

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.21928 of 2014**

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Amitabh Kumar Das, Son of Sri Gauri Shankar Das, Resident of Mohalla-Shahganj(Benta),P.O+P.S-Darbhanga,Medical College,Distt.-Darbhanga

.... .... Petitioner/s

Versus

1. The Union of India through the Secretary, Govt. of India, Ministry of Home Affairs North Block New Delhi.
2. The Chairman UPSC, Dholpur House, Shahganj Road, New Delhi
3. The Deputy Secretary, UPSC, Dholpur House, Shahganj Road, New Delhi
4. The Chief Secretary, Bihar, Patna
5. The Principal Secretary Home Department, Govt. of Bihar, Main Secretariat, Patna
6. The Special Secretary Home Department, (Police) Govt. of Bihar, Main Secretariat, Patna

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Rajesh Kumar Singh, Advocate

For the Respondent/s : Mr. Sanjay Kumar(ASG)

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**CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA**

**and**

**HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH**

CAV JUDGMENT

**(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)**

**Date: 05-05-2016**

The challenge in the present writ petition is to an order dated 13<sup>th</sup> November, 2013 in O.A.No. 71/2013 passed by the Central Administrative Tribunal, Patna Bench, Patna (hereinafter referred to as 'the Tribunal'), whereby the challenge to the punishment of reduction of his pay by two stages for two years and

further stoppage of increments for two years with cumulative effect imposed upon the petitioner, remained unsuccessful.

The petitioner was served with a show cause notice on 15.9.2006 by the DIG for showing gross negligence while working as S.P. Railways, in the Bihar Sena Police, and disregard in respect of Patna Junction Railway P.S.Case Nos. 240/01 to 246/01 relating to theft of Postal Orders and National Saving Certificates. The petitioner submitted his reply on 16.09.2006. It is thereafter on 20<sup>th</sup> September, 2007 the petitioner was served with the charge-sheet for not supervising properly railway fraud cases involving theft of crores of rupees. An Enquiry Officer was appointed who submitted his report on 8.4.2009 relating to theft of Postal Orders and National Savings Certificates.

It was on 28<sup>th</sup> November, 2012, penalty as mentioned above was imposed upon him while communicating the concurrence of penalty by the Union Public Service Commission (U.P.S.C., in short) on 17<sup>th</sup> September, 2012. It is the said order which was challenged by the petitioner before the Tribunal which remained unsuccessful and, still aggrieved; the petitioner is before this Court.

A perusal of the record shows that on conclusion of the enquiry, second show cause notice dated 2<sup>nd</sup> June, 2010 was served



upon the petitioner, communicating the copy of the enquiry report and the fact that proceedings warrants imposition of major penalty under Rule 6 of the All India Services (Discipline and Appeal) Rules, 1969 (hereinafter referred to as 'the Rules'). The petitioner submitted his detailed reply on 19<sup>th</sup> July, 2010. It was on 24<sup>th</sup> October, 2011 vide Annexure-10, decision was taken to reject the reply of the petitioner submitted to the second show cause notice. The State also sought approval from the Home Ministry proposing to impose punishment of stoppage of three increments with cumulative effect and for stoppage of promotion for three years. But the Ministry of Home Affairs communicated on 26<sup>th</sup> November, 2010 that the State Government is competent to initiate disciplinary proceeding against I.P.S. Officers working under them. Only in cases where a penalty of dismissal, removal or compulsory retirement is proposed to be imposed on a Member of the Service, the proposal has to be sent to the Central Government in terms of Rule 7(2) of the Rules. It is thereafter, an order of punishment was passed keeping in view the advice of the U.P.S.C. to reduce the salary of the petitioner for two years by two steps and that he will not be able to claim increments and that stoppage of such increment will have cumulative effect. The advice of the U.P.S.C. was sent to

the petitioner along with the order of punishment.

Learned counsel for the petitioner refers to an order passed by the Hon'ble Supreme Court in a judgment in the case of **Union of India vs. S.K. Kapoor [(2011) 4 SCC 589]** to contend that the report of the U.P.S.C. is required to be sent to the delinquent in advance and it cannot be made part of the order of punishment. It is on this account alone, the order of punishment is liable to be set aside.

We have heard learned counsel for the parties and found no merit in the argument raised on behalf of the petitioner.

Article 320(3) of the Constitution of India contemplates consultation with U.P.S.C. on all disciplinary matters affecting a person serving under the Government of India or the Government of a State in a civil capacity, including memorials or petition relating such matters. In **S. K. Kapoor's** case (supra), the Hon'ble Supreme Court has found that the compliance of the provisions of Article 320 is not mandatory. But it was held that any adverse material such as advice of U.P.S.C. is required to be communicated to the delinquent.

We find that the communication dated 2<sup>nd</sup> June, 2010 was for imposition of major penalty while agreeing with the finding of the enquiry officer. It is thereafter the reply of the petitioner was



rejected vide communication dated 24<sup>th</sup> October, 2011. The U.P.S.C. rendered its advice on 17<sup>th</sup> September, 2012, whereby the proposed punishment was not agreed to but was advised reduced punishment of stoppage of increment for two years with cumulative effect. It is the said punishment which was ultimately awarded by the State Government.

We find that in the facts of the present case, the advice of the U.P.S.C. is not an adverse material which was to be communicated to the petitioner. The decision was already taken to impose major penalty. Another decision was taken to reject the reply of the petitioner. So far as the petitioner is concerned, such action culminates the disciplinary proceedings except an order of punishment. It is the order of punishment which was communicated vide Annexure-14 on 17.11.2012. In these circumstances, when the proposed punishment was higher than the punishment imposed as per the advice of U.P.S.C., it cannot be said to adverse material. The order of punishment cannot be said to be vitiated only for the reason that copy of such advice was not sent to the petitioner prior to imposition of punishment but was sent to him along with the order of punishment.

We do not find any illegality in the order passed by the

Tribunal which may warrant any interference by this Court in the present writ petition.

The writ petition is accordingly dismissed.

**(Hemant Gupta, J)**

I agree.  
**Ahsanuddin Amanullah, J.**

mrl

**(Ahsanuddin Amanullah, J)**

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