

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

% *Judgment Reserved on: April 12, 2013*
Judgment Pronounced on: April 18, 2013

+ **WP (C) 1634/2012**

UOI & ANR Petitioner
Represented by: Mr.R.N.Singh, Advocate with
Mr.R.V.Singh, Advocate

versus

PS PURKAYASTHA Respondent
Represented by: Mr.S.Sunil, Advocate with
Mr.Jagdish and Mr.S.P. Panda,
Advocates

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J.

1. This is probably the 30th case we have come across in which the source of the problem is an ex-parte order disposing of the main matter passed by the Tribunal on the very first date when the Original Application was listed before the Tribunal. We have repeatedly cautioned the Central Administrative Tribunal that howsoever water tight and irrefutable a case may appear at first blush, but under no circumstances can a judicial Fora decide a matter without putting the other side to notice. Such a procedure violates the principle of natural justice; the greatest gift of God to the law. Notwithstanding God having witnessed Adam and Eve eat the forbidden fruit in the Garden of Eden, he give them a hearing before punishing them for the wrong. How well this has translated in the realm of law needs no exposition by us since

decisions relating to principles of natural justice are legion.

2. It all began when OA No.3290/2010 filed by the respondent was disposed of by the Tribunal without notice to the respondents thereof, when it was listed for the first time before the Tribunal on October 05, 2010. The Tribunal noted that on October 06, 2005 a charge sheet was issued to the applicant before it; the respondent in the writ petition, and on May 16, 2008 the inquiry report was submitted. The Tribunal noted that the second stage advice from CVC had been obtained and along with the report of the Inquiry Officer had been submitted to the respondent who had furnished his response. Thinking that it was an open and shut case, warranting immediate disposal, without even putting respondents to notice, the Tribunal directed that the disciplinary proceedings would terminate in a decision within two months.

3. If only the Tribunal had put to notice the respondents before it, it would have been informed to the Tribunal that due to a fire incident engulfing the building of the Central Board of Customs and Excise at HUDCO Complex in the intervening night of 26th and 27th May 2010, the record pertaining to the inquiry had got burnt. The record had thus to be reconstructed. The further problem was that the relevant record from which the record of inquiry had to be reconstructed had got either partially burnt or required to be salvaged from the new office building to where the salvaged record was shifted.

4. It is this aspect of the matter which has resulted in the issue simmering on. Respondent filed a contempt petition registered as CP No.239/2011 alleging violation of the order dated October 05, 2010. The disciplinary proceeding had not been closed. The department filed a miscellaneous application praying that time for completing the inquiry be extended informing that as per law, statutory advice had to be obtained

from UPSC which required the record of inquiry to be sent after due certification. It was informed to the Tribunal that due to record being destroyed at the fire, time would be consumed.

5. God knows wherefrom the Tribunal recorded in its order dated July 15, 2011 that the report of the Inquiry Officer was in favour of the respondent and that the Disciplinary Authority had disagreed to the findings pertaining to charge No.1 and 4 (a fact which is wrong because the Disciplinary Authority has not penned a note of disagreement because the report of the Inquiry Officer does not exonerate the respondent); but after so recording and after noting the version of the petitioner of the record being destroyed, the Tribunal opined as per the order dated July 15, 2001 that there was no justification to extend the time, but did so by granting 4 weeks time to pass the final order; simultaneously peremptorily directing that on failure to do so the inquiry proceedings shall be deemed to be dropped. We find that the Tribunal adversely commented on the conduct of the petitioner in seeking advice from UPSC without Disciplinary Authority penning a note of disagreement.

6. Ex-facie, the order dated July 15, 2010 is the result of a probable post haste adopted by the Tribunal and this evidences wrong facts noted and hence wrong inferences drawn. Wrongly noting that the report of the Inquiry Officer had exonerated the respondent, the Tribunal commented upon the department seeking advice from UPSC without Disciplinary Authority recording a note of disagreement. Based thereon the Tribunal reached a conclusion that the department was just unnecessarily delaying the matter warranting a peremptory direction to be issued.

7. The department filed MA No.2489/2011 informing the Tribunal that time was consumed in tracing relevant documents because

UPSC requires each and every document to be authenticated in the manner prescribed by UPSC. It was informed that UPSC is a constitutional body over which the department has no control. It was informed that at least 5 more months would be required to complete the process for the reason at least 3 to 4 months would be consumed by UPSC.

8. Vide impugned order dated October 25, 2011, the Tribunal dismissed MA No.2489/2011; and the result is that the peremptory directions issued by the Tribunal on July 15, 2011 has come into operation. The respondent would be required to be treated as absolved because the inquiry proceedings stand closed.

9. The backdrop facts noted by us hereinabove bring out the following:-

(i) Inquiry Officer submitted the report on May 16, 2008. Second stage advice was obtained from CVC on July 23, 2009. Along with the advice of CVC the report of the Inquiry Officer was sent to the respondent who furnished his reply on September 23, 2009. As required by law, advice from UPSC had to be obtained and when the docket to be sent to UPSC was under preparation a fire took place in the intervening night of May 26th and 27th, 2010 in the building where the record of the inquiry and other record was kept. This necessitated record to be reconstructed and authenticated.

(ii) The Tribunal decided OA No.3290/2010 without even issuing notice and in ignorance of the facts noted in sub-para (i) above.

(iii) Upon the respondent filing a contempt petition and the department seeking extension of time, on July 15, 2011 the Tribunal passed a peremptory order recording wrong facts and under colour of the wrong facts formed a wrong opinion.

(iv) Neither the order dated October 05, 2010 nor the order dated July 15, 2011 nor the impugned order dated October 25, 2011 has considered the effect of UPSC being a constitutional body, not under the control of the petitioners, and consultation with it being mandatory in law.

10. Suffice would it be to note that decisions by Tribunals which are based on wrong recording of facts and/or which do not deal with the submissions urged warrant a correction from a writ court.

11. The charge sheet raises serious issues impinging upon the moral character of the respondent and we make no comment thereon lest prejudice is caused.

12. At the hearing held on April 12, 2013 we were informed that the record has since been reconstructed and process of authentication would take about a month's time. We were informed that matter would be sent to UPSC for its advice within the next 6 weeks.

13. Accordingly, we dispose of the petition setting aside the impugned order dated October 25, 2011. We do not fix any time for the Disciplinary Authority to pass an order, but would commend it to take the briefest possible time, for the reason UPSC is not a party in the present proceedings and we cannot issue any directions to the said body for said reason. But, the Disciplinary Authority should not be oblivious to the fact that a charge sheet issued way back in the year 2005 has not reached its destination in 8 years; no doubt a Government servant should be held accountable for his acts and deeds but the process of accountability should not convert itself into a process to test the patience of the Government servant. Thus, upon receipt of advice from UPSC the Disciplinary Authority shall pass an order within 1 month thereof and this we do in view of the communication dated April 10, 2013 sent under the

signatures of Sh.B.K.Mahanta, Under Secretary to the Government of India to Sh.R.V.Sinha, Advocate; copy whereof has been shown to us.

14. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

APRIL 18, 2013
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