

# SUPREME COURT OF INDIA

Union of India & Ors.

Vs.

S.K.Kapoor

C.A.No.5341 of 2006

(Markandey Katju and Gyan Sudha Misra, JJ.,)

16.03.2011

## ORDER

1. Heard learned counsel for the parties. This Appeal has been filed against the impugned judgment and order dated 25th April, 2005 passed by the High Court of Gujarat at Ahmedabad in Special Civil Application No.7201 of 2005.
2. It appears that the respondent had been charge sheeted for absence without leave and a dismissal order was passed against him on 01.11.2001.
3. The respondent approached the Central Administrative Tribunal, Ahmedabad Bench, which by its order dated 20th July, 2004 quashed the dismissal order and directed the authorities to proceed from the stage of making available a copy of the Report of the Union Public Service Commission.
4. Being aggrieved by the order of the Tribunal, the appellants herein filed a writ petition in the High Court of Gujarat at Ahmedabad being Special Civil Application No.7201 of 2005, which has been dismissed by the impugned order. Hence, this appeal.
5. We have perused the impugned order and find no infirmity in the same.
6. It is a settled principle of natural justice that if CIVIL APPEAL NO. 5341 OF 2006 any material is to be relied upon in departmental proceedings, a copy of the same must be supplied in advance to the charge sheeted employee so that he may have a chance to rebut the same.
7. Mr. Qadri, learned counsel for the appellant submitted that the copy of the Report of the Union Public Service Commission was supplied to the respondent-employee along with the dismissal order. He submitted that this is valid in view of the decision of this Court in *Union of India vs. T.V.Patel*! We do not agree. In the aforesaid decision, it has been observed in para 25 that 'the provisions of Article 320(3)(c) of the Constitution of India are not mandatory'. 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.

8. There may be a case where the report of the Union Public Service Commission is not relied upon by the disciplinary authority and in that case it is certainly not necessary to supply a copy of the same to the concerned employee. However, if it is relied upon, then a copy of the same must be supplied in advance to the concerned employee, otherwise, there will be violation of the principles of natural justice.

9. This is also the view taken by this Court in the case of *S.N.Narula vs. Union of India & Others*<sup>2</sup>, decided on 30th January, 2004.

10. 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.

11. For the aforesaid reasons, this appeal is dismissed. Parties shall bear their own costs.

<sup>1</sup>(2007) 4 SCC 785

<sup>2</sup>C.A. No.642 of 2004