

(2019) 01 GUJ CK 0063

In the Gujarat High Court

Case No : R/Special Civil Application No. 401 Of 2018

Executive Director

APPELLANT

Vs

Rukman, Son Of Late Dularam Motwani

RESPONDENT

Date of Decision : 16-01-2019

Acts Referred:

Citation : (2019) 01 GUJ CK 0063

Hon'ble Judges : S.R.Brahmbhatt, J;A.G.Uraizee, J

Bench : Division Bench

Advocate : Archana U Aminm, Trivedi

Final Decision : Dismissed

Judgement

1. Heard learned counsel appearing for the parties. The petitioners, original respondents in Original Application No.728 of 2016 with M.A. 585 of 2016 before the Central Administrative Tribunal, Ahmedabad have approached this Court by way of this petition challenging the judgment and order dated 28.02.2017, whereunder the Central Administrative Tribunal, Ahmedabad while disposing of the said matter directed the present petitioners to allow the respondent, who happened to be applicant in those proceedings, to make representation in respect of the UPSC's advice. The applicant was given liberty to submit his representation against the UPSC's advice within fifteen days from the date of receipt of a copy of the order to the disciplinary authority and the same was ordered to be considered by the disciplinary authority for passing appropriate orders strictly in accordance with law within a period of three months from the date of receipt of the written representation of the applicant. The Tribunal has kept all the contentions open.

2. Facts shorn off unnecessary details, required to be considered only for deciding the controversy, deserves to be set out as under:

2.1 The respondent, original applicant, was working as a permanent way inspector, who demanded an illegal gratification of Rs.100/- from one Shri

Bhavsinh Baboo for realizing his cheque of loan amount. The complaint was lodged about the same with the crime branch. The respondent was placed under suspension vide memo dated 31.01.1996 and subsequently the suspension was revoked vide memo dated 12.06.1996.

2.2 The respondent was superannuated from railway service on 31.01.2005 and till his retirement no other disciplinary action was taken against the respondent except placing him under suspension. Thereafter, the case was finalized, filed against him and he was convicted under the Prevention of Corruption Act. Subsequent to the conviction, the entire record pertaining to the case of the respondent was forwarded to the railway board. After perusing the record and the judgment of the CBI Court, the President was of the view that the misconduct warrants a suitable cut in the pensionary benefits under Rule 9 of the Railway Services (Pension) Rules, 1993.

2.3 The petitioner issued memorandum dated 17.05.2012 to the petitioner about the proposed penalty and giving him an opportunity to represent against the proposed penalty within 15 days of receipt of the memorandum. The respondent has made a representation on 18.06.2012 informing that the appeal is filed by him before the High Court of Gujarat has been admitted and he has enlarged on bail. He also requested not to impose any cut in his pension till the criminal case is decided by the Hon'ble High Court. The case papers were forwarded to the UPSC for the consideration and advice.

2.4 The UPSC after considering the facts and entire record was of the opinion that the ends of justice would be met in the case of the respondent if the penalty of withholding of 100% of the monthly pension and entire gratuity, otherwise admissible to him, on permanent basis is imposed on the respondent and advised vide UPSC advise dated 05.09.2013. The President imposed a penalty of withholding of 100% of the monthly pension and entire gratuity. The same was communicated to the respondent by petitioner no.1 vide order dated 27.09.2013.

2.5 The respondent after receiving the order dated 27.09.2013, made a representation dated 03.11.2013 before the petitioner no.3. The respondent was informed vide letter dated 23.01.2014 that as per Rule 17 of the Railway Servants (D&A) Rules, no appeal shall lie against any order made by the President. Being aggrieved by the order dated 27.09.2013 and the communication dated 23.01.2014, the respondent approached the Tribunal by way of filing O.A. No.728 of 2016 along with M.A. Seeking condonation of delay, whereunder the Central Administrative Tribunal, Ahmedabad while disposing of the said matter directed the present petitioners to allow the respondent, who happened to be applicant in those proceedings, to make representation in respect of the UPSC's advice.

2.6 Being aggrieved and dissatisfied with the order dated 28.02.2017, the petitioners approached this Court by way of this petition. 3. Learned counsel appearing for the petitioners submitted that as the action imposed and impugned

upon the applicant-respondent and impugned in the Original Application was pursuant to the conviction of the respondent by a competent criminal Court on the charge of corruption under the Prevention of Corruption Act and hence the President in exercise of its power under Rule 9 of the Rules after obtaining the necessary advice from the UPSC passed an order, impugned in the Original Application.

4. Learned counsel for the petitioners submitted that Rule 9 does not contain any requirement of supplying copy of the advice of the UPSC to the delinquent before any action or direction in the pension is effected by the President under Rule 9. As against that on account of decision rendered by the Supreme Court in case of Union of India & Ors. Vs. S.K. Kapoor, reported in 2011 (4) SCC 589, there was a change in CCS Rules, which awarded supply a copy to the delinquent and hence the judgment in case of Union of India Vs. R.P. Singh, reported in 2014 (7) SCC 340, was based thereupon. In the instant case, when there was a specific absence of specific provision to supply copy of the UPSC's advice to the delinquent, the Tribunal was not justified in insisting upon receiving the representation from the original applicant and hence the order impugned in this proceeding deserves to be quashed and set aside.

5. Learned counsel appearing for the petitioners further invited Court's attention to the order impugned in the Original Application, type copy is produced at page 36, to indicate that the penalty imposed was commensurate with the delinquency and hence this Court may not disturb the same, nor was there any justification on the part of the Tribunal to direct the present petitioners to receive representation from the respondent, original applicant. The counsel for the petitioners further submitted that the consultation under Article 320(3)(c) of Constitution of India cannot be so interpreted as to make it mandatory upon the disciplinary authority to supply copy of the advice so tender to the delinquent before imposing any punishment based thereupon.

6. Learned counsel for the petitioners further submitted that the judgment rendered by the Supreme Court in case of Union of India & Anr. Vs. T.B. Patel, reported in (2007) 4 SCC 785, was based upon the interpretation of Article 320(3)(c) and Supreme Court in case of S.K. Kapoor (supra) took different view which resulted into in subsequent proceedings undertaken by the railway. The Supreme Court referring the matter to the larger bench in view of the conflicting view in case of T.B. Patel (supra) and that of R.P. Singh (supra). The S.L.P. order is placed on record at page 63 and it was urged that as the order of reference to the larger bench would indicate that the issue cannot be said to be completed, the Court may not uphold the judgment of the Tribunal and the same deserves to be quashed and set aside.

7. Learned counsel appearing for the petitioners further submitted that the show cause notice issued to the delinquent also clearly indicated the proposed penalty to be imposed on account of his conviction in the criminal case and therefore non supply of the copy of the UPSC's advice would in fact not have rendered any help

to the original petitioner. The original petitioner could not had any ground to seek any leniency from the concerned authority even if there was UPSC's advice, not so much against him, as the conviction was the basis for issuing appropriate punishment order which need not call for any interference by the Tribunal, as the supplying of the copy of the UPSC's advice would have been only an empty formality.

8. Learned counsel appearing for the respondent, original applicant in the Original Application, submitted that the S.K. Kapoor's decision required change in CCS Rules and therefore the reference to larger bench on account of the difference between the view of Court in T.B.Patel (supra) and R.P.Singh (supra) would not change the law until there is a decision otherwise in the referred matter.

9. We are of the view that the close reading of the decision rendered by the Supreme Court in case of S.K. Kapoor (supra) and the requirement of change or amendment in the CCS Rules by the Union of India in fact warranted appropriate action on the part of the Rule making authority, so far as the railway is concerned. However, non amendment in those Rules in itself would not whittled down proposition of law in any manner, as the supplying of the copy of the UPSC's advice emanating basic principle of natural justice and compliance there with. The fact remains to be noted that the delinquent before being visited with any adverse orders has to be afforded full opportunity so that he may have complete opportunity to meet with the material which had gone into consideration at the end of disciplinary authority. In the instant case, the order impugned in terms contains that the requirement of consultation and obtaining UPSC's advice had been strictly followed and adhered to the UPSC's advice running into as many as 4 pages dated 5th September 2013, the copy unfortunately came to be supplied only along with the order imposing final punishment which was rightly viewed to be non compliance by the Tribunal and Tribunal has ordered only an additional opportunity available to the petitioners for completing the compliance of natural justice, and such an order under which only an opportunity is afforded to the original applicant, so as to afford him an opportunity to make his submission upon the advice of the UPSC, the same cannot be said to be an order calling for any interference from this Court under Articles 226 and 227 of the Constitution of India.

10. As a result thereof, the petition being meritless, deserves to be dismissed and is accordingly dismissed. Rule is discharged. Interim relief, if any, stands vacated. However there shall be no order as to costs.