

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

% Judgment delivered on 13.01.2012

+ **W.P.(C) 265/2012**

UNION OF INDIA ... Petitioner

versus

YOGITA SWAROOP & ANR. ... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr R.V.Sinha
For Respondent No.1 : Mr S.K.Dubey
For Respondent No.2 : Mr Naresh Kaushik

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MR. JUSTICE V.K.JAIN

BADAR DURREZ AHMED (ORAL)

1. In this writ petition, the order dated 14.11.2011 passed in O.A.No.504/2011 by the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as 'the Tribunal') is under challenge. The impugned order dated 14.11.2011 is itself a second round of litigation. In the first round, the Tribunal itself had remitted the matter to the Disciplinary Authority for reviewing the case from the angle of proportionality of the penalty.

2. The main plea before the Tribunal in the second round was that the respondent No.1 was prejudiced by non-supply of the UPSC advice dated 18.11.2009, which had been relied upon in the penalty order dated 26.11.2009. On behalf of the petitioner herein, reliance was placed on the decision of the Supreme

Court in the case of **Union of India v. T.V.Patel: 2007 (4) SCC 785**. However, the Tribunal noted that there was a subsequent decision of the Supreme Court in the case of **Union of India & Others v. S.K.Kapoor: 2011 (4) SCC 589** in which the decision of **Union of India v. T.V.Patel** (supra) had been held to be *per incuriam*. The relevant portion of the decision in **Union of India & Others v. S.K.Kapoor** (supra), is as under:-

“10. 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.

11. 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.

12. This is also the view taken by this Court in the case of S.N.Narula vs. Union of India & Others, Civil Appeal No.642 of 2004 decided on 30th January, 2004.

13. It may be noted that the decision in S.N.Narula (supra) was prior to the decision in T.V.Patel’s case(supra). It is well settled that if a subsequent co-

ordinate bench of equal strength wants to take a different view, it can only refer the matter to a larger bench, otherwise the prior decision of a co-ordinate bench is binding on the subsequent bench of equal strength. Since, the decision in S.N.Narula's case (supra) was not noticed in T.V.Patel's case (supra), the latter decision is a judgment *per incuriam*. The decision in S.N.Narula's case (supra) was binding on the subsequent bench of equal strength and hence, it could not take a contrary view, as is settled by a series of judgments of this Court."

3. The Supreme Court in ***Union of India & Others v. S.K.Kapoor*** (supra), also observed that although the opinion/advice of the UPSC is not mandatory, if the authorities do consult the UPSC 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. Following this decision of the Supreme Court, the Tribunal has come to the conclusion as under:-

"10. Considering the totality of the facts and circumstances of the case and guided by the law laid by Hon'ble Apex Court in S.K.Kapoor's case (supra), we come to the considered view that the impugned order dated 26.11.2009 is not sustainable in the eyes of law as the applicant has been deprived of the opportunity to represent against the UPSC advice which has been fully relied on by the competent authority in passing the penalty order. Hence, the impugned order dated 26.11.2009 is liable to be quashed and set aside."

4. We have heard the counsel for the parties on this aspect of the matter and we find that the Tribunal's decision cannot be faulted inasmuch as it has clearly applied the law as laid down by the Supreme Court in ***Union of India & Others v. S.K.Kapoor*** (supra). We also note that on the question of prejudice which had been urged on behalf of the petitioner, it is apparent that the non-supply of the UPSC

advice to the respondent prior to the disciplinary order being passed has prejudiced the respondent's case. This is apparent from the disciplinary order dated 26.11.2009 where the last recital itself reads as under:-

“8. And whereas the President after carefully considering the advice of the UPSC and all relevant documents and facts and circumstances of the case has come to the conclusion that the advice of the Commission on Smt. Yogita Swaroop may be accepted.”
(underlining added)

5. It is apparent that the advice of the UPSC has specifically been considered and the conclusion has been arrived at that the advice of the UPSC, insofar as the respondent No.1 is concerned, ought to be accepted. It is apparent that the advice of the UPSC has been relied upon entirely. The fact that the UPSC advice was not given to the respondent prior to the order dated 26.11.2009 being passed clearly indicates that she has been denied an opportunity to make a representation against the said advice and to submit her point of view. Consequently, insofar as the question of prejudice is concerned, it is writ large in the facts and circumstances of this case. The Tribunal's order, therefore, cannot be faulted on this aspect of the matter. However, while setting aside the order dated 26.11.2009, the Tribunal went on further and directed that the applicant shall be reinstated in service and the respondents shall have the liberty to proceed with the disciplinary case from the stage where the illegality has crept in. The Tribunal also directed that the competent authority would decide the case afresh without being biased and influenced by the earlier orders and while deciding the disciplinary proceeding against the respondent No.1, the competent authority was directed to decide the interregnum period from the date of the applicant's dismissal from service to the date she joins her service pursuant to the direction of the Tribunal.

6. The learned counsel for the petitioner has drawn our attention to the decision of the Supreme Court in the case of **Union of India v. Y.S.Sadhu, Ex-Inspector: 2008 (12) SCC 30.** In the said decision, the question of reinstatement of the petitioner therein in service was considered by the Supreme Court for the purposes of completing the departmental proceedings. The Supreme Court referred to the earlier decision in **Managing Director, ECIL, Hyderabad and Another v. B.Karunakar & Ors.:** 1993 (4) SCC 727, wherein the Supreme Court had observed as under:-

“Where after following the above procedure, the court/tribunal sets aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the authority/management to proceed with the inquiry, by placing the employee under suspension and continuing the inquiry from the stage of furnishing him with the report. The question whether the employee would be entitled to the backwages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered, should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. If the employee succeeds in the fresh inquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any and the extent of the benefits, he will be entitled. The reinstatement made as a result of the setting aside of the inquiry for failure to furnish the report, should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held. That will also be the correct position in law.”

6. Another decision of the Supreme Court in the case of ***U.P.State Spinning Co. Ltd. v. R.S.Pandey and Another***; 2005 (8) SCC 264 was also referred to in the said decision in ***Union of India v. Y.S.Sadhu*** (supra). In that case also, the Supreme Court followed the observations made in the case of ***ECIL v. B.Karunakar*** (supra) and held that the respondent No.1 therein shall be re-instated to service but without any back wages and other service benefits and his re-instatement shall be solely for the purpose of completing the departmental proceedings. It was also directed that his entitlements, if any, would be adjudicated by the authorities depending upon the result of the disciplinary proceedings.

7. Consequently, we feel that the direction of the Tribunal with regard to the reinstatement ought to be modified in terms of the decision of the Supreme Court on this aspect of the matter. Therefore, we direct that the respondent No.1 shall be re-instated to service but that would be without any back wages and other service benefits and her re-instatement shall be solely for the purpose of completing the departmental proceedings. Her entitlements, if any, would be adjudicated by the authorities depending upon the result of the disciplinary proceedings.

8. We also direct that since the copy of the UPSC advice is already with the respondent No.1, she will make a representation within two weeks and the disciplinary authority shall take a decision within 12 weeks thereafter.

9. With this modification of the impugned order, the writ petition stands disposed of. There shall be no order as to costs.

BADAR DURREZ AHMED, J

V.K.JAIN, J

JANUARY 13, 2012

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