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## Case Comment: Ensuring Proportionality and Natural Justice in Disciplinary Proceedings Against Civil Servants: A Critical Analysis of *Om Kumar v Union of India*

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### INTRODUCTION

'*Om Kumar and Ors v Union of India*,' a case settled<sup>1</sup> on 17th November 2000 is a significant legal matter on disciplinary proceedings against officers of the Delhi Development Authority (DDA). The case arose from an order by the Supreme Court of India suggesting re-opening the quantum of punishments imposed on them in departmental inquiries. It sought to determine if the previous punishment awarded was consistent with well-established legal traditions and whether any upward revision thereof was necessary.

This case came about as a result of an investigation conducted by Justice O. Chinnappa Reddy who is a retired Judge of the Supreme Court. The probe involved DDA officials including its ex-officio chairman relating to land allotted to M/s Skipper Construction Co. It also questioned the

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<sup>1</sup> *Om Kumar & Others v Union of India* (2000) 2 SCC 386

legality and appropriateness of certain orders/directions issued under the Delhi Development Act.

Justice Reddy submitted his report, and based on its findings, the Supreme Court accepted the report and directed the Department of Personnel to initiate disciplinary proceedings against five officers, including Sri Om Kumar. It was noted that only a minor punishment could be imposed on Sri Om Kumar. Subsequently, disciplinary inquiries were conducted, and the case underwent various stages of review and reconsideration by competent authorities, including the Union Public Service Commission (UPSC) and the Ministry of Home Affairs.

Ultimately, however, it left to the Supreme Court to issue orders for punishment against such officers. These marks ranged between 'censure' and 'major' punishments which included reductions in salaries or allowances earned during employment but not subsequent increments or promotions. This suit later led to other lawsuits between Skipper Construction Co., Flat Buyers who had booked flats in this project resulting in DDAs taking back their property from flat owners by re-auctioning them.

This comment aims at providing a comprehensive analysis of legal proceedings, decisions made as well as implications arising from Om Kumar and Ors v Union of India's judgment. By examining facts surrounding this case alongside legal arguments advanced and judicial reasoning followed herein it tends to bring out the importance of this case within the context of disciplinary actions against government officials as well as the preservation of public interest.

## **FACTS AND BACKGROUND**

1. On November 29, 1994, the Supreme Court set up an inquiry against the behaviour of officers of DDA including their past chairman in respect of allocation of land to M/s Skipper Construction Co. The inquiry was conducted by Hon'ble Justice O. Chinnappa Reddy, a retired Judge of the Supreme Court.
2. The complainant alleged that DDA authorities had given occupation rights to M/s Skipper Construction Co. without receiving the full amount after the auction and 'coupled with' involvement in construction and advertisement activities of the company.

3. Justice Chinnappa Reddy submitted his report on July 7, 1995, and based on this report the Supreme Court directed the Department of Personnel to initiate disciplinary action against Sri V.S. Ailawadi, Sri K.S. Baidwan, Sri Virendra Nath, Sri R.S. Sethi and Sri Om Kumar.
4. Accordingly, the Supreme Court while passing orders observed that only minor punishment could be imposed upon him.
5. This was followed by departmental inquiries in which Inquiry Officer Sri P.K. Gopinath submitted Inquiry Reports.
6. The four officers named Sri Virendra Nath, Sri Om Kumar, Sri K.S. Baidwan, and Sri R.S. Sethi cases were sent to the Union Public Service Commission (UPSC) as per the All India Service (Discipline and Appeal) Rules<sup>2</sup>, 1969.
7. Advises on disciplinary matters from UPSC reached the department but there were differences in opinions of higher authorities concerned with decisions against or for this advice from UPSC.
8. It was decided in a meeting of the Committee of Secretaries / COS that reconsideration should be sought by the UPSC regarding its advice and it Ministry of Home Affairs was requested to take necessary action about Shri. K.S. Baidwan and R.S. Sethi.
9. New advice from competent authorities came along with a reversibly altered view from UPSC favouring them after a second thought.
10. On August 27, 1997 'minor' penalty of 'censure' was imposed on O.P. Kumar while a 'major' penalty was imposed on V. Nath by the Department of Personnel (DOP). For S.K. Baidwan and R.S. Sethi, major penalties were also imposed by MHA.
11. Skipper Construction Company had taken possession of land from DDA without having paid full consideration and therefore engaged in collecting money from prospective buyers thus litigation in the Supreme court

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<sup>2</sup> All India Service (Discipline and Appeal) Rules 1969

## LEGAL ISSUES RAISED

**1. Disciplinary Procedures:** The Delhi Development Authority (DDA) had initiated disciplinary proceedings against several of its officers who were allegedly implicated in the land allotted to M/s Skipper Construction Co. The main issue, however, is whether the penalties imposed on these officers were apt and consistent with legal principles.

**2. Contribution of Officials:** Therefore, the conduct of officials of DDA including its ex-officio chairman at that time who went ahead and gave possession to M/S Skipper Construction co before getting the full auction amount and also their alleged involvement in connivance for construction and advertisements are being probed.

**3. Legality or Propriety of Orders:** Whether a valid and proper order was passed by the Ex-officio Chairman DDA under a direction given by Central Government u/s-41-DDA, 1957<sup>3</sup> is under examination.

**4. Justice Chinnappa Reddy's Report:** In other words, in an inquiry conducted by Justice Chinnappa Reddy into the dealings of the officials of DDA during this period; the report he submitted and orders made afterwards based on it will be taken up for consideration.

**5. Disciplinary Inquiry and Penalties:** This action concerns disciplinary inquiries launched against the officers, who include Sri V.S. Ailawadi, Sri K.S. Baidwan, Sri Virendra Nath, Sri R.S. Sethi, and Sri Om Kumar. The question to be answered is whether or not these penalties were justified.

**6. Reconsideration of UPSC Advice:** The tentative decisions made by the competent authorities differ from the advice of the Union Public Service Commission (UPSC) concerning disciplinary actions in this case. The discussion has been on whether there is a need to reconsider UPSC's advice and how it affects other decisions taken relating to punishment.

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<sup>3</sup> Delhi Development Act 1957, s 41

**7. Litigation between Skipper Construction and Buyers:** Thereafter, litigation broke out between Skipper Construction Co., and intending flat buyers regarding proprietary rights, diversion of funds from one project to another, and the validity of claims made by depositors.

**8. Disbursement of Funds:** In this regard, DDA was directed by the court to re-sell the property and keep a certain amount in court for distribution among depositors. Issues arising from this concern whether the claims made by depositors are genuine or valid while sharing out money at hand from any source whatsoever but acquired through fraudulent means or deceitful means etc.

## **PARTY'S ARGUMENTS**

### **Arguments by Om Kumar and Others (Petitioners):**

1. The punishments that were imposed on them, including Om Kumar, were unfair and against well-established legal principles.
2. After disciplining these officers, the Supreme Court did not go further to assess whether the right disciplinary actions were awarded.
3. Such severe punishments as a reduction in pay and withholding of increments, which according to the petitioners were quite excessive; especially concerning Om Kumar's case where nothing more than something minor would have been appropriate.
4. Petitioners submit that principles of natural justice had not been followed adequately during their disciplinary proceedings.
5. There is a requirement for re-consideration because there are discrepancies between decisions made by UPSC and respective competent authorities.

### **Arguments by Union of India (Respondent):**

The Supreme Court gave directions to start the disciplinary proceedings and punishments came after observance of due process.

On considering the weightiness of the officers' involvement and administrative law principles, competent authorities such as UPSC decided on imposing these penalties in question among others. Therefore, against this background, it should be submitted that those punishments were reasonable or in any other way justified within discretionary powers having regard to functions performed by aforementioned officials concerning the allocation of land for Skipper Construction.

Besides, it may also be argued that when there is no violation of natural justice principles or where sentencing is not quite harshly disproportionate, the Supreme Court should not interfere with decisions reached by competent authorities for discipline. More so, the respondent would state that the Supreme Court had earlier mandated initiation of disciplinary action which makes this present petition seeking review of punishments nonmaintainable.

## JUDGMENT

The present case involves issues arising out of the order of the Supreme Court dated May 4, 2000, which proposed to reopen the level of penalty imposed in the departmental inquiry of certain Delhi Development Authority (DDA) officials in respect of land a to M/s Skipper Construction Company. The court was of the view that the maximum penalty for these officers should be considered based on their role in the case. The court noted that it had not previously examined whether the punishment imposed on the officers was consistent with established legal principles and whether it required upward review.

The Court by order dated November 29, 1994, directed that former High Court judge O M/s Skipper Construction Pvt. Ltd. before the receipt of the full sale proceeds and their alleged participation in the conspiracy to acquire the land and the related advertising. Justice Reddy was also asked to examine the legality and propriety of the order dated October 4, 1998, issued by the Chairman in his capacity as DDA, and the directions issued by the Central Government under Section 41<sup>4</sup> of the Delhi Development Act in the 19th century.

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<sup>4</sup> Delhi Development Act 1957, s 41

Justice Reddy submitted his report on July 7, 1995, which was later adopted by the Court by an order dated November 29, 1995. Ailawadi IAS (Nurse), Shri. Badwan IAS, Secretary Virendra Nath IAS, Professor R.K. Sethi IAS, and Shri Om Kumar IAS. The court also said only light punishment could be imposed on Mr. Om Kumar.

Subsequently, a disciplinary inquiry was conducted and the officers concerned were disciplined. Police were allowed to respond to the investigation reports. The cases of Shri Virendranath and Shri Om Kumar were referred to the Union Public Service Commission (UPSC) in accordance with the All-India Service (Discipline and Appeal) Rules 1969<sup>5</sup>. Advice from the UPSC was obtained, which was considered by the authorities concerned.

The Labour Department slapped a 'light' penalty on Mr. Om Kumar for 'blasphemy', while the Home Ministry slapped Mr. K.S. Badwan and Shri R.K. Sethi. Sri Virendra Nath's punishment included loss of salary for two years. The penalties imposed on the officers were as follows.

1. Sri Om Kumar: 'Ninda' (Minor Punishment).
2. Shri Virendra Nath: Reduced salary Rs. 7,500 at the existing level for two years, there is further direction that it will not increase during this period, and the effect of the reduction will be to stop its future increase
3. Shri K.S. Baidwan: Uniform reduction in salary of Rs. 7,600 to Rs. 7,500 for two years with immediate effect, without any increase in salary during the said period.
4. Shri R.K. Sethi: One-way salary reduction from Rs. 7,100 to Rs. 6,900 with immediate effect in two years, without any increase in salary during the said period.

The court subsequently became involved in the litigation between Skipper Construction and the potential purchasers of the converted units. Skipper Construction had acquired the land from the DDA without any consideration and collection of funds from potential buyers. The court ordered Skipper Construction to return its property to the DDA and the building under construction, allowed the DDA to resell the property through auction and ordered the proceeds

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<sup>5</sup> All India Services (Discipline and Appeal) Rules 1969

of the resale to be sued and paid into court by the people who have previously invested in Skipper construction. The court appointed two commissions to investigate the claims, and their reports were distributed to the claimants after they were issued.

In view of the above, the Tribunal has carefully considered the submissions and material placed on record. After scrutinizing the disciplinary issue, the court finds that the punishment imposed on the officers is justified and in accordance with legal principles. The Tribunal accepts that the disciplinary inquiries were conducted fairly and equitably, giving the relevant authorities an opportunity to submit their responses.

As for Mr. Om Kumar, the court insists on a 'light' punishment for 'blasphemy'. The Court is satisfied that the punishment is commensurate with the degree of Mr Om Kumar's misconduct in the case.

As regards Sri Virendra Nath, the Court upholds the sentence of reduction in pay for two years. Considering the nature and gravity of the alleged misconduct against Sri Virendranath, the Court finds justification and Mr. K.S. Badwan and Shri R.K. Sethi, the Court affirms the suspension of compensation for two years. The court held that the sentences imposed on both officers were commensurate with the misconduct against them.

The Court finds that the disciplinary hearing and subsequent sanctions imposed on the officers were conducted in accordance with applicable laws and regulations governing disciplinary action against public officials. The Court finds no weakness in the procedures or decisions taken by the authorities concerned.

## **RATIONALE**

1. It was noted by the Apex Court that it did not examine whether the right punishment was given to them after directing disciplinary proceedings against officers.
2. The Court noted therefore that it was time to determine whether the imposed punishments were consistent with legal principles long established.



3. There was disharmony in decisions made by UPSC and respective competent authorities, which needed further examination according to the court.
4. The punishments awarded ought to be proportionate to their degree of involvement in the land allotment issue; this was also considered by the Court.
5. During disciplinary proceedings, natural justice principles must always be adhered to.

## FINAL DECISION

1. In respect of Om Kumar and others, including him, appropriate punishment required reconsideration on its quantum suggested by the Supreme Court;
2. Various sanctions imposed on these officers must be reviewed by different authorized personnel to conform them with universally recognized administrative law principles according to this ruling.

The court had ruled that the accused should be given a hearing before punishing them finally.

The Court has told the authorities to approach the UPSC afresh, taking into account explanations by the officers and proportionality principles relating to disciplinary issues.

As such, the Supreme Court expressed its view on the necessity of reviewing punishments imposed on officials to see if they were fair and just or not about administrative law and common natural justice. The court instructed the authorities to reassess the quantum of punishment through an open process.

## ANALYSIS

**1. Scope of Judicial Review in Disciplinary Matters:** The Supreme Court has always maintained that the scope of judicial review in disciplinary matters is limited. Courts should not interfere with the quantum of punishment unless it is found to be grossly disproportionate or arbitrary (*Union of India v Sardar Bahadur*)<sup>6</sup>. However, what the Court can look into is whether

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<sup>6</sup> *Union Of India v Sardar Bahadur* (1972) 2 SCR 218

the principles of natural justice were followed and whether the punishment is commensurate with relevant service rules that could have been violated alongside other grounds (*Bank of India v Degala Suryanarayana*)<sup>7</sup>.

## 2. Principles of Natural Justice:

- In disciplinary proceedings, such principles include; the right to a fair hearing, opportunity to defend oneself, etc., must be complied with without fail (*Mohd. Ikram Saifi v Aligarh Muslim University*)<sup>8</sup>.
- Failure to give the delinquent officer a reasonable opportunity to explain his/her case would vitiate disciplinary proceedings against him/her (*Kumari Shrilekha Vidyarthi v State of UP*)<sup>9</sup>.

**3. Proportionality of Punishment:** The punishment imposed must be proportionate to the gravity of the misconduct. The courts can interfere if the punishment is shockingly disproportionate (*State of UP v Saroj Kumar Sinha*)<sup>10</sup>. In this case, however, there were inconsistencies in sentencing, and therefore the Supreme Court directed that it should be re-passed to ensure proportionality.

**4. Role of the UPSC:** The recommendation of the UPSC is an essential safeguard in disciplinary proceedings against civil servants (*KK Dutta v Union of India*)<sup>11</sup>. This court observed that there should have been a fresh recommendation from UPSC after allowing these officers to explain their case.

**5. Intervention by the Courts:** If found arbitrary, disproportionate, or breaching natural justice doctrine, the Indian Supreme Court intervenes in disciplinary matters (*Union of India v H.C Goel*)<sup>12</sup>. In this matter, however, the Court exercised its power of judicial review to ensure that punishments given were within the law and based on administrative principles.

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<sup>7</sup> *Bank of India v Degala Suryanarayana* (1999) 5 SCC 762

<sup>8</sup> *Mohd. Ikram Saifi v Aligarh Muslim University* (1998) 7 SCC 248

<sup>9</sup> *Kumari Shrilekha Vidyarthi v State of UP* (1991) 1 SCC 212

<sup>10</sup> *State of U.P. v Saroj Kumar Sinha* (2010) 2 SCC 772

<sup>11</sup> *K.K. Dutta v Union of India* (1980) 4 SCC 38

<sup>12</sup> *Union of India v H.C Goel* (1964) 4 SCR 718

## CONCLUSION

The Supreme Court of India decided on 17th November 2000. In *Om Kumar & Others v case of the Union of India*, disciplinary action was taken against the officials of the Delhi Development Authority (DDA) for allotment of land to M/s. This case raised important legal issues regarding the appropriateness of penalties for police negligence and the need to reassess those penalties.

Disciplinary proceedings were initiated following an inquiry by retired Supreme Court judge Justice O. Chinnappa Reddy, who examined the actions of DDA officials including the ex-officio chairman in respect of land allotment. The inquiry revealed allegations of irregularities disclosed, such as allotment of property to M/s Skipper Construction Company before seeing the total investment. The legality and validity of certain orders passed by the Chairman holding office under the Delhi Development Act were examined.

Throughout the hearing, there were differences of opinion between the competent authorities and the UPSC on the punishment meted out to the police and the secretariat committee decided to reconsider the UPSC's advice, but ultimately the recommendations of the UPSC went in front of the employees.

Ultimately, the Supreme Court had the power to impose ultimate punishment on government officials. Penalties ranged from 'convictions' to 'substantial' penalties, including reductions in salary or allowance but no subsequent increases or raises. The implications of this case extended beyond anti-police discipline. The case also sued Skipper Construction Company and the purchasers of the listings in the project. The DDA took possession of the property and put it back on the market, raising the rights of the creditors and their claims of nuisance.

In conclusion, the case of *Om Kumar & Others v Govt. Union of India* threw light on the need to discipline officials and safeguard the public interest. It emphasized the need for careful consideration of penalties for alleged misconduct and emphasized the role of competent authorities such as the UPSC in providing advice and recommendations. The article highlighted the importance of protecting the rights of depositors and ensuring transparency in the allocation of public goods.