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

+ **W.P.(C).1126 /2015**

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Judgment dated 24th August, 2015

UNION OF INDIA

..... Petitioner

Through : Mr. Sanjeev Narula, CGSC with Mr. Ajay
Kalra, Advocate

versus

VIJAY SINGH & ORS.

..... Respondents

Through : Mr. Padma Kumar, Advocate for
respondent no.1.
Mr. Naresh Kaushik, Ms. Aditi Gupta and
Ms. Twinkle Maheshwari, Advocates for
respondent no.2/UPSC.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J (ORAL)

CM APPL.2006/2015

1. By this application filed by the petitioner, the petitioner seeks leave to file additional documents. The application is allowed. The petitioner is granted permission to place additional documents on record.
2. The application stands disposed of.

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3. Aggrieved by the order passed by the Central Administrative Tribunal (hereinafter referred to as 'Tribunal') by which OA filed by the respondent herein was allowed has led to the filing of the present writ petition.
4. The respondent had challenged the orders dated 06.02.2008 and 13.08.2009 passed in disciplinary proceedings initiated against him. By the order of 06.02.2008, the President as the Disciplinary Authority imposed upon him the penalty of reduction to the next lower stage in the time scale of pay till retirement and by the order of 13.08.2009, the President as the Reviewing Authority rejected his review application against the aforesaid penalty. The respondent had also sought a direction before the Tribunal to restore his increments which had been reduced.
5. The respondent was proceeded under Rule 14 of the CCS(CCA) Rules, 1965. Seven Articles of Charge were framed. Five charges were accepted by the Inquiry Officer. The stand of the respondent before the Tribunal was that the Disciplinary Authority's order is a non-speaking order as it does not contain any discussion on the evidence adduced by the Department or the defence. He had also submitted that the review order is equally a non-speaking order as the President has neither considered nor dealt with the points raised by him in his petitions. It was also argued that the procedure adopted by the respondents was in violation of the principles

of natural justice. He submitted that the respondents never forwarded a copy of the advice of the UPSC imposing the penalty upon him before the penalty, on the basis of its advice, was imposed upon him.

6. The Tribunal held that the Disciplinary Authority in violation of Rule 15 of the CCS(CCA) Rules, 1965 referred the Inquiry Officer's report together with the representation of the respondent thereon to UPSC without recording its findings and without due application of mind. The Tribunal further held that the Disciplinary Authority should have applied its independent mind and proposed what punishment was to be imposed upon the employee in the given facts and circumstances of the case and only thereafter, the matter was to be referred to the UPSC for its advice. However, the Disciplinary Authority left it entirely to the UPSC to decide the matter including the quantum of punishment. The UPSC has exceeded its jurisdiction and prescribed the specific penalty to be imposed upon the respondent. Thereafter, the Disciplinary Authority, without any application of mind, simply reproduced the said advice in its order. Therefore, the advice given by the UPSC to the Disciplinary Authority to impose a specific penalty is in violation of Article 320(3)(c) of the Constitution as well as sub-rules (1), (2), (2-A) and (3) of Rule 15 of the CCS (CCA) Rules, 1965. The Tribunal also reached a finding that a copy of the advice of the UPSC was not furnished to the respondent herein before passing the

order of punishment order dated 06.02.2008. Moreover, as the Disciplinary Authority followed the advice of the UPSC verbatim, it could not have been done so without giving an opportunity to the respondent herein to make a representation against the same. The Tribunal had placed reliance in the case of *Pradayan Kumar Bose v. Hon'ble Chief Justice of Calcutta High Court*, reported at AIR 1956 SC 285 and *Union of India and Others. V. S.K. Kapoor*, (2011) 4 SCC 589 while allowing the OA.

7. At this stage, with the consent of the parties, the writ petition is disposed of with the following terms:

- (i) The petitioner will supply the advice rendered by the UPSC to respondent no.1, if not supplied, within a period of 10 days from today to enable respondent no.1 to make a representation against the same to the Disciplinary Authority;
- (ii) The representation would be decided within a period of four weeks thereafter;
- (iii) All grounds raised by the respondent in the OA are kept open. Leave is granted to raise the same in case the representation is decided against the respondent; and
- (iv) The impugned order is set aside.

8. The writ petition is disposed of in above terms.

CM.APPL 2004/2015(stay)

9. Since the present writ petition has been disposed of, the application also stands disposed of.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

AUGUST 24, 2015

pst/sc