Central Asia Division to the concerned Mission as instructed to him. It was also held that the Territorial Division was expected to examine the request from the political angle and had the petitioner followed up on the instructions of the Territorial Division by liaising with the Embassy of Kazakhstan, the case of forged notes received from the Embassy of Kazakhstan would have been detected much earlier. Taking into consideration the facts and circumstances and the advice of the UPSC, the penalty of reduction to a lower scale in the time scale of pay for a period of three years was imposed with the further condition that the petitioner will continue to earn increments during the period of reduction and the penalty will not have the effect of postponing future increment of pay by order dated 17th June, 2003 bearing Order No.Q/Vig/843/8/2002 was passed.

9. Aggrieved by the order dated 17th June, 2003 imposing a penalty of reduction to a lower scale for a period of three years, the petitioner filed a review petition dated 14th August, 2003 addressed to the President of India under Rule 29A of CCS(CCA) Rules, 1965. The review petition of the petitioner was rejected by memo dated 25/26th June, 2003. The petitioner, thereafter, filed yet another review petition dated 29th March, 2004, which was also rejected vide memo dated 20th September, 2004.

10. Thereafter, the petitioner filed an original application before the Tribunal seeking the quashing of penalty order dated 17th June, 2003 and the Reviewing Authority's orders dated 25/26th September, 2003 and 20th September, 2004. The petitioner sought quashing of these orders before the Tribunal on the ground that the advice of the UPSC, which formed the basis of imposing the penalty, was not furnished to the petitioner and thus he was denied the right to make an effective representation and therefore, principles of natural justice were violated. According to the petitioner, the charge sheet was vague and incapable of being defended as no particular case was specified against which the applicant could submit his explanation or representation. According to him, numerous requests of this nature were received in the Coordination Section of respondent's organization. The petitioner pleaded that non-communication of instructions of Joint Secretary (Central Asia) has been magnified out of proportion only with a view to make the petitioner the scapegoat for the forgery committed by someone. According to him, it has been erroneously presumed that had the remarks of the Joint Secretary (Central Asia) been communicated to the Embassy of Kazakhstan in India, the forgery could have been detected and clearance could have been denied on such a forged request. The petitioner also contended that the alleged negligence and lack of devotion in not conveying the instructions of the Joint Secretary (CA) in February, 2002, which was reiterated on 13th March, 2002 could not be construed as a charge against the petitioner.

11. The original application filed by the petitioner was contested by the respondents, who filed a reply dated August, 2005 contending, inter alia, that the examination of case records by the Ministry of External Affairs had revealed negligence on the part of the petitioner as he did not scrupulously adhere to the instructions of the Government. The extensive guidelines issued by Director General of Civil Aviation (DGCA) specifically laid down that the request for clearance should be sent three working days before entry in case of overflight/technical landing and seven days before entry for passenger/cargo traffic. However, the petitioner accepted and processed the request without following the guidelines, which were categorically communicated by the Joint Secretary (CA) on 26th February, 2002 stipulating that for a case relating to flight clearance Co-Ordination Division may kindly impress upon all Foreign Missions especially the embassy of Kazakhstan in India to give adequate time for such clearance in future. The respondents asserted that these instructions were also reiterated on 13th May, 2002, however, the petitioner did not follow these instructions nor disclosed any reason for failure to take action in consonance with the instructions. It also transpired that the cases were processed in a routine way and no system of recording proper notes by the petitioner on files indicating the nature of clearance overflight/technical landing/passenger/cargo etc. were followed. The failure on the part of the petitioner resulted in the grant of flight clearance to M/s. Sam

Aviation/GST Aero on the forged note of the Embassy of Kazakhstan. It was asserted that had the petitioner followed the instructions by liaising with the Kazakhstan Embassy and given adequate time, clearance given on forged note could have been avoided. With adequate time, as was contemplated under instructions, the case of forged note received from the Kazakhstan Embassy would have been detected at the initial stage itself. The plea of the petitioner that the work of clearance did not pertain to him was also rejected.

12. The Tribunal considered the pleas and contentions raised by the parties and held that since the respondents had neither filed a reply to the application of the petitioner for condonation of delay in filing the original application nor had they challenged the condonation of delay in their counter-reply to the original application, therefore, it was inferred that the respondents had no objection to the condonation of delay and hence the Tribunal had allowed the Misc. Application No. 950/2005 of the petitioner, seeking condonation of delay in filing the original application before the Tribunal.

13. Before the Tribunal, mainly two points were canvassed by the petitioner which is the non-supply of the copy of advice of UPSC before the order of the disciplinary authority was issued and pertaining to the vagueness of the charges and thus violation of the principles of natural justice.

14. Regarding the vagueness of the charge, the Tribunal concluded that the petitioner did not take this plea in his reply dated 9th September, 2002 to the charge memo dated 23rd August, 2002. Despite the plea of the vagueness not being taken by the petitioner, the Tribunal considered the memo of charge and did not find it to be vague as it contained specific details of the lapse on the part of the petitioner. In order to ascertain whether the memo of charge was vague or not, the Tribunal also considered the reply given by the petitioner, especially with regard to the specific instance. It was inferred that the petitioner knew exactly what was the charge against him, as in his defense, he had tried to contend that he was only acting as a post man and the responsibility for giving clearances was with the territorial division and not with him. Therefore, it was inferred that the petitioner knew exactly what the charge against him was. In the circumstances, it was held that neither the charge against the petitioner was vague nor the petitioner could be permitted to take such a plea. The precedent of *Surath Chandra Chakraborty Vs. State West Bengal: AIR1971SC752*, relied on by the petitioner was distinguished on the ground that in that case, the employee had not been supplied with the statement of allegations and the case also related to the period prior to coming into force of the 42nd Constitutional Amendment in 1976 whereby first proviso to Article 311(2) was amended and the provision of another opportunity at the

stage of the second show cause notice with regard to penalty proposed to be imposed had been done away with.

15. Regarding the plea of the petitioner that he was prejudiced due to non supply of the copy of the UPSC advice, the Tribunal considered the various judgments of the Supreme Court, High Courts and also the Tribunal and noted that in the order of the Disciplinary Authority dated 17th June, 2003, the facts regarding the UPSC advice had been categorically outlined. Since the disciplinary authority had tentatively decided the punishment to be imposed with which the UPSC fully concurred, therefore, there was no disagreement between the disciplinary authority and the UPSC and thus repelled the plea of the petitioner. The Tribunal also rejected the contention of the petitioner that the charge of negligence and lack of devotion to duty mentioned in para -8 of the memo dated 25/26th September, 2003 was not part of the charge memo on the ground that the petitioner fully understood the charges against him and in reply to charge memo in para-8 it was categorically averred that there was no lack of devotion to duty. Regarding the other point argued by the petitioner pertaining to not seeking the advice from the UPSC with regard to this specific charge, it was held that there was no statutory provision or instructions of Govt. of India mandating a reference to the UPSC by the reviewing authority and thus dismissed the original application of the petitioner by order dated 31st October, 2006.

16. The order of the Tribunal is impugned in the present writ petition on the same grounds, which were raised before the Tribunal, inter alia, that numerous requests of the nature for which the petitioner has been held responsible are regularly received for the Coordination Section of respondent's organization and thus, the charge sheet against him is vague and was incapable of being defended. The petitioner also contended that the lapse on his part cannot be termed as misconduct because at worst it was an irregularity without any malafides and lack of devotion to duty.

17. Regarding the Office Procedure Manual, it was contended that the manual is not a statutory provision whose violation is punishable. Regarding the penalty, the petitioner accepted that even though it is a minor penalty, it has delayed the promotion of the petitioner by at least three years, since no promotion is granted during the concurrency of the penalty and withholding a promotion is a separate and distinct penalty which should not be imposed in the case of the petitioner.

18. The respondent contested the petition reiterating the pleas and contentions raised before the Tribunal. It was admitted that the instructions were categorically communicated by the Joint Secretary (CA) on 26th February, 2002. The instructions on 26th February, 2002 categorically stipulated on a note in respect of a flight clearance from

Air Kazakhstan, that the Coordination Division should impress upon all foreign missions, especially embassy of Kazakhstan in India to give adequate time for such clearances in future. These instructions were reiterated on 13th March, 2002, however, the petitioner did not follow the instructions nor were any reasons recorded on the file for failure to take action as per the instructions nor were any cogent and plausible reasons been given later on.

19. This Court has heard the learned counsel for the parties in detail and has also perused the record produced before the Tribunal along with the present writ petition. On the request dated 22nd February, 2002, the Joint Secretary (CA) on 26th February, 2002 categorically made an endorsement that the Coordination Division may kindly impress upon all Foreign Missions, especially the Embassy of Kazakhstan to give adequate time for such clearances in the future. The said endorsement with the said direction came specifically to the notice of the petitioner as it is also signed by the petitioner, which fact has not been denied by the learned counsel for the petitioner as well. Since the petitioner was specifically directed to impress upon the Embassy of Kazakhstan to give adequate time for seeking clearance, when the request dated 13th March, 2002, was received and it was endorsed to the petitioner on 14th March, 2003, and a categorical stipulation was made on 14th March, 2003, while marking it to the petitioner as 'Please examine', which is apparent as underneath it, it

was initialed by the petitioner on 15th March, 2003, it was incumbent upon the petitioner to bring it to the notice of not only all the embassies but also to the Embassy of Kazakhstan. While forwarding such a note for clearance, it should have also been brought to the notice of the other sections and departments. The petitioner cannot be permitted to take shelter under the plea that his job was only that of a 'Post Man'. This plea appears to be devoid of any merit because had the scope of work of the petitioner been only to mindlessly forward notes to the concerned sections, the Joint Secretary would not have made the endorsement of the directions on the request dated 22nd February, 2002 which was forwarded to the petitioner and was initialed by him and was within his knowledge. Thereafter in the request dated 13th March, 2002, the petitioner was again categorically asked to examine the same. Even the clearance dated 22nd March, 2002 was issued under the signature of the petitioner and cannot be denied by him and thus the plea that he was only acting as a postman cannot be accepted.

20. The respondents categorically pleaded failure on the part of the petitioner to follow instructions of the Govt. relating to flight clearance issued by Civil Aviation and also conveyed by Joint Secretary (Central Asia), which violation resulted in the clearance of flight of M/s Sam Aviation/GST Aero on the forged note of the Mission of Kazakhstan. Had the instructions been followed up, with adequate time, by liaising with Kazakhstan Embassy in India, the case of forged note received

from the Embassy would have been detected at the initial stage itself. The plea that the instructions were not statutory instruction, would not absolve him of his act. No law or precedent has been shown by the learned counsel for the petitioner holding that the instructions issued, if not statutory, were not to be followed. In any case neither were any reasons given on the files for not following the instructions nor were any office memorandum or guidelines or a statutory rule been brought to our notice which would indicate that in case the non statutory guidelines are not followed, the employee would not be liable for disciplinary action. It cannot be denied that on account of not following the instructions, flight clearance was granted on a forged note of the concerned Embassy. The plea of the petitioner that his work was more like a postman to forward the request for clearance to the concerned coordination section cannot absolve him of the lapse on his part. This is also not the case of the petitioner that despite the instructions of the concerned Joint Secretary being communicated to the embassies to not send the request for clearance without giving at least three days prior notice, the embassies had sent the requests in violation of the instructions. The petitioner has not even averred that on the basis of the instructions to him, guidelines were circulated to the different embassies especially to the Embassy of Kazakhstan in India. The petitioner cannot be allowed to contend that despite not complying with the instructions, he is not accountable because the instructions were not statutory. Such a plea cannot be accepted nor on the basis of such

a plea, can it be held that the decision of the disciplinary authority and the Tribunal is illegal or unsustainable. There are no grounds to interfere with the order of the Tribunal on this account.

21. In the circumstances, the concurrent findings of the Disciplinary Authority and the Reviewing Authority and the Central Administrative Tribunal are not to be interfered with, on similar pleas raised by the petitioner before this Court in the Writ petition.

22. The learned counsel for the petitioner has failed to make out any such ground, which would show any illegality or un-sustainability in the reasoning of the Tribunal. Perusal of the inferences drawn by the Disciplinary Authority, Reviewing Authority and the Tribunal show that there is no perversity in them.

23. As far as the plea of non supply of the UPSC advise, the learned counsel for the petitioner in view of the decision of the Supreme Court in the case of Union of India & Anr. Vs T.V.Patel, (2007) 4 SCC 785 did not press this plea any further. The Supreme Court had held that before the imposition of penalties/punishment it is not necessary to supply the copy of advice tendered by the Public Service Commission to delinquent employee in view of Article 322 & 320 (3) (c) read with rules 15 (3) and 32 of Central Civil Services (Classification, Control and Appeal) Rules, 1965. It was further held that consultation with Public

Service Commission on all disciplinary matters is not mandatory. It was specifically held that absence of consultation or any irregularity in consultation process or in furnishing copy of advice tendered by the Public Service Commission to the delinquent does not afford the government servant a cause of action in a Court of Law. In paragraph 25 at page 792, the Supreme Court had held:

25. In view of the law settled by the Constitution Bench of this Court in *Srivastava*, 1958 SCR 533 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 UPSC, if any, does not afford the delinquent government servant a cause of action in a court of law.

24. The petitioner in the facts and circumstances, therefore, cannot contend that he has been prejudiced on account of non-supply of the copy of advice tendered by the UPSC to the Disciplinary Authority or that the principles of natural justice has been violated in such a manner that the order of punishment imposed on the petitioner will be impacted. The petitioner has been awarded a minor penalty and considering the facts and circumstances and the lapse on his part, it also cannot be held that the penalty imposed is disproportionate, since the petitioner did not get promotion for a period of three years when his pay was reduced to a lower scale in the time scale of pay. In any case it has also not been shown that during three years when his pay was

reduced to a lower scale in the time scale, he had become entitled for promotion and he was not promoted on account of it.

25. No other point or ground has been raised by the petitioner. In the totality of the facts and circumstances, therefore, there are no grounds to interfere with the order of the Tribunal as there is no illegality or perversity made out on behalf of the petitioner which will entail any interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. The writ petition is without any merit and it is, therefore, dismissed. Parties are, however, left to bear their own costs.

ANIL KUMAR, J.

SUDERSHAN KUMAR MISRA, J.

APRIL 26, 2011

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