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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S).6394-6395 OF 2012

UNION OF INDIA & ORS.

Appellant(s)

VERSUS

HARI SHANKAR DIXIT

Respondent(s)

WITH

CIVIL APPEAL NO(S). 6575 OF 2012

WITH

CIVIL APPEAL NO(S). 5133 OF 2013

WITH

CIVIL APPEAL NO(S). 6270 OF 2013

WITH

CIVIL APPEAL NO(S). 6412 OF 2014

WITH

CIVIL APPEAL NO(S). 8155 OF 2016

O R D E R

Heard Mrs. Pinky Anand, learned Additional Solicitor General (ASG) appearing for the Union of India, which is appellant in many of these batch of cases and the learned counsel appearing for the respondents.

2. The main point under issue and which is common to all these appeals is whether the appellants were required to supply a copy of the opinion of the Union Public Service Commission (in short 'the

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Commission') to the charged employees/officers before imposing penalty. In the present case, the said legal issue is said to have been settled by a judgment of this Court in the case of Union of India vs. R.P. Singh (2014) 7 SCC 340 rendered by the Division Bench. As per that judgment, it is not enough to supply the copy of the Commission's advice along with the order of punishment as is required under the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (in short 'the 1965 Rules') but rather it should be supplied in advance to solicit comments from the delinquent officers and thereafter only final decision should be taken.

3. On behalf of the appellants, an attempt has been made to assail the view taken in the aforesaid judgment mainly on the ground that the implications of proviso to Article 311 (2) of the Constitution post 42 nd

Amendment in 1976 has not been taken into account. It was also submitted that the Rules governing the employees/officers such as Rule 28 of the 1965 Rules in the case of Railway employees; and Rule 32 of the 1965 Rules in case of employees governed by the 1965 Rules, require supply of copy

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of the Commission's opinion only along with the final order of penalty and such Rules have not been challenged so far.

4. Learned Additional Solicitor General has also submitted that paras 26 to 28 of the Constitution Bench Judgment of this Court in the case of Managing Director, ECIL, Hyderabad and Others vs. B. Karunakar and Ors. (1993) 4 SCC 727 has not been properly interpreted upon in the case of R.P. Singh (supra) and in fact that judgment apart from dealing with the rights of the employees at the first stage of disciplinary inquiry leading to a finding whether the charges stood proved or not, also dealt with the effect of 42 nd

Amendment and held that similar right exercisable at the second stage was taken away. It was submitted that till the first stage, it was incumbent for the authorities to supply copy of the inquiry report but at the second stage no opportunity is to be given since the constitutional amendment does not require the delinquent employees to be associated with the award of punishment and accordingly the opportunity of representation has been dispensed with. In respect of consequence of

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the 42 nd

Amendment of the Constitution, the Constitution Bench judgment in fact provides some clarification which favours the appellants' case. In support of the contention, reliance was placed upon Para 28 of the Constitution Bench's judgment which reads as follows:

â S28. The position in law can also be looked at from a slightly different angle. Article 311(2) says that the employee shall be given a 'reasonable opportunity of being heard in respect of the charges against him'. The findings on the charges given by a third person like the inquiry Officer, particularly when they are not borne out by the evidence or are arrived at by overlooking the evidence or misconstruing it, could themselves constitute new unwarranted imputations. What is further, when the proviso to the said Article states that 'where it is proposed after such inquiry to impose upon him any such penalty such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed', it in effect accepts two successive stages of differing scope. Since the penalty is to be proposed after the inquiry, which inquiry in effect is to be carried out by the disciplinary authority (the Inquiry Officer being only his delegate appointed to hold the inquiry and to assist him), the employee's reply to the inquiry officer's report and consideration of such reply by the disciplinary authority also constitute an integral part of such inquiry. The second stage follows the inquiry so carried out and it consists of the issuance of the notice to show cause against the proposed penalty and of considering the reply to the notice and deciding upon the penalty. What is dispensed with is the opportunity of making representation on the penalty proposed and not of opportunity of making representation on the report of the inquiry officer. The

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latter right was always there. But before the

42 nd

Amendment of the Constitution, the point of time at which it was to be exercised had stood deferred till the second stage viz., the stage of considering the penalty. Till that time, the conclusions that the disciplinary authority might have arrived at both with regard to the guilt of the employee

and the penalty to be imposed were only tentative. All that has happened after the 42 nd

Amendment of the Constitution is to advance the point of time at which the representation of the employee against the inquiry Officer's report would be considered. Now, the disciplinary authority has to consider the representation of the employee against the report before it arrives at its conclusion with regard to his guilt or innocence of the charges.â- \235

5 . On the other hand, learned counsel for the respondents have taken us through the opinion rendered by the Commission in more than one matter to show that the opinion has been rendered by UPSC/CVC, not only in respect of the punishment but also on the issue as to whether the materials justified holding the charged officers guilty or not. On that basis, it has been submitted that opinion of the Commission virtually stands on same footing as the report of the inquiry officer because the final order of punishment also reflects the fact that the disciplinary authority has accepted the opinion of the Commission for holding the charged officers guilty as well as for awarding

6 the punishment as per the opinion of the Commission. In fact, the submission is that there is over-lapping of stage I and stage II in actual practice and hence the same principles of natural justice which required supply of a copy of the inquiry report are attracted warranting supply of a copy of the opinion of the Commission. It was submitted that since the opinion of the Commission was not furnished to the delinquent officers, High Court rightly directed the authorities to furnish copy of the report of CVC/UPSC and proceed with the enquiry from stage of making available copy of the report of CVC/UPSC to the respondents and pass fresh orders in accordance with law.

6. We have carefully considered the submissions.

7. These matters have remained pending for several years at various stages and the directions are only to re-consider the order of punishment after supplying to the concerned employees a copy of the CVC/UPSC's advice/opinion.

8. In the larger interest of justice, we do not want the respondents in these appeals to

7 suffer the agony of further delay and hence while leaving the questions of law open, we do not propose to pass any order interfering with the impugned order in these cases. As a result, the appeals are dismissed but without any order as to costs. It is clarified that this order has been rendered in the peculiar facts of the cases on hand.

9. The question of law raised doubting the correctness of RP Singh's case (2014) 7 SCC 340 and the contention that there was no thread bare analysis of proviso to Article 311(2) of the Constitution and the request for referring the matter to a larger Bench is left open to be addressed in any other appropriate matter.

10. All the pending applications/petitions

shall now stand disposed of.

â- |. ....J  
(SHIVA KIRTI SINGH)

â- |.....J  
(R. BANUMATHI)

NEW DELHI

September 28, 2016.

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ITEM NO.105 COURT NO.12 SECTION IX  
S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Civil Appeal No(s). 6394-6395/2012  
UNION OF INDIA & ORS. Appellant(s)

VERSUS

HARI SHANKAR DIXIT Respondent(s)  
WITH

C.A. No. 6575/2012

(With Office Report)

C.A. No. 5133/2013

(With Interim Relief and Office Report)

C.A. No. 6270/2013

SLP(C) No. 22211/2013

(With Office Report)

SLP(C) No. 26024/2013

SLP(C) No. 32344/2013

(With appln.(s) for c/delay in filing process fee and Office Report)

C.A. No. 6412/2014

SLP(C) No. 10848/2014

(With Office Report)

S.L.P.(C)...CC No. 15844/2014

(With appln.(s) for c/delay in filing SLP and Office Report)

C.A. No. 8155/2016

Date : 28/09/2016 These matters were called on for hearing today.

CORAM :

HON&#39;BLE MR. JUSTICE SHIVA KIRTI SINGH

HON&#39;BLE MRS. JUSTICE R. BANUMATHI

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For Appellant(s)

Mr. Arvind Kumar Sharma,Adv.

Mr. Shreekant N. Terdal,Adv.

Ms. Pinky Anand, ASG

Mr. D.N. Goburdhun, Adv.

Mr. R. Balasubramaniun, Adv.

Ms. Manita Verma, Adv.

Ms. Snidha Verma, Adv.

Ms. Kritika Sachdeva, Adv.

Ms. Somya Rathore, Adv.

Mr. Pranav Kumar, Adv.

Mr. Raj Bahadur Yadav, Adv.

Ms. Niranjana Singh, Adv.

Ms. Abha R. Sharma, Adv.

Mr. B. Krishna Prasad,Adv.

Mr. D. S. Mahra,Adv.

For Respondent(s)

Mr. Anupam Lal Das,Adv.

Mr. Sahil Monga, Adv.

Mr. Anirudh Singh, Adv.

Ms. Priyanka Sony, Adv.

for Mrs Rani Chhabra,Adv.

Mr. Anand Varma,Adv.

Mr. Kaustubh Prakash, Adv.

Mr. C. K. Rai,Adv.

Mrs. Rekha Palli, Sr. Adv.

Mr. Deepak Goel, Adv.

Ms. Ankita Patnaik, Adv.

Mr. Nikhil Palli, Adv.

Mr. Anant Vijay Palli, Adv.

Mr. Ajit Sharma, Adv.

Mr. Bijan Kumar Ghosh, Adv.

Mrs. Santosh Singh, Adv.

Caveator-in-person

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UPON hearing the counsel the Court made the following

O R D E R

Delay condoned.

Heard Mrs. Pinky Anand, learned Additional Solicitor General (ASG) appearing for the Union of India, which is appellant in many of these batch of cases and the learned counsel appearing for the respondents.

Special leave petitions are dismissed.

Appeals are dismissed in terms of the signed order .

All the pending applications/petitions shall now stand disposed of.

(NEELAM GULATI)

COURT MASTER

(SUKHBIR PAUL KAUR)

AR cum PS

(Signed order in C.A. 6394-95 and 6575 of 2012, 5133 and 6270 of 2013, CA. 6412/2014 and CA 8155 of 2016)