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

+ W.P.(C) 2891/2014

% ***Judgment dated 20th July, 2015***

UNION OF INDIA & ANR. Petitioners

Through : Mr.V.S. Krishna, Adv.

versus

M.M. KOHLI Respondent

Through : Ms.Meenu Mainee, Adv.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J (ORAL)

1. Present writ petition has been filed by the petitioners under Article 226 and 227 of the Constitution of India seeking a direction to quash the impugned order dated 6.8.2013 passed by Central Administrative Tribunal (hereinafter referred to as "*the Tribunal*") in O.A.No.693/2011. The respondent herein had approached the Tribunal seeking consequential benefits and refund of pension amount, which was recovered from him with interest.
2. The brief facts of the case, as noticed by the learned Tribunal, are that the respondent had joined Railways as a Chargeman on 20.8.1964. He was promoted from time to time. While the respondent was working as a Divisional Electrical Engineer, on 13.2.2003 he was served with a charge sheet for major penalty. The respondent retired on superannuation on 28.2.2003. An enquiry report was submitted, which was made available to the respondent on 20.10.2015, against which a representation was

submitted by the respondent on 6.12.2005. An order dated 29.6.2008 was passed imposing upon the respondent penalty of withholding ten percent monthly pension on permanent basis.

3. Learned counsel for the petitioners submits that the impugned order passed by the Tribunal is bad in law and the Tribunal has exceeded its jurisdiction by passing the said order.
4. We have heard counsel for the parties, carefully examined the impugned order passed by the Tribunal and also considered the rival submissions of counsel for the parties.
5. The order dated 29.6.2008, by which penalty was imposed on the respondent withholding ten percent monthly pension on permanent basis, was challenged before the Tribunal on the following grounds:

“(i) The charges leveled against the applicant were misconceived and based on misconception.

(ii) Some of the vital documents were not supplied to the applicant during enquiry.

(iii) The EO violated the prescribed rules while conducting the enquiry inasmuch as he examined the applicant at the very first regular hearing before recording any evidence of the prosecution.

(iv) No prosecution witness was produced to authenticate any of the documents relied upon. As such, none of the documents were proved at the time of enquiry.

(v) The conclusions of the EO are based on surmises and conjectures without discussing the evidence produced by the applicant.

(vi) During the arguments, learned counsel for the applicant mentioned that the report of the UPSC relied upon by the respondents was made available to the applicant only along with the impugned order.

(vii) The order of the Disciplinary Authority (DA) is not speaking and reasoned.

6. The submissions of the respondent (appellant before the Tribunal) found favour with the Tribunal.
7. Relying on the enquiry report, the Tribunal reached a conclusion that the charged Officer was examined by the EO on 13.9.2004 itself that is before recording any evidence of the prosecution. Thus, the Tribunal has held that the grounds taken by the respondent herein appeared to be correct. In this regard, the respondent had relied upon *The Central Bank of India Limited v. Karunamoy Banerjee*, reported at AIR 1968 Supreme Court 266, where it was held that it was not fair in a domestic enquiry that at the commencement of the enquiry the employee should be cross-examined even before evidence is led against him.
8. Another ground, which was raised by the respondent, before the Tribunal was that no prosecution witness was produced in evidence and in the absence of prosecution witnesses the documents could not have been read in evidence.
9. The Tribunal also impressed with this argument of the respondent based on the decision of the Supreme Court in the case of *B.C. Chaturvedi v. UOI*, reported at JT 1995 (8) SC 65.
10. The Tribunal, thus, held that in the absence of the prosecution witnesses the documents relied upon remained unauthenticated and, thus, it became a case of no evidence [See (1998) 3 SC 227].
11. Another important aspect, which was brought to the notice of the Tribunal was that the UPSC report, which had been relied upon by the respondents (petitioners herein) before imposing punishment, was only made available to the respondent herein along with the impugned order of punishment,

which was contrary to the law laid down by the Supreme Court of India in the case of *Union of India & Others v. S.K. Kapoor*, reported at (2011) 4 SCC 589 wherein it was held as under:

“5. It is a settled principle of natural justice that if any material is to be relied upon in departmental proceedings, a copy of the same must be supplied in advance to the charge sheeted employee so that he may have a chance to rebut the same.

6. Mr. Qadri, learned counsel for the appellant submitted that the copy of the Report of the Union Public Service Commission was supplied to the respondent-employee along with the dismissal order. He submitted that this is valid in view of the decision of this Court in *Union of India vs. T.V. Patel*, (2007) 4 SCC 785. We do not agree.

7. 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.

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 vs. Union of India & Others*, Civil Appeal No. 642 of 2004 decided on 30th January, 2004.”

12. We find no infirmity in the judgment passed by the learned Tribunal. We may add that the prime ground with regard to reliance of the UPSC report before imposing penalty and not making the same available to the respondent herein was also subject of a recent decision before the Supreme Court in a recent decision rendered in the case of ***Union of India & Others v. R.P. Singh***, Civil Appeal No.6717/2008 dated 22.5.2015 where Deepak Misra, J, has held as under:

“26. 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, Rule 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. We have been apprised by Mr.Raghavan, learned counsel for the respondent, that after the decision in S.K.Kapoor's case, the Government of India, Ministry of Personnel, PG & Pensions, Department of Personnel & Training vide Office Memorandum dated 06.01.2014 has issued the following directions:

"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.

27. After the said Office Memorandum, a further Office Memorandum has been issued on 05.03.2014, which pertains to supply of copy of UPSC advice to the Charged Officer. We think it appropriate to reproduce the same:

"The undersigned is directed to refer to this Department's O.M. of even number dated 06.01.2014 and to say that it has been decided, in partial modification of the above O.M. that a copy of the inquiry report may be given to the Government servant as provided in Rule 15(2) of Central Secretariat Services (Classification, Control and Appeal) Rules, 1965. The inquiry report together with the representation, if any, of the Government servant may be forwarded to the Commission for advice. On receipt of the Commission's advice, 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 fifteen days. The Disciplinary Authority will consider the inquiry report, advice of the Commission and the representation(s) of the Government servant before arriving at a final decision."

28. 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."

13. We have carefully examined the judgment passed by the Tribunal. For the

reasons stated above, we find no reason to take a different view than the view taken by the Tribunal. We find no merit in the present writ petition and the same is accordingly dismissed.

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14. Application stands dismissed in view of the order passed in the writ petition.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

JULY 20, 2015

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