



2024:DHC:7864-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **W.P.(C) 8929/2024****MINISTRY OF RAILWAYS AND OTHERS**PetitionersThrough: Mr. Ruchir Mishra, Mr. Sanjiv
Kr. Saxena and Mr. Mukesh Kr. Tiwari and
Ms. Reba Jena Mishra, Advs.

versus

SHRI MOHAN SINGH SANDHURespondent

Through: Mr. Maneet Singh Reen, Adv.

CORAM:**HON'BLE MR. JUSTICE C. HARI SHANKAR****HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN****JUDGMENT (ORAL)**

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27.09.2024**C. HARI SHANKAR, J.**

1. This petition, at the instance of the Ministry of Railways, assails an order dated 25 September 2023 passed by the Central Administrative Tribunal¹, Principal Bench. The respondent had approached the Tribunal assailing the order dated 24 January 2022, imposing a penalty of 10% cut in pension. Consequently, a direction was also sought to the petitioner – i.e., the respondent before the learned Tribunal – to restore the full pension of the respondent with consequential benefits.

2. It was also further prayed that the petitioners be directed to open the sealed cover in which the respondent's case for promotion had been placed due to the pendency of disciplinary proceedings and,

¹ "the Tribunal", hereinafter



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subject to the recommendations of the DPC, the respondent be granted promotion if found fit.

3. Disciplinary proceedings had been instituted by way of a charge-sheet dated 8 June 2015 containing three Articles of Charge against the respondent, under Rule 9 of the Railways Service (Discipline and Appeal Rules), 1968.

4. A disciplinary inquiry was held, resulting in the submission, by the Inquiry Officer², of his report, on 13 December 2019. The Inquiry Report held Articles I and II of the Articles of Charge against the respondent not to have been proved and Article III to have been partially proved. The petitioner thereafter referred the matter to the Union Public Service Commission³. The UPSC rendered its advice, following which the petitioner passed an order of penalty against the respondent on 24 January 2022, imposing, on the respondent, a penalty of withholding of his monthly pension by 10% for a period of two years. This decision was assailed by the respondent before the Tribunal.

5. One of the contentions advanced by the respondent was that he had not been provided with a copy of the advice rendered by the UPSC, on the basis of which the petitioner differed from the findings of the IO and proceeded to impose penalty on the respondent.

² "IO" hereinafter

³ UPSC



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6. There is no dispute about the fact that, on the issue of whether the advice of the UPSC is required to be provided to the charged officer in such a case, there is a cleavage of opinion by the Supreme Court.

7. Certain decisions hold that the advice is required to be furnished, whereas others take a contrary view. The matter has, therefore, been referred by the Supreme Court to a larger Bench by order dated 4 July 2017 in *UIO v Anup Kumar Sinha*⁴.

8. Though, of the decisions referred to in the order of reference, the earlier decision of the Supreme Court in *UIO v T V Patel*⁵ held that the copy of the UPSC advice need not be given to the charged officer, and the latter decision in *UIO v R P Singh*⁶ held to the contrary, learned Counsel for the parties are *ad idem* that, even before these decisions, the Supreme Court had held, in *S N Narula v UIO*⁷, that the UPSC report had necessarily to be provided to the delinquent employee. The decision in *S N Narula* is brief and may be reproduced, *in extenso*, thus:

“1. Leave granted. The appellant was initially appointed as Station Master in the Northern Railways in 1955 and during the relevant time when he was Senior Commercial Manager a charge-sheet was issued to the appellant and disciplinary proceedings were initiated against him, and the enquiry officer filed report holding that Charge 5 was partly proved and Charge 7 proved. As regards other charges he was exonerated. After considering the report of the enquiry officer, the disciplinary authority proposed a punishment suggesting a suitable cut in the pension and the

⁴ SLP (C) 17430/2017

⁵ (2007) 4 SCC 785

⁶ (2014) 7 SCC 340

⁷ (2011) 4 SCC 591



appellant was not heard on this proposal.

2. Thereafter, the proceedings were sent for opinion of the Union Public Service Commission and the Union Public Service Commission gave an opinion to the effect that the appellant's pension shall be reduced to the minimum and he shall not be granted any gratuity. The disciplinary authority accepted the proposal of the Union Public Service Commission and imposed the said punishment.

3. It is to be noticed that the advisory opinion of the Union Public Service Commission was not communicated to the appellant before he was heard by the disciplinary authority. The same was communicated to the appellant along with final order passed in the matter by the disciplinary authority.

4. The appellant filed OA No. 1154 of 2002 before the Central Administrative Tribunal, New Delhi and the Tribunal held that there was violation of the principles of natural justice and the following direction was issued:

"We are of the considered opinion that this order is a non-speaking one and as such we are of the view that the same cannot be sustained and is liable to be quashed. Accordingly, we quash the impugned order and remand the case back to the disciplinary authority to pass a detailed reasoned and speaking order within a period of 3 months from the date of receipt of a copy of this order in accordance with instructions and law on the subject."

5. This order was challenged by the Union of India by way of writ petition before the High Court of Delhi and by the impugned judgment the High Court interfered with that order. The writ petition was partly allowed and it was directed that the matter be again considered by the Tribunal. Against that order the appellant has come up in appeal by way of special leave petition.

6. We heard the learned counsel for the appellant and the learned counsel for the respondent. It is submitted by the counsel for the appellant that the report of the Union Public Service Commission was not communicated to the appellant before the final order was passed. Therefore, the appellant was unable to make an effective representation before the disciplinary authority as regards the punishment imposed.

7. *We find that the stand taken by the Central Administrative Tribunal was correct and the High Court was not justified in*



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interfering with the order.

Therefore, we set aside the judgment of the Division Bench of the High Court and direct that the disciplinary proceedings against the appellant be finally disposed of in accordance with the direction given by the Tribunal in para 6 of the order. The appellant may submit a representation within two weeks to the disciplinary authority and we make it clear that the matter shall be finally disposed of by the disciplinary authority within a period of 3 months thereafter.

8. The appeal is disposed of.”

(Emphasis supplied)

9. Mr. Manjeet Singh Reen, learned Counsel for the respondent, has drawn our attention to a recent decision of the Supreme Court in ***Union Territory of Ladakh v Jammu & Kashmir National Conference***⁸, para 35 of which is eloquent on the approach to be adopted by the courts when faced with conflicting decisions of the Supreme Court or a situation in which the matter stands referred by the Supreme Court to a larger Bench:

“35. We are seeing before us judgments and orders by High Courts not deciding cases on the ground that the leading judgment of this Court on this subject is either referred to a larger Bench or a review petition relating thereto is pending. We have also come across examples of High Courts refusing deference to judgments of this Court on the score that a later Coordinate Bench has doubted its correctness. *In this regard, we lay down the position in law. We make it absolutely clear that the High Courts will proceed to decide matters on the basis of the law as it stands. It is not open, unless specifically directed by this Court, to await an outcome of a reference or a review petition, as the case may be. It is also not open to a High Court to refuse to follow a judgment by stating that it has been doubted by a later Coordinate Bench. In any case, when faced with conflicting judgments by Benches of equal strength of this Court, it is the earlier one which is to be followed by the High Courts, as held by a 5-Judge Bench in ***National Insurance Company Limited v Pranay Sethi***⁹. The High Courts, of*

⁸ 2023 SCC OnLine SC 1140

⁹ (2017) 16 SCC 680



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course, will do so with careful regard to the facts and circumstances of the case before it.”
(Emphasis supplied)

10. Thus, the view expressed by the Supreme Court is that, even when, owing to conflicting decisions rendered by it, the Supreme court has referred an issue to larger Bench, courts lower in the judicial hierarchy should not adjourn matters awaiting the outcome of the larger Bench, but should follow the law laid down in the earlier decision. In so holding, the Supreme Court has relied on an earlier constitution bench pronouncement in *Pranay Sethi*.

11. Following the above enunciation of law, this Court is bound to follow the law laid down by the Supreme Court in *S N Narula* which, as per submissions of learned counsel, appears to be the earliest decision on the point, on whether the advice of the UPSC was or was not required to be provided to the delinquent employee.

12. As *S N Narula* holds that the advice of the UPSC was required to be provided to the delinquent officer and this is the view expressed by the Tribunal in the impugned judgment as well as, we find no reason to interfere with the decision under challenge. It is accordingly upheld in its entirety.

13. The writ petition is dismissed.

C. HARI SHANKAR, J.

DR. SUDHIR KUMAR JAIN, J.

SEPTEMBER 27, 2024/dsn

[Click here to check corrigendum, if any](#)

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