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

% *Date of Judgment : 13th September, 2019*

+ **W.P.(C) 9895/2019**

UNION OF INDIA AND ANR

..... Petitioners

Through **Mrs. Bharthi Raju, CGSC**

versus

SH. NEERAJ SHARMA & ANR

..... Respondents

Through **Mr. T.D. Yadav, Advocate for respondent no.1.**

Mr. Naresh Kaushik and Ms. Vibhuti Tyagi, Advocates for respondent no.2/UPSC.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

G.S. SISTANI, J. (ORAL)

CMs. APPL 40902-40903/2019 (Exemption)

1. Exemption allowed, subject to all just exceptions.
2. The applications stand disposed of.

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3. The present writ petition is directed against the order dated 01.05.2019 passed by the Central Administrative Tribunal (the Tribunal), by which the OA filed by the respondent no.1 herein has been partly allowed.

4. The learned counsel for the petitioners, while relying on a decision in the case of ***B.C. Chaturvedi v. Union of India***, reported at 1995 (6) SCC 749, submits that the Tribunal has exceeded its jurisdiction by modifying the punishment awarded to respondent no.1 vide order dated 15.04.2004. The learned counsel contends that having regard to the articles of charge, evidence placed on record and the report of the Inquiry Officer, the UPSC/respondent no.2 had rightly suggested the passing of an order of compulsory retirement against the respondent no.1. The learned counsel further submits that although the Disciplinary Authority/petitioner had proposed imposition of penalty of reduction of pay scale by 4 stages from Rs.6200/- to Rs.5500/- for a period of three years without cumulative effect against the respondent no.1 herein, but the UPSC, on advisory reference, suggested imposition punishment of compulsory retirement. The learned counsel submits that the punishment proposed by the petitioner would have no effect as the petitioner herein, on careful examination of the case in totality, decided to comply with the suggestion of the UPSC. Regarding the Tribunal exceeding its jurisdiction by modifying the order dated 15.04.2004, reliance is also placed on the judgments in the case of ***State of Orissa and Ors. v. Bidyabhushan Mohapatra***, reported at (1963) *ILLJ* 239 SC and in the case of ***State of Andhra Pradesh & Ors. v. Sree Rama Rao***, reported at AIR 1963 SC 1723.
5. We have heard the learned counsel for the parties and carefully examined the order passed by the Tribunal.
6. The respondent was working as a Personal Assistant in the Ministry of Defence. Disciplinary proceedings were initiated against the

respondent no.1 herein, under Rule 14 OF CCS(CCA) Rules, 1965 vide Office Memorandum dated 27.07.2000, for breach of discipline as he remained unauthorisedly absent from duty for 140 days during the period commencing from 14.01.2000 to 27.07.2000. The respondent no.1 submitted his written statement of defence dated 21.08.2000 and the Disciplinary Authority, unsatisfied with the reply, ordered an inquiry by appointing an Inquiry Officer vide order dated 28.09.2000. The inquiry was held *ex parte* as the respondent did not participate in the same. The inquiry report was submitted on 01.11.2001 holding the articles of charge as proved. A copy of the report was sent to the respondent to furnish his written representation against the finding contained in the inquiry report as per the instructions of Rule 15(2) of CCS(CCA) Rules, 1965, but no representation was submitted by the respondent no.1. As per the averment made in this petition in para 8, on careful consideration of the report of Inquiry Authority and evidence available on record, the Disciplinary Authority came to a tentative view that it would justify imposition of penalty of “reduction of pay by four stages from Rs.6200/- to Rs.5500/- for a period of three years without cumulative effect” on the respondent no.1. Thereafter, the case was referred to the UPSC for advice and the UPSC vide letter dated 27.02.2003 advised that ends of justice would be met in case the penalty of compulsory retirement from service was imposed upon the respondent no.1. The Disciplinary Authority further examined the case of the respondent no.1 and it was decided to bring to the notice of the UPSC that the respondent no.1 had not completed 10 years of qualifying service required for being eligible for pensionary benefits.

The matter was referred back to the UPSC, as according to the petitioner, this crucial piece of information was missing in the initial reference. The UPSC reiterated its earlier advice and the Disciplinary Authority accordingly followed the advice of the UPSC and imposed the penalty on the respondent no.1 of compulsory retirement from service vide order dated 15.04.2004. The respondent no.1, against the order of penalty, made a representation addressed to the President of India, but the order of penalty was not varied. Aggrieved by the decision of the Disciplinary Authority, the respondent no.1 approached the Tribunal, which vide order dated 01.05.2019, allowed the OA in part, and which has led to the filing of the present petition.

7. The Tribunal in paras 12 and 13 held as under:

“12. On a perusal of this, it becomes clear that left to himself, the Disciplinary Authority was of the view that the imposition of penalty of reduction of pay scale by 4 stages from Rs.6200/- to Rs.5500/- for a period of three years without cumulative effect against the applicant would be adequate. However, through its advice, the UPSC proposed to impose the punishment of compulsory retirement. Even when the Disciplinary Authority re-sent the proposal stating that the applicant did not have a pensionary service, the UPSC reiterated its stand.

13. It is no doubt true that the UPSC takes into account, various aspects such as nature of misconduct and provisions of law before it suggests punishment. The fact, however, remains that the nature of allegation against the applicant is only of some unauthorized absence and the Disciplinary Authority has found it appropriate to resend the proposal to the UPSC. It is only when a solid and substantial basis existed for ignoring that suggestion, that the UPSC could have advised imposition of a higher punishment. The record does not disclose that the

UPSC has assigned any specific reason for being even harsher to the applicant. Though the Disciplinary Authority has the discretion to take his own decision, he went by the advice of the UPSC out of sheer respect for it. The sufferer, however, is the applicant. We are of the view that the punishment as suggested by the Disciplinary Authority would be adequate and reasonable, if one takes into account, the nature of the charge held proved against the applicant.”

8. In this case, the basic facts are not in dispute that the disciplinary proceedings were initiated against the respondent no.1; articles of charge were framed; the respondent no.1 did not participate in the inquiry; and the Disciplinary Authority proposed the penalty of reduction of pay scale by four stages from Rs.6200/- to Rs.5500/- for a period of three years without cumulative effect against the respondent no.1 herein. The learned counsel for the petitioner is unable to show that the advice rendered by the UPSC is either mandatory or binding upon the Disciplinary Authority. We also find that the consistent stand of the Disciplinary Authority was that the penalty of reduction of pay scale would be adequate and commensurate to the articles of charge framed in the report of the Inquiry Officer. Not only this proposal was made once, but the same was returned to the UPSC, in order to bring it to the notice of the UPSC that in case an order of compulsory retirement is passed, the respondent no.1, not having completed his qualifying service, would be deprived of pension, and which was a relevant factor for the Disciplinary Authority while proposing the punishment. It would be useful to reproduce the **Central Vigilance Commission (CVC)** guidelines, which reads as under:

“No.003/DSP/3

Government of India Central Vigilance Commission

Satarkta Bhavan, Block ‘A’,

GPO Complex, INA,

New Delhi- 110 023

Dated the 26th February 2004

Office Order No.14/02/04

To

All Secretaries to the Government of India

All Chief Vigilance Officers

Deputy Secretary (AVD III), DOPT

Subject:- Role of Disciplinary Authority in decision taken.

Sir/Madam,

The Commission vide its Office Order No. 51/9/03 dated 15.9.2003 stressed the need for self-contained speaking and reasoned orders to be issued by the authorities exercising disciplinary powers. The Commission has however, noticed that at the time of issuing final orders imposing a penalty on the charged officer on the advice of the Commission and/or at the time of deposing affidavits in the courts, some Disciplinary Authorities (DA) mention the Commission’s reference. The Commission has observed that this leads to an unwarranted presumption that the DA has acted under the influence/pressure of the Commission.

2. The DAs are again informed that, their orders in the matter of disciplinary cases or affidavits to the courts, should in no case imply that any decision has been taken under the influence of the Commission; as the Commission is only an Advisory Body and it is for the Disciplinary Authority to apply its mind subsequent to obtaining the Commission’s advice and take reasoned decisions on each occasion. The Disciplinary Authorities are required to

strictly follow the above guidelines of the Commission at all stages.

Yours faithfully,
Sd/-
(Anjana Dube)
Deputy Secretary”

(*Emphasis added*)

9. We have also have examined Article 320 of the Constitution of India and also also taken into account the judgment in the case of ***Union of India v. R.P. Singh***, reported at (2014) 7 SCC 340 wherein it was held that the provisions contained in Article 320(3)(c) are not mandatory. Paras 13 and 21 are reproduced as under:

“13. In *Union of India v. S.K. Kapoor*, (2011) 4 SCC 589, the Court accepted the ratio laid down in *Union of India v. T.V. Patel*, (2007) 4 SCC 785 as far as the interpretation of Article 320(3)(c) is concerned and, in that context, it opined that the provisions contained in the said Article 320(3)(c) of the Constitution of India are not mandatory. While distinguishing certain aspects, the Court observed as follows: (*S.K. Kapoor case*, SCC p. 590, para 7)

“7. ... 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 case* is clearly distinguishable.”

After so stating the two-Judge Bench opined that when the disciplinary authority does not rely on the report of UPSC then it is not necessary to supply the same to the employee concerned. However, when it is relied upon then the copy of the same may be supplied in advance to the employee concerned, otherwise, there would be violation of the principles of natural justice. To

arrive at the said conclusion, reliance was placed upon the decision in *S.N. Narula v. Union of India*, (2011) 4 SCC 591. Proceeding further, the Court held: (*S.K. Kapoor case*, SCC p. 591, para 9)

“9. It may be noted that the decision in *S.N. Narula case* was prior to the decision in *T.V. Patel case*. It is well settled that if a subsequent coordinate 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 coordinate Bench is binding on the subsequent Bench of equal strength. Since, the decision in *S.N. Narula case* was not noticed in *T.V. Patel case*, the latter decision is a judgment per incuriam. The decision in *S.N. Narula case* 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.”

.....

“21. At this juncture, we would like to give our reasons for our respectful concurrence with *S.K. Kapoor*. There is no cavil over the proposition that the language engrafted in Article 320(3)(c) does not make the said article mandatory. As we find, in *T.V. Patel case*, the Court has based its finding on the language employed in Rule 32 of the Rules. It is not in dispute that the said Rule from the very inception is a part of the 1965 Rules. With the efflux of time, there has been a change of perception as regards the applicability of the principles of natural justice. An inquiry report in a disciplinary proceeding is required to be furnished to the delinquent employee so that he can make an adequate representation explaining his own stand/stance. That is precisely what has been laid down in *B. Karunakar case* [*ECIL v. B. Karunakar*, (1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] . We may reproduce the relevant passage with profit: (*B. Karunakar case* [*ECIL v. B. Karunakar*, (1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] , SCC p. 756, para 29)

“29. Hence it has to be held that when the enquiry officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the enquiry officer's report before the disciplinary authority arrives at its conclusions with regard to the guilt or innocence of the employee with regard to the charges

levelled against him. That right is a part of the employee's right to defend himself against the charges levelled against him. A denial of the enquiry officer's report before the disciplinary authority takes its decision on the charges, is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice.”

10. We are also of the view that the judgments relied upon by the learned counsel for the petitioner would not apply to the facts of the present case as in the case of *B.C. Chaturvedi*(supra), it was held that the Disciplinary Authority is the sole judge of facts where the appeal is presented and interference would be called where the order of penalty is either perverse or suffered from patent error on the face of the record or based on no evidence at all. In fact, the observations made in the case of *B.C. Chaturvedi*(supra) would apply in favour of the respondent no.1 as, in our view, the Disciplinary Authority was conscious of the fact that the order of compulsory retirement was passed on the respondent no.1 on his not having completed 10 years of service which would deprive him of pension and the articles of charge would not be commensurate to the punishment awarded to him.
11. The case of *State of Orissa and Ors.*(supra) was somewhat on the same lines and therefore, we deem it not necessary to discuss the aforesaid judgment. We are conscious of the fact that provisions under Article 226 are not in the scheme of court of appeal. In fact, the Tribunal has upheld the proposal of the Disciplinary Authority and not substituted its own view on the question of awarding of punishment to the respondent no.1. In our view, the Tribunal, in para 13, has rightly highlighted the fact that the record does not disclose that the UPSC has assigned any

specific reason for imposing higher punishment to the respondent no.1 and the Disciplinary Authority, for reasons best known to it, has decided to abide by the decision of the UPSC. When the CVC is only an Advisory Body, it is for the Disciplinary Authority to apply its mind as has been mentioned in the CVC guidelines.

12. In our view, the advice of the UPSC is not binding on the Disciplinary Authority and hence, we do not find any infirmity in the orders passed by the Tribunal.
13. The writ petition is accordingly dismissed with costs of Rs.5,000/- to be deposited with the Juvenile Justice Board, Delhi.

CM.APPL 40901/2019(stay)

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

G.S. SISTANI, J

ANUP JAIRAM BHAMBHANI, J

SEPTEMBER 13, 2019

pst//