



2025:DHC:257-DB



\$~104

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **W.P.(C) 3755/2023 and CM APPL.14752/2023****UNION OF INDIA & ORS.**

.....Petitioners

Through: Ms. Pratima N. Lakra, CGSC
with Mr. Kashish Gupta, Adv.

versus

MAHENDER SINGH

.....Respondent

Through: Mr. Manjeet Singh Reen, Adv.

CORAM:**HON'BLE MR. JUSTICE C. HARI SHANKAR****HON'BLE MR. JUSTICE AJAY DIGPAUL****JUDGMENT (ORAL)**

%

16.01.2025**C.HARI SHANKAR, J.**

1. On 6 June 2005, the respondent Mahender Singh was issued a charge sheet, proposing initiation of disciplinary proceedings against him. The proceedings ultimately resulted in imposition, on the respondent, of the penalty of "reduction in the same pay band by one step with cumulative effect". The punishment was affirmed by the Appellate Authority *vide* order dated 24 October 2010. The respondent approached the Central Administrative Tribunal¹ by way of OA 2115/2011. The Tribunal, *vide* judgment dated 22 February 2013, set aside the punishment order as well as the appellate order and remanded the matter to the Appellate Authority to pass a speaking order. The Appellate Authority once again rejected the respondent's appeal *vide*



2025:DHC:257-DB



order dated 3 July 2013. A Revision Petition, preferred thereagainst, was rejected by the Revisionary Authority on 25 October 2013. The respondent once again approached the Tribunal by way of OA 1893/2014 in which the Tribunal, once again, *vide* order dated 23 August 2018, quashed and set aside the order of punishment, the appellate order and the revisionary order and directed the petitioners to proceed *de novo* from the stage of issuance of the charge sheet and appoint an appropriate Inquiry Officer to conduct the enquiry. The disciplinary proceedings took off once again, resulting in an order dated 12 July 2022, passed by the Disciplinary Authority², whereby the respondent was imposed a penalty of withholding of 100% monthly pension on a permanent basis.

2. Assailing this order, the respondent approached the Tribunal a third time, by way of OA 2339/2022.

3. Before the Tribunal, the respondent raised only two grounds. The first was that the punishment order dated 12 July 2022 expressly stated, in paras 6 and 7, that it was based on advice received from the Union Public Service Commission³, which had never been provided to the respondent, and the second ground urged by the respondent was that the punishment imposed was disproportionate to the gravity of the charge against him. The Tribunal, following its own earlier decision in **Krishna Singh v UOI**⁴ – which, in turn, relied on the judgment of the Supreme Court in **UOI v S.K. Kapur**⁵, held that, as the advice of the UPSC had not been provided to the respondent before the punishment order was passed against him, the order stood vitiated.

² “DA” hereinafter

³ “UPSC” hereinafter

⁴ Judgement dated 16 January 2020 in OA 42/2015

⁵ (2011) 4 SCC 589



4. Noting the fact that the respondent had been provided a copy of the UPSC advice only after the OA had been filed by him, the Tribunal has set aside the punishment order, appellate order and revisionary order passed against the respondent and has directed restoration of his pension. Additionally, the respondent has been granted liberty to prefer a comprehensive representation to the petitioners, keeping in view all relevant facts including the advice of the UPSC and the petitioners have been directed to consider the said representation and pass an appropriate reasoned and speaking order thereon as expeditiously as possible.

5. Aggrieved by the said decision, the Railway Authorities have approached this Court by means of the present writ petition.

6. We have heard Ms. Lakra for the petitioner and Manjeet Singh Reen for the respondent.

7. Mr. Reen points out that the issue in controversy is covered by a recent judgment rendered by this Court in *Ministry of Railways v Shri Mohan Singh Sandhu*⁶, on the aspect of the requirement of furnishing of a copy of the UPSC advice to the charged officer, before the advice was acted upon to his detriment. In the said decision, this Court has observed as under:

“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 *UOI v Anup Kumar Sinha*⁷.

8. Though, of the decisions referred to in the order of reference, the earlier decision of the Supreme Court in *UOI v T.V. Patel*⁸ held that the copy of the UPSC advice need not be given to

⁶ WP(C) 8929/2024 decided on 27 September 2024

⁷ SLP (C) 17430/2017

⁸ (2007) 4 SCC 785



the charged officer, and the latter decision in *UOI v R.P. Singh*⁹ 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 UOI*¹⁰, 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 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

⁹ (2014) 7 SCC 340

¹⁰ (2011) 4 SCC 591



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 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*¹¹, 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*¹². The High Courts, of 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.”



2025:DHC:257-DB



8. Ms. Lakra fairly acknowledges the fact that the dispute in controversy stands covered by the judgment in *Mohan Singh Sandhu*. However, she submits that as the Supreme Court is still seized of the issue of whether the disciplinary proceedings would stand vitiated merely on the ground of non-supply of the UPSC advice, where the final punishment order relies on the said advice, this Court may consider awaiting the outcome of the proceedings in the Supreme Court.

9. We are not inclined to defer to Ms. Lakra's request. A similar contention was, in fact, raised before us in *Mohan Singh Sandhu* and stands rejected, in view of the judgment of the Supreme Court in *Union Territory of Ladakh*, which has specifically disapproved High Courts adjourning matters merely because the issue in controversy may be pending before the Supreme Court. Though the said decision was rendered in the context of pendency of the issue in review or if it stands referred to a larger bench, the principle would equally apply if the issue is merely pending before the Supreme Court, unless there is a proscription, by the Supreme Court, on authorities lower in the judicial hierarchy deciding matters coming up before them. The decisions require the High Court to adjudicate on the issues which arise before it keeping in view the extant position in law.

10. As the issue in controversy stands squarely covered by our earlier decision in *Mohan Singh Sandhu* which, in turn, relies on judgments of the Supreme Court on the point, we are in agreement with the Tribunal that the punishment imposed on the respondent cannot sustain as it was predicated on advice tendered by the UPSC, no copy of which was made available to the respondent.



2025:DHC:257-DB



11. There is, therefore, no occasion for us to interfere with the impugned judgment of the Tribunal which is accordingly upheld in its entirety.

12. The writ petition is accordingly dismissed with no orders as to costs.

C. HARI SHANKAR, J.

AJAY DIGPAUL, J.

JANUARY 16, 2025/ar

Click here to check corrigendum, if any