

\$~08.

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

+ W.P.(C) 2386/2014

% *Judgment dated 8th December, 2015*

UNION OF INDIA & ORS Petitioners

Through : Mr.R.V. Sinha, Adv.

versus

SUBHASH CHANDER SHARMA Respondent

Through : Ms.Meenu Maini, Adv.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J (ORAL)

1. With the consent of counsel for the parties, present writ petition is set down for final hearing and disposal.
2. Present writ petition has been filed by petitioners under Article 226 of the Constitution of India seeking a direction to quash the impugned order dated 12.11.2013 passed by Central Administrative Tribunal (hereinafter referred to as the '*Tribunal*') in O.A. No.3900/2011.
3. At the outset, we may notice that during the pendency of this writ petition, the respondent has died on 2.6.2015. The legal heirs of the deceased have been brought on record. For the sake of convenience the deceased respondent shall be referred to as the respondent.
4. In this case, the respondent joined the Railway Service as Apprentice Mechanic and after two years of successful training, he was promoted as Chargeman in the Diesel Shed Shakurbasti. In the year 1979, the respondent was promoted to the post of Senior Chargeman. The respondent while working as a Senior Chargeman was sent on deputation to the Railway Board as a Technical Assistant. He was thereafter

repatriated vide Railway Board's order dated 6.7.1995, however, instead of reporting to the Northern Railways he absented himself only to report on duty to the General Manager (Personnel) on 6.6.2000, when he was posted at Northern Railways, Deisel Shed, Ludhiana vide order dated 26.8.2000. The respondent again did not report for duty and remained unauthorisedly absent w.e.f. 22.8.2000. The respondent thereafter reported for duty on 21.3.2007 and after getting himself medically examined he was allowed to join the duties at the Diesel Shed, Ludhiana, on 15.6.2007. In the meanwhile, a Memorandum of charge was issued to the respondent on 17.3.2007 under Order 9 of the Railway Servants (Discipline and Appeal) Rules 1968. A reply to the Memorandum was submitted by the respondent and finally the enquiry officer submitted his report on 28.6.2007. The respondent superannuated on 30.6.2007. The respondent submitted his reply to the enquiry report on 12.7.2007. In the meanwhile, since the pensionary benefits were not being released to the respondent, he filed O.A.2097/2008 in which an order was passed for grant of provisional pension. In the year 2011, the respondent filed another O.A.No.3900/2011 under Section 19 of the Administrative Tribunals Act. In the meanwhile, the President, in exercise of his power under Rules, vide order dated 28.6.2011, imposed a penalty of 100% cut in pension on permanent basis and forfeiture of 100% gratuity otherwise admissible to the respondent. The O.A. filed by the respondent before the Tribunal has been allowed and the enquiry proceedings and all the orders passed thereunder stand quashed.

5. Mr.Sinha, learned counsel for the petitioners, submits that the Tribunal has failed to take into consideration that the respondent had remained absent from duty without any intimation and without filing an application seeking leave, which fact was admitted by the respondent before the

enquiry officer. Thus, there was no necessity in producing the witness and proving what already stood admitted by the respondent. Counsel further submits that while conducting the enquiry the principles of natural justice were duly followed and, thus, the order of the Tribunal is not only perverse but against the settled principles of law.

6. Ms.Maini, learned counsel appearing on behalf of legal heirs of the deceased respondent, submits that a bare reading of the enquiry report would show that it is not in dispute that the respondent was prevented from attending to his duties on account of his ailments. Counsel has drawn the attention of the Court to the concluding portion of the observations made by the enquiry officer, which reads as under:

“On the other hand, from the Medical Reports of private doctors and Railway doctors who attended the employee it is clear that the employee was suffering from heart trouble during the period of his absence from duty. Moreover, the Railway doctor has given light duty for one month to the employee. It is requested that this case may please be considered sympathetically.”

7. Ms.Maini, counsel for the respondent, further submits that the respondent had also taken a stand before the enquiry officer that he had informed the Department in writing about his disease and he had also submitted an application for voluntary retirement on medical grounds on 7.2.2000. Counsel also contends that the Tribunal has relied upon various decisions rendered by the Supreme Court of India and correctly applied the same to the facts of the present case and, thus, the present writ petition is liable to be dismissed. It is submitted that there is no infirmity in the order passed by the Tribunal, which would require interference under the proceedings under Article 226 of the Constitution of India. Counsel further submits that the enquiry officer has also taken note of the fact that even if the respondent joined the duties, the Doctor had recommended him for light

duty, which would leave no element of doubt that the respondent was suffering from a heart ailment and only on account of his illness he could not join the duty. It is further submitted that the Tribunal has rightly relied upon the decision rendered by the Supreme Court of India in the case of ***Union of India & Others v. S.K. Kapoor***, reported at JT 2011 (3) SC 446 to the facts of this case. Ms.Meenu submits that admittedly the report of the UPSC, relied upon by the President in his order imposing penalty, was not given to the appellant. Counsel further submits that in O.A. No.2097/2008, the Tribunal had directed the petitioners to complete the disciplinary proceedings and pass the order within three months but the order was not passed within three months and on this alone the enquiry proceedings would stand vitiated. Ms.Maini further submits that the respondent was spared from the Railway Board on 6.7.1995 when he was already in the sick list as he was suffering from heart disease, however, as he was compelled to attend the duty, he reported for duty on 7.2.2000 with the Medical Certificate. As no immediate posting was given to the respondent, he was asked to wait and he was not on leave from that date. The respondent had also submitted an application on 7.2.2000 itself for grant of voluntary retirement from the service. But without considering the aforesaid request, the General Manager (Personnel), vide its notice dated 22.8.2000, posted the respondent at Diesel Shed, Ludhiana.

8. Another submission of learned counsel for the respondent is that there was gross delay between the period when the enquiry officer submitted his report on 28.6.2007 and the disciplinary authority which passed the order on 23.9.2011 and during this period of four years he was made to run from pillar to post for his terminal benefits as according to him he had already retired from the service of his attaining superannuation. The Department continued to remain insensitive to the sufferings including the

heart ailments of the respondent.

9. We have heard learned counsel for the parties, considered their rival submissions and also examined the impugned order passed by the Tribunal. During the hearing of the present petition, we had asked Ms.Maini, learned counsel for the respondent, that although the Tribunal has allowed the O.A. and quashed the enquiry proceedings what would be the justification for payment of salary between the period 2000 to 2007, when admittedly the respondent did not perform his duties, did not apply for leave and there is nothing on record to show that his period of absence was regularised. We had also asked Ms.Maini as to whether this period, in all fairness, should be treated as *dies non*, moreover, when it is the case of the respondent that he sought voluntary retirement in the year 2000. Ms.Maini agrees to the same, however, she submits that although the respondent was under the impression that his application seeking voluntary retirement had been accepted and, thus, he did not apply for regularisation of his leave.
10. We had thereafter again asked Ms.Maini that in case the contention of the respondent was that he presumed that his application for compulsory retirement has been accepted in the year 2000 there would be no justification for payment during the period 2000 to 2007.
11. In the light of the observations so made, learned counsel for the respondent agrees that the order of the Tribunal be modified to the extent that the period w.e.f. 2000 to 2007 may be treated as *dies non*.
12. In the present case copy of the report of the UPSC, relied upon by the President in his order imposing penalty, was not supplied to the respondent.
13. In the case of ***Union of India*** (supra) it was held as under:

“4. We have perused the impugned order and find no infirmity in the same.

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.

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.

10. For the aforesaid reasons, this appeal is dismissed. Parties shall bear their own costs.”

14. Accordingly, the present writ petition is allowed in part. As agreed by learned counsel for the respondent, we modify the impugned order leaving all the legal questions to be kept open but we may note that since admittedly the advice of the UPSC was not brought to the notice of the respondent on this ground the enquiry proceedings are liable to be quashed. The order of the tribunal is modified to the extent that the period of absence from 2000 to 2007 of the respondent shall be treated as *dies non*. All the arrears of pension and retiral benefits shall be released by the petitioners in favour of the legal heirs of the deceased respondent within six weeks from today.
15. Writ petition stands disposed of in view of above.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

DECEMBER 08, 2015 msr