**Reportable**

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No.6717 OF 2008

UNION OF INDIA & ORS. .....APPELLANTS

VERSUS

R.P.SINGH .....RESPONDENT

**J U D G M E N T**

**Dipak Misra, J.**

Calling in question the legal defensibility of the judgment and order dated 19.01.2007 passed by the High Court of Delhi in W.P.(C)No.16104 of 2004 whereby it has annulled the judgment and order dated 28.06.2004 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (for short "the tribunal") in O.A.No.1977 of 2003 and the order dated 19.08.2004 declining to entertain the review, the present appeal has been preferred by special leave.

2. The respondent while serving as an Assistant Engineer

(Civil) in the Central Public Works Department (CPWD) was proceeded in a departmental proceeding in respect of two charges which read as follows:

> "(a) 540 bags of cement were got issued for the above stated work from the Central Stores on 31.3.97. The said Shri R.P.Singh allowed Shri N.K.Sarin, Junior Engineer to issue 89 bags of cement within 24 hours of receipt of the cement from the Central Stores without giving any written permission to the Junior Engineer and without authenticating the said issue of cement, thereby violating the instructions contained in Para 3(d) of memorandum No.DGW/CON/67 dated 6.5.94.
>
> (b) Out of the above stated lot of 540 bags of cement of "Superplus Jaypee" brand, 82 bags of cement were found short, which had been pilfered with connivance of the said Shri R.P.Singh, Assistant Engineer."

3. As the delinquent officer refuted the charges, an Inquiry Officer was appointed to conduct the inquiry and in the inquiry, he found the charges levelled against the delinquent officer were not proven and, accordingly, he submitted the Inquiry Report. The disciplinary authority after expressing the disagreement, called for a representation from the respondent communicating the Inquiry Report as well as the opinion for disagreement requiring him to submit his explanation. The respondent submitted his explanation and thereafter the disciplinary authority sought advice from the

Union Public Service Commission (UPSC) by proposing to impose penalty 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. The UPSC vide letter No. F.3/144/2002-SI dated 20.11.02 gave the advice to impose penalty 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. After obtaining the advice from the UPSC, the disciplinary authority accepted the same, passed an order of punishment and communicated the same to the respondent along with the advice of UPSC.

4. The said order of punishment was assailed by the respondent before the tribunal on many a ground and the principal ground propounded was that the advice of the UPSC was not furnished to him before imposing the penalty and, therefore, there had been violation of principles of natural justice. The tribunal negatived the said stand on the ground that no prejudice was caused to him.

5. Being dissatisfied with the said order, the respondent preferred the writ petition and the High Court placing reliance mainly on the decision in ***State Bank of India and***

***others vs. D.C.Aggarwal and another***[1] came to hold that non-supply of the copy of advice of UPSC at the pre-decisional stage did tantamount to violation of principles of natural justice for making effective representation. It further observed that non-supply of such material could amount to denial of fair opportunity of being heard. Being of this opinion, the High Court directed as follows:-

> "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."

6. We have heard Mr.K.Radhakrishnan, learned counsel assisted by Mr.W.A.Qadri and Ms.Rekha Pandey for the appellant and Mr.Vasudevan Raghavan, learned counsel for the respondent.

7. At the very outset, we may state that the facts relating to seeking of advice from UPSC and the stage of furnishing the same to the delinquent employee are not in dispute. Thus, the singular question that emanates for determination

1AIR 1993 SC 1197

is whether the High Court is justified in issuing the directions which have been reproduced hereinabove solely on the ground that non-supply of the advice obtained by the disciplinary authority from the UPSC and acting on the same amounts to violation of principles of natural justice. Learned counsel for the appellants has placed reliance on Rule 32 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (for brevity "the CCS Rules"). The said Rule reads as under:

> "32.*Supply of copy of Commission's advice*.- 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."

8. Relying upon the aforesaid Rule, it is contended that when the only prescription in the Rule is that a copy of the advice is to be furnished at the time of making of the order, it is not obligatory in law to supply it prior to imposition of punishment requiring a representation or providing an opportunity of hearing to the delinquent officer. In support of the said submission, our attention has been drawn to the

decision in ***Union of India and another vs. T.V.Patel***[2] wherein a two-Judge Bench, appreciating the Rule position, has held as follows:

> "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."

9. Be it noted, in the said case, interpretation placed by this Court under Article 320(3)(c) of the Constitution in ***State of U.P.*** **v.** ***Manbodhan Lal Srivastava***[3] has been

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2(2007) 4 SCC 785

3 AIR 1957 SC 912

placed reliance upon and, in that context, it has been opined thus: -

> "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."

10. It is also necessary to mention here that the learned Judges distinguished the pronouncements in ***D.C.Aggarwal and another*** (supra) and ***MD, ECIL vs. B.Karunakar***[4].

11. Mr.Vasudevan Raghavan, learned counsel for the respondent has submitted that the said decision has been treated as a *per incuriam* in ***Union of India and others vs. S.K.Kapoor***[5] in one aspect as it has not taken note of the earlier decision in ***S.N.Narula vs. Union of India and others***[6]. Learned counsel while clarifying the position has submitted that the decision in **Narulas's** case has been rendered on 30.01.2004 which is prior to the decision in **T.V.Patel's** case though it has been reported later on.

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4(1993) 4 SCC 727
5(2011) 4 SCC 589
6(2011) 4 SCC 591

12. In the case of ***S.N.Narula***, the Court took note of the fact that the proceedings therein were sent for information of the UPSC and the UPSC had given the advice indicating certain punishment and the said advice was accepted by the disciplinary authority who, on that basis, had imposed punishment. Thereafter the Court took note of the factual score how the disciplinary authority had acted. We think it seemly to reproduce the same: -

> "**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."

After so stating, the two-Judge Bench proceeded to opine thus: -

> "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 Paragraph 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."

13. We will be failing in our duty if we do not take note of the submission of Mr.W.A.Qadri that the decision is not an authority because the tribunal had set aside the order of the disciplinary authority on the ground that it was a non-speaking order. Be that as it may, when the issue was raised before this Court and there has been an advertence to the same, we are unable to accept the submission of Mr. Qadri. The said decision is an authority for the proposition that the advice of UPSC, if sought and accepted, the same, regard being had to the principles of natural justice, is to be communicated before imposition of punishment.

14. In the case of ***S.K.Kapoor***, the Court accepted the ratio laid down in the case of ***T.V.Patel*** as far as the interpretation of Article 320(3)(c) is concerned and, in that context, it opined that the provisions contained in the said Article 320(3)(c) of the Constitution of India are not mandatory. While distinguishing certain aspects, the Court observed as follows:

> "7. We are of the opinion that although Article 320(3)(c) is not mandatory, if the authorities do consult the Union Public Service Commission and rely on the report of the commission for taking disciplinary action, then the principles of natural justice require that a copy of the report must be supplied in advance to the employee concerned so that he may have an opportunity of rebuttal. Thus, in our view, the aforesaid decision in T.V.Patel's case is clearly distinguishable."

15. After so stating the two-Judge Bench opined that when the disciplinary authority does not rely on the report of the UPSC then it is not necessary to supply the same to the employee concerned. However, when it is relied upon then the copy of the same may be supplied in advance to the employee concerned, otherwise, there would be violation of the principles of natural justice. To arrive at the said conclusion, reliance was placed upon the decision in ***S.N.Narula's*** case. Proceeding further, the Court held:



> "9. It may be noted that the decision in S.N.Narula's case (supra) was prior to the decision in T.V.Patel's case(supra). It is well settled that if a subsequent co-ordinate bench of equal strength wants to take a different view, it can only refer the matter to a larger bench, otherwise the prior decision of a co-ordinate bench is binding on the subsequent bench of equal strength. Since, the decision in S.N.Narula's case (supra) was not noticed in T.V.Patel's case(supra), the latter decision is a judgment per incuriam. The decision in S.N.Narula's case (supra) was binding on the subsequent bench of equal strength and hence, it could not take a contrary view, as is settled by a

series of judgments of this Court."

16. Learned counsel for the appellant would contend that the two-Judge Bench in ***S.K. Kapoor's*** case could not have opined that the decision in ***T.V. Patel's*** case is *per incuriam.* We have already noticed two facts pertaining to ***S.N. Narula*** (supra), (i) it ws rendered on 31.1.2004 and (ii) it squarely dealt with the issue and expressed an opinion. It seems to us that the judgment in ***S.N. Narula's*** case was not brought to the notice of their Lordships deciding the lis in ***T.V. Patel*** (supra). There cannot be a shadow of doubt that the judgment in ***S.N. Narula*** (supra) is a binding precedent to be followed by the later Division Bench. In this context, we may fruitfully refer to the decision in ***Union of India*** **v.** ***Raghubir Singh (dead) by L. Rs. And Others*** [7], wherein the Constitution Bench has held as follows: -

> "We are of opinion that a pronouncement of law by a Division Bench of this Court is binding on a Division Bench of the same or a smaller number of Judges, and in order that such decision be binding, it is not necessary that it should be a decision rendered by the Full Court or a Constitution Bench of the Court"

17. In ***Indian Oil Corporation Ltd.,*** **v.** ***Municipal Corporation and Another*** [8]**,** it has been observed that

7 (1989) 2 SCC 754
8 AIR 1995 SC 1480

the Division Bench of the High Court in ***Municipal Corpn., Indore*** **v.** ***Ratnaprabha Dhandha***[9] was clearly in error in taking the view that the decision of this Court in ***Municipal Corporation, Indore*** **v.** ***Ratna Prabha***[10] was not binding on it. In doing so, the Division Bench of the High Court did something which even a later co-equal Bench of this Court did not and could not do.

18. In ***Chandra Prakash and others*** **v.** ***State of U.P. and another***[11], the Constitution Bench has reiterated the principle that has already been stated in ***Raghubir Singh*** (supra).

19. Thus perceived, it can be stated with certitude that ***S.N. Narula*** (supra) was a binding precedent and when the subsequent decision in ***T.V. Patel*** (supra) is rendered in ignorance or forgetfulness of the binding authority, the concept of *per incurium* comes into play.

20. In this regard, we may usefully refer to a passage from ***A.R. Antulay*** **v.** ***R.S. Nayak***[12], wherein Sabyasachi

9 1989 MPLJ 20
10 (1976) 4 SCC 622
11 (2002) 4 SCC 234
12 (1988) 2 SCC 602

Mukharji, J. (as his Lordship then was) observed thus: -

> *"....'Per incuriam'* are those decisions given in ignorance or forgetfulness of some inconsistent statutory provision or of some authority binding on the court concerned, so that in such cases some part of the decision or some step in the reasoning on which it is based, is found, on that account to be demonstrably wrong."

At a subsequent stage of the said decision it has been observed as follows: -

> ".... It is a settled rule that if a decision has been given *per incuriam* the court can ignore it."

21. In ***Siddharam Satlingappa Mhetre* v. *State of Maharashtra and Ors***. [13], while dealing with the issue of 'per incuriam', a two-Judge Bench, after referring to the dictum in ***Bristol Aeroplane Co. Ltd.*** (supra) and certain passages from *Halsbury's Laws of England* and ***Raghubir Singh*** (supra), has ruled thus:-

> "The analysis of English and Indian Law clearly leads to the irresistible conclusion that not only the judgment of a larger strength is binding on a judgment of smaller strength but the judgment of a co-equal strength is also binding on a Bench of Judges of co-equal strength. In the instant case, judgments mentioned in paragraphs 135 and 136 are by two or three judges of this Court. These judgments have clearly ignored a Constitution Bench judgment of this Court in Sibbia's case (supra) which has comprehensively dealt with all the facets of anticipatory bail enumerated under Section 438 of Code of Criminal Procedure

13 AIR 2011 SC 312 : ( 2011) 1 SCC 694

Consequently, judgments mentioned in paragraphs 135 and 136 of this judgment are per incuriam."

22. Testing on the aforesaid principles it can safely be concluded that the judgment in ***T.V. Patel's*** case is *per incuriam*.

23. At this juncture, we would like to give our reasons for our respectful concurrence with ***S.K. Kapoor*** (supra). There is no cavil over the proposition that the language engrafted in Article 320(3)(c) does not make the said Article mandatory. As we find, in the ***T.V.Patel's*** case, the Court has based its finding on the language employed in Rule 32 of the Rules. It is not in dispute that the said Rule from the very inception is a part of the 1965 Rules. With the efflux of time, there has been a change of perception as regards the applicability of the principles of natural justice. An Inquiry Report in a disciplinary proceeding is required to be furnished to the delinquent employee so that he can make an adequate representation explaining his own stand/stance. That is what precisely has been laid down in the ***B.Karnukara's*** case. We may reproduce the

relevant passage with profit: -

> "Hence it has to be held that when the enquiry officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the enquiry officer's report before the disciplinary authority arrives at its conclusions with regard to the guilt or innocence of the employee with regard to the charges levelled against him. That right is a part of the employee's right to defend himself against the charges levelled against him. A denial of the enquiry officer's report before the disciplinary authority takes its decision on the charges, is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice."

24. We will be failing in our duty if we do not refer to another passage which deals with the effect of non-supply of the enquiry report on the punishment. It reads as follows: -

> "[v] The next question to be answered is what is the effect on the order of punishment when the report of the enquiry officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non-furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with back-wages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be in-

voked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an "unnatural expansion of natural justice" which in itself is antithetical to justice."

25. After so stating, the larger Bench proceeded to state that the court/tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished. The courts/tribunals would apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment. It is only if the court/tribunal finds that the furnishing of report could have made a difference to the result in the case then it should set aside the order of punishment. Where after following the said procedure the court/tribunal sets aside the order of punishment, the proper relief that should be granted to direct reinstatement of the employee with liberty to the authority/ management to proceed with the enquiry, by

placing the employee under suspension and continuing the enquiry from that stage of furnishing with the report. The question whether the employee would be entitled to the back wages and other benefits from the date of dismissal to the date of reinstatement, if ultimately ordered, should invariably left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome.

26. We have referred to the aforesaid decision in extenso as we find that in the said case it has been opined by the Constitution Bench that non-supply of the enquiry report is a breach of the principle of natural justice. Advice from the UPSC, needless to say, when utilized as a material against the delinquent officer, it should be supplied in advance. As it seems to us, Rule 32 provides for supply of copy of advice to the government servant at the time of making an order. The said stage was in prevalence before the decision of the Constitution Bench. After the said decision, in our considered opinion, the authority should have clarified the Rule regarding development in the service

jurisprudence. We have been apprised by Mr.Raghavan, learned counsel for the respondent, that after the decision in ***S.K.Kapoor's*** case, the Government of India, Ministry of Personnel, PG & Pensions, Department of Personnel & Training vide Office Memorandum dated 06.01.2014 has issued the following directions:

> "4. Accordingly, it has been decided that in all disciplinary cases where the Commission is to be consulted, the following procedure may be adopted :-
>
> (i) On receipt of the Inquiry Report, the DA may examine the same and forward it to the Commission with his observations;
>
> (ii) On receipt of the Commission's report, the DA will examine the same and forward the same to the Charged Officer along with the Inquiry Report and his tentative reasons for disagreement with the Inquiry Report and/or the advice of the UPSC;
>
> (iii) The Charged Officer shall be required to submit, if he so desires, his written representation or submission to the Disciplinary Authority within fifteen days, irrespective of whether the Inquiry report/advice of UPSC is in his favour or not.
>
> (iv) The Disciplinary Authority shall consider the representation of the Charged Officer and take further action as prescribed in sub-rules 2(A) to (4) of Rule 15 of CCS (CCA) Rules, 1965.

27. After the said Office Memorandum, a further Office Memorandum has been issued on 05.03.2014, which pertains to supply of copy of UPSC advice to the

Charged Officer. We think it appropriate to reproduce the same:

> "The undersigned is directed to refer to this Department's O.M. of even number dated 06.01.2014 and to say that it has been decided, in partial modification of the above O.M. that a copy of the inquiry report may be given to the Government servant as provided in Rule 15(2) of Central Secretariat Services (Classification, Control and Appeal) Rules, 1965. The inquiry report together with the representation, if any, of the Government servant may be forwarded to the Commission for advice. On receipt of the Commission's advice, a copy of the advice may be provided to the Government servant who may be allowed to submit his representation, if any, on the Commission's advice within fifteen days. The Disciplinary Authority will consider the inquiry report, advice of the Commission and the representation(s) of the Government servant before arriving at a final decision."

28. In our considered opinion, both the Office Memoranda are not only in consonance with the ***S.K.Kapoor's*** case but also in accordance with the principles of natural justice which has been stated in ***B.Karunakar's*** case.

29. In view of the aforesaid, we respectfully agree with the decision rendered in ***S.K.Kapoor's*** case and resultantly decline to interfere with the judgment and order of the High Court. As a result, the appeal, being devoid of merit, is dismissed without any order as to costs.

.....J
(DIPAK MISRA)

.....J.
(N.V. RAMANA)

NEW DELHI;
MAY 22, 2014.