

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

FRIDAY, THE 5TH DAY OF JUNE 2015/15TH JYAISHTA, 1937

WA.NO. 1312 OF 2014 () IN WP(C).12481/2011

AGAINSTBJUDGMENT IN WP(C) 12481/2011 OF
HIGH COURT OF KERALA DATED 13.03.2014

APPELLANT(S)/RESPONDENT 1 & 2 :

1. UNION OF INDIA,
RPERESENTED BY THE SECRETARY
MINISTRY OF HOME AFFAIRS, NEW DELHI 110001

2. THE DEPUTY INSPECTOR GENERAL (PERS),
DIRECTORATE GENERAL
CERNTRAL INDUSTRIAL SECURITY FORCE
(MINISTRY OF HOME AFFAIRS,) BLOCK NO 13, CGO COMPLEX
LODHI ROAD, NEW DELHI 110003

BY ADV. SRI.T.SANJAY, CGC

RESPONDENT(S)/PETITIONER & 3RD RESPONDENT:

1. M. SREENIVASAN,
S/O LATE M. CHEKKINI, (SENIOR COMMNDANT (RETIRED)
CENTRAL INSUDTRIAL SECURITY FORCE
(MINISTRY OF HOME AFFAIRS)
THE FERTILIZERS AND CEHMICALS TRAVANCORE LIMITED (FACT)
UDYOGAMANDAL, KOCHI), RESIDING AT MANGALASSERI A-12
STATE BANK NAGAR, KUMARAPURAM, MEDICAL COLLEGE P.O
THIRUVANANTHAPURAM 695011

2. THE SECRETARY
UNION PUBLIC SERVICE COMMISSION, DHOLPUR HOUSE
SHAJAHAN ROAD, NEW DELHI 110001

R. BY ADV. SRI.P.V.MOHANAN

R2 BY ADV. SRI.THOMAS MATHEW NELLIMOOTTIL,SC UPSC

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ALONG WITH W.A.
NO.1407 OF 2014K THE, COURT ON 05-06-2015 DAY DELIVERED THE
FOLLOWING:

“C.R.”

ASHOK BHUSHAN, C.J.

and

A.M. SHAFFIQUE, J.

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W.A. Nos.1312 & 1407 of 2014

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Dated this the 05th day of June, 2015

J U D G M E N T

Ashok Bhushan, C.J.

These two Writ Appeals have been filed against the common judgment dated 13.03.2014 in W.P(C) Nos.12481 and 28932 of 2011 filed by respondent No.1 to the appeals, who were the petitioners in the Writ Petitions. Learned Single Judge by the judgment dated 13.03.2014 allowed the Writ Petitions setting aside the order passed by the disciplinary authority directing for reduction of 10% of the pension of the Writ Petitioners. Both the Writ Appeals raise common question of law and similar facts, hence have been heard together and are being disposed of by this judgment.

2. Facts leading to the order impugned in the

Writ Petitions regarding both the petitioners are separately noticed.

3. **W.P(C) No.12481 of 2011 (M.Sreenivasan v. Union of India and Others).** Petitioner was working as the Senior Commandant in the Central Industrial Security Force at the relevant time. Recruitment of constables GD/Fire-2005 was conducted during the period from 07.11.2005 to 28.11.2005 at various centres in which BSL Bokaro was one of the recruitment centres in Jharkand State. By order of the Directorate dated 14.10.2013 petitioner was detailed as Chairman of the Board for recruitment of constables at CISF Unit, Bokaro, Jharkand along with two other members. Jacob Koshy, petitioner in the other Writ Petition was also inducted as member of the recruitment Board whose Chairman was the petitioner. Recruitment of constables took place at the centres in which one candidate, Ajay Kumar, Roll No.5600044 had

also appeared. Ajay Kumar, after verifying his credentials was permitted to undertake physical measurement as well as the written test. Jacob Koshy, member of the Board after verification has signed the photographs of the candidates. Physical measurements of Ajay Kumar was noted along with other candidates . Those qualified in the physical measurement were called for physical efficiency test to be supervised by all Board Members. Result of the physical efficiency test was entered in the record sheet and signed by the members of the Board. Written test of the candidates who were qualified in the physical efficiency test was conducted. Result of the qualified candidates was announced on the same day and they were directed to report for medical examination. A list of 300 selected candidates was published and they reported for basic training at Regional Training Centres, CISF Bhilay on 17.03.2006. The candidate, Ajay Kumar with Roll

No.560044 was measured as 169 cms height and 80-83 cms as chest whereas his height recorded was 179 cms and chest 81-87 cms noted in the individual record sheet as well as the medical record at the time of recruitment. His written examination documents were rechecked by a Board of Officers at the Training Centre in which his actual handwriting did not tally with the one available in the answer sheet reportedly written by him during written examination of constables held on 15.11.2005 at BSL, Bokaro. Preliminary enquiry was held and two enquiry reports were submitted. The preliminary enquiry Officer found that someone else impersonated Ajay Kumar at the time of recruitment. The Preliminary Enquiry Officer in his report dated 04.08.2007 has reported that the Recruitment Board took all precautions and conducted the recruitment in a systematic and fair manner and involvement of Board Members in unfair practice was ruled out. However, it

was found that there was impersonation in the written test conducted during the recruitment. Another preliminary enquiry report was submitted on 17.01.2008 reiterating the conclusion that during the enquiry Board took all precautions to conduct the enquiry in a systematic and fair manner and involvement of Board Members in unfair practice is ruled out. It was however found that there was a case of impersonation during the recruitment where someone else appeared for the candidate Ajay kumar. It was further observed that the Recruitment Board has failed to detect the same due to inadequate supervision. The petitioner retired from service after attaining superannuation on 31.12.2006. In pursuance of the sanction accorded by the President under Rule 9 of the Central Civil Services (Pension) Rules 1972 departmental enquiry was initiated against the petitioner issuing charge memo dated 10.07.2008.

4. The charged Officer submitted his written statement of defence on 18.08.2008 and 16.09.2008. Enquiry was held and the enquiry Officer submitted his report dated 18.02.2010 holding both the charges proved against the petitioner. Copy of the report was served on the charged Officer on 01.04.2010 and the charged Officer submitted his representation on 05.05.2010 against the report of the Enquiry Officer. The Disciplinary Authority after considering the records of the enquiry awarded penalty of "withholding 10% of the monthly pension for a period of 5 years." By letter dated 25.03.2011 petitioner was communicated a copy of the advice of the Deputy Secretary, Union Public Service Commission dated 25.01.2011 and order dated 18.03.2011 regarding disciplinary proceedings against petitioner. Petitioner filed the Writ Petition praying for the following reliefs.

"(i) *To call for the records leading to Exhibit*

P1 and Exhibit P2 dated 18.03.2011 and set aside the same by issuing a Writ of Certiorari, appropriate writ order or direction.

(ii) To issue a Writ of Mandamus, Order or Direction commanding the respondents not to withhold pension of the petitioner."

5. W.P. No.28932 of 2011 (Jacob Koshy v. Union of India and Others). Petitioner, who was working as the Deputy Commandant in the CISF at the relevant time was a member of the Recruitment Board which conducted the recruitment in November, 2005 in which Ajay Kumar was selected. Petitioner retired on attaining superannuation on 31.01.2009. Before this retirement a charge memo dated 10.07.2008 containing only one charge was served to the petitioner. Petitioner submitted his written statement on 16.08.2008. The enquiry officer submitted report dated 05.06.2009 holding the charge proved. Copy of the enquiry report was forwarded to the petitioner on 27.07.2009. Petitioner submitted his representation by

letter dated 31.08.2009. The Disciplinary Authority by order dated 16.08.2010 awarded penalty of withholding 10% of the monthly pension otherwise admissible for a period of 5 years. The UPSC was also consulted which Commission has submitted its advice dated 30.06.2010 advising that if the penalty of withholding 10% of the monthly pension for five years is imposed ends of justice would be served. Challenging the order petitioner filed the Writ Petition praying for the following reliefs:

(i) issue a writ of certiorari or any other appropriate writ, order or direction calling for Exts.P2 and P3 and quash the same.

(ii) Direct the respondents to draw and disburse the entire pensionary benefits due to the petitioner withheld as per Ext.P2 and P3 with interest forthwith."

6. The Principal argument which was raised by both the parties in the Writ Petition was that advice of the Union Public Service Commission on the disciplinary proceedings against the petitioners was relied by the

disciplinary authority for imposing the penalty but the copy of the said advice of the UPSC was not given to the petitioners, hence there was violation of the principles of natural justice and the order deserves to be set aside on this ground alone. From the facts which were brought on record in the Writ Petitions the facts that the UPSC sent advice to the disciplinary authority proposing to withhold 10% of the pension for five years, which was also received before passing the order, and was taken into consideration before imposing the penalty are not disputed. The said advice was not sent to the petitioners nor the petitioners were given opportunity to submit any representation. The advice of the UPSC was sent to the petitioners subsequent to the passing of the final penalty order. Learned Single Judge by the impugned judgment has allowed the Writ Petitions relying on the judgment of the Supreme Court of India in **Union of India and Others v. S.K.Kapoor**

([2011] 4 SCC 589) where it was held that if report of the UPSC is relied, then copy of the same must be supplied in advance to the concerned employees otherwise it will violate the principles of natural justice. The learned Single Judge in allowing the Writ Petitions placed reliance on Office Memorandum dated 06.01.2014 which was relied on by the Union of India.

7. Shri T.Sanjay, learned Central Government Counsel in support of the Writ Appeals contended that OM dated 06.01.2014 which was relied on by the learned Single Judge was not attracted in the facts of the present case since punishment orders were passed regarding the writ petitioners in the year 2011 and 2010 respectively. By that time OM dated 06.01.2014 was not even issued. OM dated 06.01.2014 shall have no retrospective operation and the learned Single Judge ought not have relied on the OM. It is further submitted by the learned CGC that report of the UPSC was only

advisory in nature and it was not necessary for the disciplinary authority to supply advice of the Commission to the delinquent employee before passing the punishment order. It is further submitted that in accordance with 1965 Rules advice of the UPSC is to be sent only along with the final order which clearly means that the said advice is not to be supplied. Reliance was placed by the learned CGC on the judgment of the Apex Court in **Union of India v. T.V.Patel** ([2007] 4 SCC 785). It is submitted that the said judgment covered the issue where it was held that supply of copy of the advice is to be made along with the final order as required by Rule 32.

8. Learned counsel for the respondents-Writ Petitioners refuting the submissions of the learned CGC contended that advice of the UPSC having been relied on by the disciplinary authority for imposing the penalty of reduction of pension the said material was

required to be supplied to the petitioners and non-supply of the said advice violated the principles of natural justice and vitiated the penalty order. He submitted that there was earlier judgment of the Apex Court decided on 30.01.2004, **S.N.Narula v. Union of India** ([2011] 4 SCC 591) where the Supreme Court held that non-supply of advice of the Commission violated the principles of natural justice which judgment was binding on the subsequent co-ordinate Bench which decided the case in **Union of India v. T.V.Patel (supra)**. He has placed reliance on a recent judgment of the Supreme Court in **Union of India v. R.P. Singh** ([2014] 7 SCC 340).

9. We have heard learned counsel for both parties and perused the records.

10. Issue to be decided in these appeals lies on a very narrow campus, i.e., what is the consequence of non-supply of advice of the UPSC to the delinquent

employees before passing the penalty order? Whether non-supply of advice to the delinquent employees violated the principles of natural justice and vitiated the penalty order is also to be answered.

11. In the present case enquiry was conducted against both the Writ Petitioners under the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (hereinafter referred to as the "1965 Rules"). Rule 32 on which reliance has been placed by the learned counsel for the appellants which relates to supply of copy of Commission's advice which is to the following effect:

"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”

12. The first judgment relied on by the learned counsel for the parties is the judgment of the Apex Court is in Civil Appeal No.642 of 2004 decided on 01.01.2010 which is reported in **S.N. Narula v. Union of india** ([2011] 4 SCC 591). In the said case the disciplinary authority before imposing punishment had obtained advice of the UPSC and after accepting the advice, order of punishment was passed. The advisory opinion of the UPSC was not communicated to the delinquent employee. The employee filed an Original Application before the Central Industrial Tribunal which held that there was violation of principles of natural justice and direction was issued quashing the punishment order. The Apex in Paragraphs 6 and 7 laid down the following:

"6. We heard the learned counsel for the appellant and the learned counsel for the respondent. It is submitted by the counsel for the appellant that

the report of the Union Public Service Commission was not communicated to the appellant before the final order was passed. Therefore, the appellant was unable to make an effective representation before the disciplinary authority as regards the punishment imposed.

7. We find that the stand taken by the Central Administrative Tribunal was correct and the High Court was not justified in interfering with the order. Therefore, we set aside the judgment of the Division Bench of the High Court and direct that the disciplinary proceedings against the appellant be finally disposed of in accordance with the direction given by the Tribunal in para 6 of the order. The appellant may submit a representation within two weeks to the disciplinary authority and we make it clear that the matter shall be finally disposed of by the disciplinary authority within a period of 3 months thereafter.

13. The second judgment which has been relied by the learned CGC is the judgment of the Apex Court is **Union of India v. T.V. Patel (supra)**. In the said case also punishment order was passed without serving copy of the advice obtained from the UPSC. The matter

was taken to the Tribunal. The Tribunal allowed the application of the delinquent employee. Writ Petition was filed. High Court allowed the Writ Petition on the sole ground that copy of the Advice tendered by the UPSC was not supplied to the delinquent officer so as to enable him to represent. Union of India filed appeal before the Supreme Court. Two Judge Bench of the Apex Court has referred to Rule 32 and noticed the judgment of the Constitution Bench in **State of U.P. v. Manbodhan Lal Srivastava** (AIR 1957 SC 912) wherein the Apex Court held that requirement of consultation with the Public Service Commission under Article 320(3)(c) of the Constitution of India is not mandatory and binding on the appropriate authority. The following was laid down in paragraphs 15, 16, 17, 25 and 26:

"15. In the aforesaid premises, Mr. B. Datta, learned ASG, contended that a consultation with the UPSC under Art.320(3)(c) is not mandatory and the

advice tendered, if any, by the UPSC is not binding on the Disciplinary Authority. It is further contended that such advice would not confer any rights on a public servant so that the absence of consultation or any irregularity in consultation does not afford him a cause of action in a court of law. He further contended that even otherwise R.32 of the Rules is clear that a copy of such advice shall be furnished to the delinquent servant along with a copy of the order passed in the case, by the authority making the order.

16. *There is substance in the contention of Mr.Datta, learned ASG.*

17. *As already noticed, R.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 R.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.

25. 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 Art.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.

26. In the view that we have taken we allow these appeals. The orders of the High Court and the Tribunal, to the extent indicated above, are set aside. This takes us to consider as to whether the

matter be remitted back to the High Court or the Tribunal to deal with the other various grounds raised by the delinquent government officers.

14. In a subsequent case before the Supreme Court, both view of the Apex Court taken by the two Judge Bench decision, i.e., the judgment in **S.N.Narula v. Union of India and Union of India v. T.V. Patel (supra)** came up for consideration in **Union of India v. S.K.Kapoor (supra)**. It was held by the Apex Court that the judgment in **S.N.Narula v. Union of India (supra)** which was rendered prior to the judgment in **Union of India v. T.V.Patel (supra)** was not noticed, hence the judgment of the two Judge Bench in **Union of India v. T.V. Patel (supra)** is *per incuriam*. The Apex Court in the said case laid down that in event the report of the UPSC is relied, it is necessary to supply the same to the delinquent. It is useful to quote paragraphs 8 and 9 of the judgment.

"8. *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. This is also the view taken by this Court in the case of S. N. Narula v. Union of India.

9. *It may be noted that the decision in S. N. Narula's case (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."*

15. In another judgment of the Apex Court all the above 3 cases came up for consideration. A two Judge Bench in **Union of India v. R.P.Singh (supra)**

considered the question as to whether non-supply of advice of the UPSC shall violate the principles of natural justice vitiating the penalty order. Answer was given in the affirmative. In the above case, punishment order was also passed without supplying the advice obtained from the UPSC whereas advice given by the UPSC was obtained and relied by the disciplinary authority. The disciplinary authority imposed the punishment. In paragraphs 14 and 17 the Apex Court has endorsed the view of the earlier two judgments in **Union of India v. S.K. Kapoor (supra)** and held that the judgment of the two Judge Bench in **Union of India v. T.V. Patel (supra)** is *per incuriam* it having not noted the earlier binding judgment in **S.N.Narula v. Union of India (supra)**. Rule 32 of the 1965 Rules was also considered by the Apex Court in paragraph 21 and noticing Rule 32 the Apex Court held that by efflux of time there has been a change of perception as regards

the applicability of the principles of natural justice. The following was laid down in paragraph 21:

"21. At this juncture, we would like to give our reasons for our respectful concurrence with S. K. Kapoor (supra). There is no cavil over the proposition that the language engrafted in Art.320(3)(c) does not make the said Article mandatory. As we find, in the T. V. Patel's case, the Court has based its finding on the language employed in R.32 of the Rules. It is not in dispute that the said Rule from the very inception is a part of the 1965 Rules. With the efflux of time, there has been a change of perception as regards the applicability of the principles of natural justice. An Inquiry Report in a disciplinary proceeding is required to be furnished to the delinquent employee so that he can make an adequate representation explaining his own stand / stance. That is what precisely has been laid down in the B. Karnukara's case. We may reproduce the relevant passage with profit: -

"Hence it has to be held that when the enquiry officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the enquiry officer's report before the disciplinary authority arrives at its conclusions with regard to the guilt or innocence of the employee with regard to the charges levelled against him. That right is a part of the

employee's right to defend himself against the charges levelled against him. A denial of the enquiry officer's report before the disciplinary authority takes its decision on the charges, is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice."

The following was again laid down in paragraphs 23, 26 and 27.

"23. We have referred to the aforesaid decision in extenso as we find that in the said case it has been opined by the Constitution Bench that non - supply of the enquiry report is a breach of the principle of natural justice. Advice from the UPSC, needless to say, when utilized as a material against the delinquent officer, it should be supplied in advance. As it seems to us, R.32 provides for supply of copy of advice to the government servant at the time of making an order. The said stage was in prevalence before the decision of the Constitution Bench. After the said decision, in our considered opinion, the authority should have clarified the Rule regarding development in the service jurisprudence.

26. 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.

27. In view of the aforesaid, we respectfully agree with the decision rendered in S. K. Kapoor's case and resultantly decline to interfere with the judgment and order of the High Court. As a result, the appeal, being devoid of merit, is dismissed without any order as to costs."

16. After the judgment of the Apex Court in **Union of India v. R.P. Singh (supra)**, the Government came with the OM dated 06.01.2014 which OM has already been brought on record by the appellants as Annexure A1 to W.A. No.1312 of 2014. The Government of India after noticing the judgment in **T.V.Patel and S.K.Kapoor's cases (supra)**, has issued the O.M. It is useful to quote paragraphs 3, 4 and 6 which are to the following effect:

"3. The matter has been examined in consultation with Department of Legal Affairs and it has been decided that in compliance of the judgment of the Honourable Supreme Court in S.K. Kapoor case, a copy of the advice of UPSC, in all cases where the Commission is consulted, may be provided to the

Charged Officer, notwithstanding the provisions of Rule 17 and Rule 32 of CCS (CCA) Rules, 1965 before a final decision is taken by the Disciplinary Authority (DA).

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.*

6. *All Ministries/Departments/Offices are requested to bring the above guidelines to the notice of all Disciplinary Authorities under their control. All*

cases, where final orders have not been issued may be processed as per these guidelines.”

17. Submission which has been pressed by the learned CGC that the OM being subsequent in point of time, when penalty order was passed with regard to petitioners, the said OM has no relevance. Learned Single Judge has committed an error in relying on the said OM. Paragraph 6 of the OM clearly indicate that all cases where penalty orders have been issued may be processed as per these guidelines. Thus the OM was issued for guidance of the disciplinary authority under the 1965 Rules who was directed to communicate the advice of the UPSC to the delinquent officer before taking a decision. OM also indicated that amendment shall also be carried out in Rule 32. Although the submission of the learned Assistant Solicitor General of India that OM dated 06.01.2014 was not relevant for decision of the present cases in which penalty orders were already been passed in the year 2010 and 2011 is

correct but taking into consideration the law laid down by the Apex Court in **S.K. Kapoor and R.P. Singh's cases (supra)**, there is no iota of doubt that advice of the UPSC in event it is relied on by the disciplinary authority has to be served to the delinquent employee and non-supply of the same vitiated the penalty order. As noted above, the subsequent judgment of the Supreme Court in **R.P. Singh's case (supra)** has considered all earlier judgments including the judgment in **S.N. Narula's case (supra)** which had sounded a different note. Judgment of the Apex Court in **T.V.Patel's case (supra)** having been held to be *per incuriam*, by two different two Judge Benches of the Supreme Court, we find ourself bound by the above pronouncement of the Apex Court. In the above view of the matter, we are of the view that the learned Single Judge has not committed any error in setting aside the penalty order on the ground that advice of UPSC was

not supplied to the petitioners before imposing the penalty.

We thus dismiss both the Writ Appeals.

The parties shall bear their own costs.

**ASHOK BHUSHAN,
CHIEF JUSTICE.**

**A.M. SHAFFIQUE,
JUDGE.**

VSV