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

+ W.P.(C) 5043/2016 & CM No.21093/2016

GOVT. OF INDIA & ORS Petitioners

Through: Mr. Arun Bhardwaj, CGSC

versus

M.P. SARANGI Respondent

Through: Mr. Piyush Sharma, Advocate

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

ORDER

% **22.03.2017**

Having heard learned counsel for the petitioners, Government of India & its functionaries, we are not inclined to interfere with the impugned order dated 7.5.2015 passed by the Principal Bench of the Central Administrative Tribunal, as the issue is covered by the decision of the Supreme Court in Civil Appeal No.6717/2008, Union of India & Ors. v. R.P. Singh, decided on 22.5.2014. This decision refers to several earlier decisions with reference to Rule 32 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 and holds 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.

29. In view of the aforesaid, we respectfully agree with the decision rendered in S.K.Kapoor's case and resultantly decline to interfere with the judgment and order of the High Court. As a result, the appeal, being devoid of merit, is dismissed without any order as to costs."

2. In order to protect the interests of the petitioners, the Tribunal, in the impugned order, has specifically observed that they would be entitled to pass a fresh order in the disciplinary proceedings in accordance with Rules and instructions laid down for the said purpose. In fact, this Court, vide order dated 30.5.2016, while issuing notice in the writ petition had observed that

without prejudice to the rights and contentions of the petitioners, it will be open to them to pass a fresh order in terms of the impugned order in accordance with law. The petitioners inspite of the aforesaid observation and liberty have not taken steps in terms of the said order.

3. With the aforesaid observations, the writ petition is dismissed.

SANJIV KHANNA, J

CHANDER SHEKHAR, J

MARCH 22, 2017/tp