

CASE NO.:
Appeal (civil) 2067 of 2005

PETITIONER:
Union of India & Anr

RESPONDENT:
T.V. Patel

DATE OF JUDGMENT: 19/04/2007

BENCH:
H.K. SEMA & V.S. SIRPURKAR

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO. 2067 OF 2007
(Arising out of S.L.P.(C) No. 11651 of 2005)
WITH
CIVIL APPEAL NO. 2071, 2072, 2068, 2069 OF 2007
(Arising out of S.L.P.(C) Nos. 19594, 26333 of 2005, 8470,
10225 and 12656 of 2006 AND C.A. No. 3628 OF 2006)

H.K.SEMA, J.

Leave granted.

These appeals preferred by the Union of India arise out of a common question of facts and law and they are being disposed of this common order. The facts are identical. For the sake of brevity we are taking facts from S.L.P (C) No. 11651 of 2005.

The facts in compendium are as follows:

The respondent was functioning as SDO (Phone) at Navsari Telephone Exchange. He was found to have been involved in providing telephone connection in contravention of the P & T Manual thereby causing huge avoidable financial loss to the Department. A memorandum and the article of charges framed against the respondent are coined in identical in language. A memorandum dated 30.06.1997 along with the substance of imputation of conduct was served on the respondent.

The statement of article of charge framed against the respondent are as follows:-

"That the said Shri T.V. Patel while functioning as SDOP, Navsari, during the period 1996-96, deliberately provided seven telephone connections from Navsari Telephone Exchange to subscribers of Munsad Village falling within the local area of Ugat Telephone Exchange, with ulterior motive and in contravention of Paras 11(A) & (B) of P&T Manual Vol.XII, Part-I; and the connections thus irregularly provided, had to be got closed by the Telecom District Manager, Valsad. The said Shri T.V. Patel thereby caused a huge avoidable loss to the Department by incurring unnecessary expenditure towards stores and labour. Thus by his above acts, the said Shri T.V. Patel committed grave misconduct, failed to maintain absolute integrity, exhibited lack of

devotion to duty and acted in a manner unbecoming of a Government servant, thereby contravening Rule 3(1)(i), (ii) and (iii) of the CCS (Conduct) Rules, 1964."

List of documents and prosecution witnesses sought to be relied during the inquiry were also supplied along with the article of charge.

During the inquiry the respondent was given an opportunity of fair hearing and the Inquiry Officer submitted its report holding that the charges were not proved. The Disciplinary Authority disagreed with the report and issued a notice to the respondent providing the reasons for disagreement and calling upon the respondent to make representation, if any, by its order dated 1.4.1999. On 4.5.1999, the respondent made a representation to the said notice. This was rejected.

The Disciplinary Authority, thereafter, sought the advice of the Union Public Service Commission (UPSC) and after considering the advice of the UPSC imposed a penalty of reduction of pay by one stage in the time scale of pay till 30.11.2001, without cumulative effect by an order dated 15.11.2000. A copy of the advice obtained from UPSC was also sent along with the final order of penalty.

Aggrieved thereby, the respondent filed O.A.No.96 of 2001 challenging the final order passed on 15.11.2000 before the Central Administrative Tribunal (CAT) Ahmedbad Bench on various grounds. The Tribunal after considering various grounds urged before it, set aside the order dated 15.11.2000 passed by the Disciplinary Authority imposing the penalty. One of the grounds, which persuaded the Tribunal to come to the aforesaid conclusion, is recorded in paragraph 12 of the judgment:

"We also note that the copy of UPSC advice was not made available to the applicant. Under the circumstances we quash and set aside of the penalty imposed on the applicant and direct the respondents to take a decision after supplying a copy of the UPSC report and having regard to principles stated in para 10 & 11 above. The OA is allowed with these directions. No costs."

Aggrieved thereby, the appellant unsuccessfully filed Special Civil Application being No.17027 of 2004 before the High Court urging various grounds. The High Court dismissed the Special Civil Application on the sole ground that a copy of advice tendered by the UPSC was not supplied to the delinquent officer to enable him to represent. According to the High Court, the said advice tendered by the UPSC, a copy of which should be made available to the delinquent officer so as to enable him to afford an effective representation to the punishment proposed and such advice tendered by the UPSC a copy of which having not been supplied to the delinquent officer before the order of imposing a penalty was passed, there is violation of principles of natural justice and vitiates the inquiry.

Admittedly, in the present case, the UPSC tendered its advice and a copy of the advice tendered by the UPSC was sent along with the copy of the final order dated 15.11.2000 imposing the penalty, to the delinquent officer.

The question that calls for determination is as to whether a copy of the advice tendered by the UPSC is to be furnished along with the order of penalty or before the passing of an order imposing final penalty.

In Swamy's Compilation of CCS CCA Rules, Rule 15 deals with the action on the inquiry report.

Sub-rule (3) of Rule 15 reads as under:

"(3) If the Disciplinary Authority having regard to its findings on all or any of the articles of charge is of the opinion that any of the penalties specified in Clauses (i) to (iv) of Rule 11 should be imposed on the Government servant, it shall, notwithstanding anything contained in Rule 16, make an order imposing such penalty:

Provided that in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the Disciplinary Authority to the Commission for its advice and such advice shall be taken into consideration before making any order imposing any penalty on the Government servant.

Part IX of the CCS Rules deals with Miscellaneous. Rule 32 deals with Supply of copy of Commission's advice. It reads:

"Whenever the Commission is consulted as provided in these rules, a copy of the advice by the Commission and where such advice has not been accepted, also a brief statement of the reasons for such non-acceptance, shall be furnished to the Government servant concerned along with a copy of the order passed in the case, by the authority making the order."

In the aforesaid premises, Mr. B.Datta, learned ASG, contended that a consultation with the UPSC under Article 320 (3)(c) is not mandatory and the advice tendered, if any, by the UPSC is not binding on the Disciplinary Authority. It is further contended that such advice would not confer any rights on a public servant so that the absence of consultation or any irregularity in consultation does not afford him a cause of action in a court of law. He further contended that even otherwise Rule 32 of the Rules is clear that a copy of such advice shall be furnished to the delinquent servant along with a copy of the order passed in the case, by the authority making the order.

There is substance in the contention of Mr. Datta, learned ASG.

As already noticed, Rule 32 of the Rules deals with the supply of a copy of Commission's advice. Rules as read as it is mandatory in character. Rule contemplates that whenever a Commission is consulted, as provided under the Rules, a copy of the advice of the Commission and where such advice has not been accepted, also a brief statement of the reasons for such non-acceptance shall be furnished to the Government servant along with a copy of the order passed in the case, by the authority making the order. Reading of the Rule would show that it contemplates two situations; if a copy of advice is tendered by the Commission, the same shall be furnished to the government servant along with a copy of the order passed in the case by the authority making the order. The second situation is that if a copy of the advice tendered by the Commission has not been accepted, a copy of which along with a brief statement of the reasons for such non-acceptance shall also be furnished to the government servant along with a

copy of the order passed in the case, by the authority making the order. In our view, the language employed in Rule 32, namely "along with a copy of the order passed in the case, by the authority making the order" would mean the final order passed by the authority imposing penalty on the delinquent government servant.

Article 320 of the Constitution deals with the functions of Public Service Commission and provides that it shall be the duty of the Union and the State Public Service Commissions to conduct examinations for appointments to the services of the Union and the services of the State respectively.

Article 320(3)(c) reads:-

(a)\005\005\005\005.

(b)\005\005\005\005.

(c) on all disciplinary matters affecting a person serving under the Government of India or the Government of a State in a civil capacity, including memorials or petitions relating to such matters;

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Provided that the President as respects the all-India services and also as respects other services and posts in connection with the affairs of the Union, and the Governor, as respects other services and posts in connection with the affairs of a State, may make regulations specifying the matters in which either generally, or in any particular class of case or in any particular circumstances, it shall not be necessary for a Public Service Commission to be consulted.

A Constitution Bench of this Court in the case of State of U.P. vs Manbodhan Lal Srivastava, 1958 SCR 533, considered the question as to whether the consultation of the Commission under Article 320(3)(c) is mandatory and binding on the appropriate authority.

The arguments that the non-compliance of Article 320(3)(c) vitiates the order passed by the appropriate authority have been repelled by the Court at SCR.pp 543-544:-

"Perhaps, because of the use of word "shall" in several parts of Art. 320, the High Court was led to assume that the provisions of Art. 320(3)(c) were mandatory, but in our opinion, there are several cogent reasons for holding to the contrary. In the first place, the proviso to Art. 320, itself, contemplates that the President or the Governor, as the case may be, "may make regulations specifying the matters in which either generally, or in any particular class of case or in particular circumstances, it shall not be necessary for a Public Service Commission to be consulted." The words quoted above give a clear indication of the intention of the Constitution makers that they did envisage certain cases or classes of cases in which the Commission need not be consulted. If the provisions of Art. 320 were of a mandatory character, the Constitution would not have left it to the discretion of the Head of the Executive Government to undo those provisions by making regulations to the contrary. If it had been intended by the makers

of the Constitution that consultation with the Commission should be mandatory, the proviso would not have been there, or, at any rate, in the terms in which it stands. That does not amount to saying that it is open to the Executive Government completely to ignore the existence of the Commission or to pick and choose cases in which it may or may not be consulted. Once, relevant regulations have been made, they are meant to be followed in letter and in spirit and it goes without saying that consultation with the Commission on all disciplinary matters affecting a public servant has been specifically provided for, in order, first, to give an assurance to the Services that a wholly independent body, not directly concerned with the making of orders adversely affecting public servants, has considered the action proposed to be taken against a particular public servant, with an open mind; and, secondly, to afford the Government unbiassed advice and opinion on matters vitally affecting the morale of public services. It is, therefore, incumbent upon the Executive Government, where it proposes to take any disciplinary action against a public servant, to consult the Commission as to whether the action proposed to be taken was justified and was not in excess of the requirements of the situation.

Secondly, it is clear that the requirement of the consultation with the Commission does not extend to making the advice of the Commission on those matters, binding on the Government. Of course, the Government, when it consults the Commission on matters like these, does it, not by way of a mere formality, but, with a view to getting proper assistance in assessing the guilt or otherwise of the person proceeded against and of the suitability and adequacy of the penalty proposed to be imposed. If the opinion of the Commission were binding on the Government, it may have been argued with greater force that non-compliance with the rule for consultation would have been fatal to the validity of the order proposed to be passed against a public servant. In the absence of such a binding character, it is difficult to see how non-compliance with the provisions of Art. 320(3)(c) could have the effect of nullifying the final order passed by the Government.

Thirdly, Art. 320 or the other articles in Chapter II of Part XIV of the Constitution deal with the constitution of the Commission and appointment and removal of the Chairman or other members of the Commission and their terms of service as also their duties and functions. Chapter II deals with the relation between Government and the Commission but not between the Commission and a public servant. Chapter II containing Art. 320 does not, in terms, confer any rights or privileges on an individual public servant nor any constitutional guarantee of the nature

contained in Chapter I of that Part, particularly Art. 311. Article 311, therefore, is not, in any way, controlled by the provisions of Chapter II of Part XIV, with particular reference to Art. 320."

Finally, at page SCR p.547 it was held as under:

"We have already indicated that Art. 320(3)(c) of the Constitution does not confer any rights on a public servant so that the absence of consultation or any irregularity in consultation, should not afford him a cause of action in a court of law, or entitle him to relief under the special powers of a High Court under Art. 226 of the Constitution or of this Court under Art. 32. It is not a right which could be recognized and enforced by a writ. On the other hand, Art. 311 of the Constitution has been construed as conferring a right on a civil servant of the Union or a State, which he can enforce in a court of law. Hence, if the provisions of Art. 311, have been complied with in this case - and it has not been contended at any stage that they had not been complied with - he has no remedy against any irregularity that the State Government may have committed. Unless, it can be held, and we are not prepared to hold, that Art. 320(3)(c) is in the nature of a rider or proviso to Art. 311, it is not possible to construe Art. 320(3)(c) in the sense of affording a cause of action to a public servant against whom some action has been taken by his employer."

The decision of the Constitution Bench in *Srivastava (supra)* was reiterated by a three Judge Bench of this Court in the case of *Ram Gopal Chaturvedi vs. State of Madhya Pradesh*, 1969 (2) SCC 240, it was held in paragraph 7 of the judgment as under:-

"It was argued that the impugned order was invalid as it was passed without consulting the State Public Service Commission under Article 320(3)(c) of the Constitution. There is no merit in this contention. The case of *State of U.P. v. M.L. Srivastava* 1958 SCR 533 decided that the provisions of Article 320(3)(c) were not mandatory and did not confer any rights on the public servant and that the absence of consultation with the State Public Service Commission did not afford him a cause of action."

Counsel for the respondent contended that non-supply of a copy of the advice tendered by the UPSC before the final order was passed deprived the delinquent officer of making an effective representation and therefore it vitiates the order. To support his contention he referred to the decision of this Court rendered in the case of *State Bank of India v. D.C. Aggarwal*, (1993) 1 SCC 13, where this Court held that the disciplinary authority, while imposing punishment, major or minor, cannot act on material which is neither supplied nor shown to the delinquent. Imposition of punishment on an employee, on material which is not only not supplied but not disclosed to him, cannot be countenanced. Procedural fairness is as much essence of right and liberty as the substantive law itself.

He also referred to the decision of this Court in the

case of Managing Director, ECIL, Hyderabad vs. B.Karunakar, (1993) 4 SCC 727, where this Court dealt with the non-furnishing of the inquiry report to the delinquent officer. The facts of the aforesaid decision are distinguishable from the facts of the case at hand. The aforesaid decisions are not relevant for the purpose of adjudication of the case at hand.

In view of the law settled by the Constitution Bench of this Court in the case of Srivastava (supra) we hold that the provisions of Article 320(3)(c) of the Constitution of India are not mandatory and they do not confer any rights on the public servant so that the absence of consultation or any irregularity in consultation process or furnishing a copy of the advice tendered by the UPSC, if any, does not afford the delinquent government servant a cause of action in a court of law.

In the view that we have taken we allow these appeals. The orders of the High Court and the Tribunal, to the extent indicated above, are set aside. This takes us to consider as to whether the matter be remitted back to the High Court or the Tribunal to deal with the other various grounds raised by the delinquent government officers.

CIVIL APPEAL ARISING OUT OF S.L.P.(C) NO. 11651 OF 2005
(Union of India & Anr. v. T.V. Patel)

The Tribunal had elaborately dealt with the contentions of both sides on merits. The Writ Petition of the Union of India before the High Court also raised many grounds to be dealt with on merits. However, the High Court has only dealt with the question of non-supply of copy of advice tendered by the UPSC before the passing of the order of punishment which has already been dealt with by us. SCA No.17027 of 2004 is now restored to the file of the High Court. The matter is remitted back to the High Court for disposal on merit on other grounds urged before the Court.

CIVIL APPEAL ARISING OUT OF S.L.P.(C) NO. 19594 OF 2005
(Union of India & Ors. v. Avinash Kumar Srivastava)

In this case also the High Court dismissed the SCA No. 15316 of 2004 filed by the appellant challenging the order of CAT. The High Court dismissed the writ petition solely on the ground of non-supply of copy of advice tendered by the UPSC to the respondent before the final order was passed. The respondent did not prefer any writ petition before the High Court challenging the order of Tribunal. Many grounds were urged before the Tribunal. However, the Tribunal decided the issue only on ground of non-supply of copy of the advice tendered by the UPSC before the final order was passed. O.A.No.206 of 2004 is restored to the file of the Tribunal and is remitted back to the Tribunal to consider the other grounds urged before the Tribunal.

CIVIL APPEAL ARISING OUT OF S.L.P.(C) NO. 26333 OF 2005
(Union of India & Ors. v. S.K. Agrawal)

Both the High Court and the Tribunal disposed of the case only on the ground of non-supply of copy of the advice tendered by the UPSC to the delinquent officer before the passing of the final order impinged the principles of natural justice. The other grounds urged before the Tribunal in O.A.No.451 of 2003 have not been considered by the Tribunal. O.A.No.451 of 2003 is restored to the file of the Tribunal and the matter is remitted back, to consider on

merits all other grounds urged before the Tribunal.

CIVIL APPEAL ARISING OUT OF S.L.P.(C) NO. 8470 OF 2006
(Union of India & Ors. v. P.K. Saha & Anr.)

In this case also the Tribunal has decided solely on the ground that a copy of the advice tendered by the UPSC has not been furnished to the delinquent government servant before the final order was passed. In view of our order, O.A.No.627 of 2000, is now restored to the file of the Tribunal and the Tribunal shall now deal with the other grounds urged before the Tribunal on merits.

CIVIL APPEAL ARISING OUT OF S.L.P.(C) NO. 10225 OF 2006
(Union of India & Ors. v. N.J. Paulose)

In this case, both the High Court and Tribunal disposed of the case solely on the ground of non-supply of a copy of the advice tendered by the UPSC before the final order was passed. In view of our order, O.A.No.490 of 2002 is now restored to the file of the Tribunal and the matter is remitted back to the Tribunal, to deal with the other grounds urged before it and pass appropriate orders in accordance with law.

CIVIL APPEAL ARISING OUT OF S.L.P.(C) NO. 12656 OF 2006
(Union of India & Ors. v. V.K. Sajnani)

The respondent has challenged the main order before the Tribunal by filing O.A.No.208 of 2002. The Tribunal by an order dated 17.10.2003 considered the entire grounds on merits and dismissed the petition. Aggrieved thereby, he filed SCA No.1071 of 2004 urging many grounds. The Division bench of the High Court by the impugned order set aside the order of the Tribunal solely on the ground of non-supply of copy of the advice tendered by the UPSC before the final order was passed by the authority. The High Court has not decided other grounds urged before the High Court in SCA No.1071 of 2004. In view of our order, SCA No.1071 of 2004 is now restored to the file of the High Court. The High Court shall decide the other grounds urged before the High Court and dispose of the matter in accordance with law.

CIVIL APPEAL NO. 3628 OF 2006
(Union of India v. Ashok Kumar Tiwari)

In this case, both the High Court and the Tribunal, disposed of the matter only on the ground of non-supply of copy of advice tendered by the UPSC before the final order was passed. In view of our order, O.A.No.271 of 2003, is now restored to the file of the Tribunal and the matter is remitted back. The Tribunal shall consider other grounds urged before it and pass appropriate order in accordance with law.

The appeals are allowed in the above terms. No costs.