

(2007) 01 DEL CK 0097

In the Delhi High Court

Case No : Writ Petition (C) No. 16104 of 2004

R.P. Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 19-01-2007

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 14

Citation : (2007) 1 ILR Delhi 194

Hon'ble Judges : Vipin Sanghi, J; Manmohan Sarin, J

Bench : Division Bench

Advocate : B.K. Basera, for the Appellant; Rajesh Katyal and N.K. Khatri, for the Respondent

Final Decision : Allowed

Judgement

Manmohan Sarin, J.—Petitioner by this writ petition assails the order dated 28.6.2004 in OA No. 1977 of 2003 and order dated

19.8.2004, in Review Application No. 238 of 2004 of the Central Administrative Tribunal, Principal Bench, New Delhi. By the said orders

petitioner's OA was dismissed on the ground that non supply of UPSC advice caused no prejudice to the petitioner and his review application was

dismissed as not maintainable. Petitioner in the said OA had challenged order dated 28.1.2003, by which he had been awarded the penalty of

reduction of pay by two stages in the time scale of pay for a period of two years without cumulative effect.

2. Petitioner prays in this writ petition for directions, inter alia, for quashing the judgment and order dated 28.6.2004 and order dated 19.8.2004 It

is the petitioners case that the Tribunal has erred in holding that it is not necessary to provide UPSC's report/advice to the Charged Officer at the

pre-decisional stage. Petitioner contends that denying him a copy of the recommendation of UPSC is vocative of the principles of natural justice.

3. The facts culminating in filing of the present petition are:

At the relevant time petitioner was posted as AE (Civil) PW Division No.XI. On 1.4.1997, the Departmental Vigilance Team carried out a

surprise check of cement stocks at cement store and Jail No. 6A. Petitioner contends that during such checking the vigilance team was satisfied

about the correctness of the cement stock at the cement store. The team returned at 5 PM in the evening, when work was almost closed,

purportedly to count the cement bags properly. An inspection note was prepared upon which the petitioner was asked to put his signature.

Petitioner contends that despite protesting about the fallacies in the inspection note, he signed on the note on the insistence of the Vigilance Team.

4. Petitioner was served a memorandum dated 22.4.1997 by the Superintending Engineer (Vigilance) calling for his Explanation in the matter which

was duly replied to by the petitioner vide letter dated 15.5.1997. On 12.10.1999, petitioner was issued a charge sheet under Rule 14 of the CCS

(CCA) Rules 1965 charging him for violation of instructions with regard to issuance of cement bags from central stores and for connivance in

pilferage of cement bags. Petitioner submitted his statement of defense dated 25.10.1999. Vide Inquiry report dated 6.2.2001 the Inquiry officer

exonerated the petitioner of both the charges.

5. Disciplinary Authority did not agree with the findings of the Inquiry officer. As per the procedure a second stage advice was sought from the

Central Vigilance Commission (CVC). CVC, vide advice dated 7.8.2001 recommended that the facts of the case indicated pilferage of cement as

a result of connivance among the contractor, the AE and the JE. Commission advised imposition of stiff minor penalties. Petitioner sought to urge

before us that it does not fall within the purview of the CVC to propose any punishment even by way of advice. Vide memo dated 28.11.2001,

Disciplinary Authority communicated its disagreement with the Inquiry report dated 6.2.2001, to the petitioner asking him to make his

representation. The basis for disagreement were, inter alia, that the Inquiry Officer did not correctly assess the evidence on record as minor

shortcomings in the inspection note and deposition of PW1, were blown out of

proportion and that there was no misrepresentation of the facts in the inspection note.

6. Petitioner made a representation in reply to the memo of disagreement on 18.12.2001, submitting inter alia, that inquiry officer's findings are based on due appreciation of facts. UPSC sent its advice in the matter on 20.11.2002, wherein with respect to charge (b) of pilferage with connivance of the petitioner it recommended as follows:

...in the absence of any clear evidence that pilferage has taken place, with the connivance of the C.O., the charge stands proved against the C.O.,

Sh. R.P. Singh, to the extent that there was a shortage of 82 bags of super-plex J.P. Brand Cement at the time of surprise inspection conducted by

EE (Vigilance) on 1.4.1997, as brought out above.

The recommendation of UPSC was that penalty of reduction of pay by two stages in the pay scale of the charged officer for a period of two years

without cumulative effect be imposed on the petitioner, for the misconduct established. This UPSC Advice was not made available to the

petitioner. 7. Vide order dated 28.1.2003, penalty, as recommended by the UPSC, of reduction of pay by two stages in the time scale of pay of

the charged officer for a period of two years without cumulative effect was imposed. A copy of the UPSC Advice was enclosed with the order.

Petitioner preferred appeal dated 17.4.2003 to the President which was rejected on 2.3.2003 stating that no appeal lies against the order made by

the President. Aggrieved, the petitioner filed OA No. 1977/2003 before the Tribunal seeking quashing of the order dated 28.1.2003 on the

grounds inter alias that non supply of UPSC advice has resulted in denial of a fair opportunity to represent his case in consonance with the

principles of natural justice and more so because the UPSC has substituted charge No. 1(b) materially from what was originally leveled against the

petitioner. The UPSC while observing that charge of pilferage with connivance of the Charged Officer was not proved, yet it held shortage of

cement bags at the time of inspection as having been proved against the Charged Officer. This as per the petitioner was an altered charge.

8. Tribunal dismissed the OA holding inter alias that non supply of UPSC advice has caused no prejudice to the petitioner and Therefore it cannot

be held to have vitiated the proceedings. Petitioner filed Review Application No.

238/2004 which was also dismissed vide order dated 19.8.2004

Orders dated 28.6.2004 and 19.8.2004 are assailed by the petitioner before us.

9. Mr. B. K. Barera, learned Counsel for the petitioner sought to challenge the dismissal of the OA on the grounds that the Tribunal has not

considered the fact that the punishment imposed on the petitioner is based on "no evidence" and that non furnishing of a copy of the

recommendations of UPSC to the petitioner at pre-decisional stage has deprived the petitioner of his valuable right of availing a reasonable

opportunity to defend himself against the unfounded altered charge and conclusion arrived at by UPSC. Petitioner contends that UPSC in its

advice has varied the nature of charge materially which rendered the order imposing punishment, illegal. Reliance was placed upon the Supreme

Court's order dated 30.1.2004 in S.N. Narula v. Union of India Civil Appeal No. 642/2004 wherein while dealing with a similar issue, where the

Tribunal had quashed the punishment order and remanded the matter to the disciplinary authority, Supreme Court upheld the order of the Tribunal

holding the interference by the High Court to be unjustified in the following words:

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. 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 the disciplinary

proceedings against the appellant be finally disposed of in accordance with the directions given by the Tribunal in para 6 of the order.

10. Further reliance was placed upon State Bank of India and others Vs. D.C. Aggarwal and another, , where the Supreme Court held that "non

supply of CVC recommendation which was prepared behind the back of the respondent without his participation, and one does not know on what

material, which was not only sent to the Disciplinary Authority but was examined and relied, was certainly vocative of procedural safeguard and

contrary to fair and just inquiry."

11. Mr.Rajesh Katyal, learned Counsel for the respondent rebuts the contentions raised by the petitioner by submitting that during the surprise

checking conducted by PW1, shortage of 82 bags was detected. The Rules do not require that a copy of the UPSC advice is to be provided to

the delinquent officer at pre-decisional stage. However the same was provided to the petitioner Along with the punishment order. The counsel

Therefore contended that no prejudice was caused to the petitioner.

12. Countering this argument, petitioner sought to urge that the requirement of providing a copy of the UPSC advice at pre decisional stage will

have to be read into the Rules in order to provide a fair opportunity of hearing to the petitioner, especially in the present case as the Disciplinary

Authority relied upon it in order to go against the conclusion arrived at by the Inquiry Officer. Petitioner placed reliance on the judgment in

Yoginath D. Bagde Vs. State of Maharashtra and Another, . The Supreme Court while dealing with a matter of dismissal of an Additional Sessions

Judge held as follows:

...Where the Rules are in this regard silent, and the disciplinary authority also does not give an opportunity of hearing to the delinquent officer and

records findings different from those of the Inquiring Authority that the charges were established, "an opportunity of hearing" may have to be read

into the Rule by which the procedure for dealing with the Inquiring Authority's report is provided principally because it would be contrary to the

principles of natural justice if a delinquent officer, who has already been held to be "not guilty" by the Inquiring Authority, if found "guilty" without

being afforded an opportunity of hearing on the basis of the same evidence and material on which a finding of "not guilty" has already been

recorded.

13. Without going into the factual aspects of the matter like the discrepancies in the inquiry report and the statements of witnesses, the question of

seminal importance which arises for our consideration is whether there is a denial of natural justice to the petitioner by not supplying a copy of the

UPSC advice at pre-decisional stage. It is an admitted fact that the inquiry officer exonerated the petitioner of all the charges. The disciplinary

authority sought the advice of CVC and UPSC and acted thereon to finally arrive at a conclusion contrary to that of the Inquiry officer. The

opportunity of representation given to the petitioner was merely at the stage of disapproval by the Disciplinary Authority, of the inquiry officer's

report. No opportunity was made available to respond to the UPSC advice. The established legal position apparent from the judgments quoted

above is that material on the basis of which punishment is imposed on a charged officer must be provided to the charged officer prior to finalising

the punishment in order to implement the principles of natural justice. Non supply of such material would amount to denial of a fair opportunity of

being heard. Accordingly, in the present facts and circumstances, non availability of UPSC advice has resulted in denying the petitioner, an

opportunity to make an effective representation in his defense. Therefore orders dated 28.6.2004 and 19.8.2004 of the CAT as well as order

dated 28.1.2003 of the Disciplinary Authority are set aside. We direct the respondents to allow the petitioner to make his representation in respect

of the UPSC advice, which was made available to him along with the order dated 28.1.2003, imposing punishment. The representation of the

petitioner be duly considered and the Disciplinary Authority to take a decision afresh, taking into account the representation with regard to the

disciplinary proceedings within a period of two months. Petition stands allowed in the above terms.