

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.13406 of 2010

DATE OF DECISION: SEPTEMBER 21, 2015

UNION OF INDIA & ANOTHER

...PETITIONERS

VERSUS

MAYA RAM & OTHERS

...RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL.
HON'BLE MR. JUSTICE DARSHAN SINGH.**

1. Whether the judgement should be reported in the digest? Yes

PRESENT: MR. JAGDISH MARWAHA, ADVOCATE FOR THE PETITIONER.
MR. K.B.SHARMA, ADVOCATE FOR THE RESPONDENT NO.1.

M. JEYAPPAUL, J.

1. Respondent No.1 Maya Ram aggrieved by the penalty of 10% cut in his monthly pension for 5 years without furnishing him a copy of the advice given by the Union Public Service Commission (for short 'UPSC') challenged the disciplinary proceedings culminated in the above order of punishment passed by the writ petitioners before learned Central Administrative Tribunal, Chandigarh Bench (for short 'Tribunal'). The Tribunal, having found that there was lack of application of mind and that the impugned order was not supported by reasons, chose to allow the Original Application filed by the 1st respondent Maya Ram and directed the 1st respondent to pass appropriate orders after affording the opportunity of being heard to 1st respondent herein.

2. There is no dispute to the fact that 1st respondent was afforded sufficient opportunity to rebut the charges formulated as against him and the

findings were recorded in that regard.

2. The points that arise for determination in the writ petition are;

i) Whether the order passed by 1st writ petitioner on 4.1.2008 (Annexure A-1) (with O.A.) imposing penalty of 10% cut in the monthly pension for a period of 5 years is a non-speaking order passed without application of mind; ii) Whether the 1st writ petitioner is bound to supply a copy of the advice given by the UPSC before passing impugned order dated 4.1.2008.

3. We carefully perused the impugned order passed on 4.1.2008. In our considered view, the disciplinary Authority has thoroughly adverted to the articles of charges, the findings recorded by the Inquiry Officer after affording sufficient opportunity to the 1st respondent and the advice given by the UPSC in the process of due consultation made by the disciplinary Authority and passed an elaborate order.

4. The disciplinary Authority need not laboriously discuss each and every article of charge and the findings recorded by the Inquiry Officer and give elaborate reasons for accepting the Inquiry report beforever passing the final order imposing penalty. The Court will have to see whether the disciplinary Authority has adverted to the findings recorded by the Inquiry officer beforever it accepted the findings recorded by the Inquiry officer. Repetition of the findings recorded by the Inquiry officer in the final order passed by the disciplinary Authority imposing penalty is not at all warranted. Therefore, we are of the view that the disciplinary Authority in the instant case has in fact applied its mind and passed a speaking order.

6. Learned counsel appearing for the writ petitioner citing a decision rendered by a Larger Bench of the Hon'ble Supreme Court in

Union of India vs. Tulsiram Patel, 1985(3) SCC 398, submitted that it shall not be necessary for the disciplinary Authority to give the delinquent an opportunity of making the representation on the penalty proposed after the first proviso to Article 311(2) of the Constitution of India was introduced by the Constitution (42nd Amendment) Act, 1976 w.e.f. 3.1.1977. It is his submission that the delinquent is not entitled, as a matter of right, to a copy of the advice rendered by the UPSC in the consultation process embarked upon by the disciplinary Authority in the instant case.

7. *Per contra*, learned counsel appearing for 1st respondent citing the decision of the Hon'ble Supreme Court in **Union of India and others vs. S.K.Kapoor, 2011(2) SCT 609, Union of India and others vs. R.P.Singh, 2014(3) SCT 3 and Union of India and another vs. M.Sreenivasan and another, WA Nos.1312 and 1407 of 2014 dated 5.6.2015**, submitted that the principles of natural justice warrant supply of advice furnished by UPSC in the consultation process embarked upon by the disciplinary Authority to the employee facing disciplinary proceedings so as to make his representation.

8. Article 311 of the Constitution of India deals with the mandatory procedures to be adopted before dismissal, removal or reduction in rank as a penalty so imposed on a civil servant. As rightly pointed out by the learned counsel appearing for the writ petitioners, a proviso to Article 311(2) was introduced by the Constitution (42nd Amendment) Act, 1976 w.e.f. 3.1.1977 diluting the necessity to give the delinquent an opportunity to make representation on the penalty proposed. Such a proviso has been taken note of by the Hon'ble Supreme Court in the above larger Bench decision in **Tulsiram Patel's case** (supra).

9. Learned counsel appearing for 1st respondent submitted that Article 311 would not apply to the 1st respondent as he had already retired from service. It is his further contention that inasmuch as dismissal, removal or reduction in rank was not imposed in the case of the 1st respondent, Article 311 which specifically deals with such penalties alone would not apply to the 1st respondent.

10. We seriously took note of the above submissions made by learned counsel appearing for the 1st respondent. Firstly, we find that articles of the charges had been formulated and served upon the 1st respondent even before he retired from service. Therefore, the 1st respondent cannot legally contend that the provision under Article 311 would have no application to his case as he has retired from service. Secondly, though Article 311 would not apply to lesser penalty proposed to be imposed on the 1st respondent, inasmuch as the right to make a representation on the major penalty of dismissal, removal or reduction in rank has been taken away by the above amendment to Article 311, there was no necessity to afford an opportunity to make representation on the lesser penalty proposed. Therefore, in our considered view, whether the penalty is major or minor, no opportunity need be given by the disciplinary Authority to make representation on the penalty proposed.

11. Now there is no dispute to the fact that the 1st writ petitioner has already issued office memorandum dated 6.1.2014 and subsequently, modified office memorandum dated 5.3.2014 insisting specifically the disciplinary Authority to forward the Inquiry report together with the representation, if any, of the Government servant to the UPSC for advice.

On receipt of the advice from the UPSC, a copy of the advice may be provided to the Government servant who may be allowed to submit his representation, if any, on the Commission's advice within 15 days. The disciplinary Authority shall consider the Inquiry report, advice of the Commission and the representation of the Government servant before arriving at a final decision.

12. The Hon'ble Supreme Court in **S.K.Kapoor's case** (supra) has categorically held that the delinquent employee is entitled to a copy of the advice given by the UPSC. Only thereafter, could the disciplinary Authority impose penalty on the delinquent employee. The above decision has also been considered by the Kerala High Court in **M.Sreenivasan's case** (supra).

13. We want to clarify that proviso to Article 311(2) of the Constitution enables the disciplinary Authority to impose penalty without giving an opportunity of making a representation. As per the above provision of law, of course, the disciplinary Authority is not bound to give any opportunity to the delinquent to make a representation on the penalty proposed. But it is to be noted that there is a stage in the disciplinary proceedings prior to the imposition of penalty by the disciplinary Authority. At that crucial stage, the disciplinary Authority as per the above official memorandum is bound to furnish a copy of the Inquiry report to the delinquent giving him an opportunity to make a representation. The Inquiry report alongwith his representation shall be consigned to the UPSC for its advice. The moment the advice is received, it shall also be communicated to the delinquent to enable him to make further representation. Only thereupon, could the disciplinary Authority impose appropriate penalty. In

other words, though the disciplinary Authority is not bound to give any opportunity to make representation on the penalty proposed in compliance of the principles of natural justice, the disciplinary Authority is bound to adhere to the above Instructions found in the official memorandum to well inform the delinquent of the advice that has been received from the UPSC in connection with the disciplinary proceedings initiated as against him.

14. In view of the above, the final order passed by the writ petitioners in the disciplinary proceedings initiated against the 1st respondent stands set aside. The writ petitioners shall furnish a copy of the advice received from the UPSC to 1st respondent to enable him to make further representation within 15 days from the date of receipt of communication and thereafter, the disciplinary Authority shall consider the Inquiry report, advice of the Commission and the representation, if any, made by 1st respondent and pass a final order in the disciplinary proceedings initiated as against the 1st respondent.

15. The order passed by the Tribunal is accordingly modified and the writ petition stands disposed of.

(M. JEYAPPAUL)
JUDGE

September 21, 2015
Gulati

(DARSHAN SINGH)
JUDGE