

**CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW
BENCH LUCKNOW**

Original Application No. 350/2009

Order Reserved on 12.2.2015

Order Pronounced on 05/3/15

**HON'BLE MR. NAVNEET KUMAR MEMBER (J)
HON'BLE MS. JAYATI CHANDRA, MEMBER (A)**

Chandra Ballabh Maithani aged about 46 years son of late J.B. P. Maithani, resident of C-186, Sector C, Mahanagar, Lucknow.

Applicant

By Advocate: Sri Shreesh Kumar

Versus

Union of India through the Secretary, Department of Atomic Energy, Govt. of India, Anushakti Bhawan, C.S.M. Marg, Mumbai.

Respondents

By Advocate : Sri Atul Dixit

ORDER

By Hon'ble Mr. Navneet Kumar, Member (J)

The present Original Application is preferred by the applicant under Section 19 of the AT Act, 1985 with the following reliefs:-

i) to quash the order dated 16.7.2009 as contained in Annexure No. A-7 to this original application and direct the respondents to reinstate the applicant in service with all the consequential benefits of arrears of pay and allowances and continuity in service etc.

ii) Any other order which is deemed just and proper in the nature and circumstances of the case be also passed in favour of the applicant in the interest of justice along with the cost of this original application.

2. The facts of the case are that the applicant was initially appointed as Scientific Assistant(B) after qualifying the regular selection procedure prescribed for appointment to the post and in pursuance thereof, the applicant joined the respondents organization on 28th September, 1987. After serving for a substantial period of time, the applicant was confirmed and promoted to the post of Scientific Assistant (C) in the year 1992 and in the year 1999, he further

promoted to the post of Scientific Officer (B) and thereafter promoted to the post of Scientific Officer (C) in the year 2004. While he was working as Scientific Officer (C) at Atomic Minerals Directorate for Exploration and Research, Central Region, Nagpur, the applicant was placed under suspension in contemplation of disciplinary enquiry. For considerable period of time, the applicant was not informed of any progress in the matter and he was not served with any charge sheet and finally vide memo dated 4th May, 2006, the applicant was served with the charge sheet indicating therein certain charges. Learned counsel for the applicant categorically indicated that after the charge sheet was served upon the applicant, he submitted written statement denying the charges levelled against him and also requested for personal hearing. The charges so levelled against the applicant are that the applicant while functioning as Scientific Officer "C", he misused the office-cum-residence-cum- store for pre-planned motive for immoral activities. The enquiry officer conducted the enquiry and enquiry report was given to the applicant and the same was submitted to the disciplinary authority on 31.10.2007. The applicant was required to submit the objection against the enquiry officer's report. Thereafter, an opinion is sought from the U.P.S.C. and the applicant was awarded punishment of dismissal from service. The learned counsel for the applicant has categorically indicted that the applicant was not served with the copy of the UPSC advice before imposition of the punishment and the same was served upon the applicant only along with the punishment order.

3. Not only this, it is also vehemently argued by the learned counsel for the applicant that list of documents including the preliminary enquiry report was also not given to him. Learned counsel for applicant also indicated this fact that along with the charge sheet, there is a list of witnesses and the enquiry officer has not examined all the witnesses and only five witnesses were examined, as such, entire enquiry proceedings is bad in the eyes of law and is liable to be

quashed. It is also indicated by the learned counsel for the applicant that the disciplinary authority also disagreed with the findings of the enquiry officer's report and applicant has submitted the reply to the same, though the reply submitted by the applicant to the enquiry officer's report as well as to the disagreement memo is not available on record. The learned counsel for the applicant has also relied upon number of decisions and has indicated that opportunity of hearing is must in case of difference of opinion between the enquiry officer and the disciplinary authority and has relied upon a decision of Hon'ble Apex Court in the cases of **Punjab National Bank and others Vs. Kunj Behari Misra reported in 1998 Supreme Court Cases (L&S) 1783, Yoginath D.Bagde Vs. State of Maharashtra and another reported in (1999) 7 Supreme Court Cases 739 and Lav Nigam Vs. Chairman and Managing Director, ITI Ltd and another reported in (206) 9 Supreme Court Cases, 440** and has vehemently argued that only after hearing the employee, the disciplinary authority can arrive at a final finding of guilt. Learned counsel for the applicant has also relied upon decision of Hon'ble Apex Court in the case of **Union of India and others Vs. R.P.Singh reported in (2014) 7 Supreme Court Cases 340** and has pointed out that Hon'ble Apex Court is of the view that the advice of the UPSC is must to be served before imposition of punishment. Learned counsel for the applicant has also relied upon a decision of Hon'ble Apex Court in the case of **Roop Singh Negi Vs. Punjab National Bank and others reported in 2009 (2) SCC 571** as well as **Nirmala J. Jhala Vs. State of Gujarat and another reported in 2013 (4) SCC 301** and has indicated that departmental proceedings is a quasi judicial proceedings, as such the charges levelled against the applicant must to be found to have been proved. In the instant case, all the charges levelled against the applicant are not proved, as such the applicant is

not entitled for any punishment as imposed by the disciplinary authority.

4. On behalf of the respondents, reply is filed and through reply, it is indicated by the respondents that full-fledged enquiry was conducted and once the Disciplinary Authority is the President, who has exercised his power, no appeal lies to any authority. However, it is submitted that the applicant can prefer a Review Petition in terms of Rule 29(1) of CCS (CCA) Rules, 1965 and an application for revision shall be dealt within the same manner as if it is an appeal under these rules and in the instant case, the applicant instead of submitting an application for revision to the President within the stipulated period of time, preferred the present O.A., as such without exhausting remedy available to him, approached the Tribunal, as such the present O.A. is pre-mature, and is liable to be dismissed.

5. Apart from this, it is also indicated by the respondents that the applicant while working as Scientific Officer "C" at Central Region, Atomic Minerals Directorate for Exploration and Research, Nagpur, he was initially placed under suspension for a period of 90 days w.e.f. 7.11.2005 and thereafter, the same was extended and finally, the applicant was served with the charge sheet. The respondents have duly conducted an enquiry.

6. It is also indicated by the respondents that while working on the post of Scientific Officer "C", the applicant was involved in an activity of flesh trade by hiring two women at the rate of Rs.500/- each and name of those women were also indicated in the charge sheet. The enquiry officer submitted the report to the disciplinary authority. It is also indicated by the respondents that act of the applicant was also published in the newspapers and police has also arrested five persons in this connection. Learned counsel relied upon the decision of the Hon'ble Apex Court in the case of **B.C.Chaturvedi Vs. Union of India and others reported in 1995(6)SCC 749** and **Union of**

India Vs. Upendra Singh reported in 1994(3) SCC 357 and has categorically indicated that in respect of disciplinary matters, the scope of judicial review is very limited and court should not interfere in the case of disciplinary proceedings.

7. On behalf of the applicant, Rejoinder Reply is filed and through Rejoinder Reply, mostly the averments made in the O.A. are reiterated and denied the contents of the counter reply.

8. Heard the learned counsel for the parties and perused the records.

9. The applicant was working with the respondents organization and he was served with the charge sheet on 4th May, 2006 in which it is indicated that while he was functioning as Scientific Officer "C" (Drilling) and Incharge of Drilling Unit, Jagdalpur, Chattisgarh Central Region of Atomic Minerals Directorate for Exploration and Research has misused the office-cum-residence-cum- store at House No. 8 SBI Colony, Dharampur Road, Jagdalpur with preplan for illegal/immoral activity i.e. flesh trade by hiring two women @ Rs. 500/- each viz. Km. Sita aged 19 years D/o Sri Kumar and Smt. Urmila Devangan aged 22 years w/o Sri Ramu Devangan for fulfillment of sexual desires of himself and his two friends namely Surendra Sharma aged 38 years and Ram Pal aged 42 years on 19.5.2005. It is also indicated in the statement of Articles that they also consumed liquor in the said Govt. accommodation on 19.5.2005. In the said statement, it is also pointed out that the applicant has been indulged in these immoral activities for some time. In other words, these immoral activities of flesh trade took place in his official residence with his knowledge and his consent and he has also involved in the said flesh trade. There were eight Article of charges mentioned in the charge sheet and all of them are practically deals with the same issue.

10. It is also indicated that the applicant has not even informed the police raid of 19.5.2005, as such the act of the applicant was examined.

Along with the charge sheet, the list of witnesses as well as the list of documents were mentioned.

11. Copy of the charge sheet was served upon the applicant and he was asked to submit the reply which he duly submitted and has also requested by means of letter dated 12.6.2006 that he want to be heard in person.

12. It is to be pointed out that prior to issuance of the charge sheet, a board was constituted comprising of Sri M.K.Roy, as Chairman, Sri A.S. Sachan, SO, Sri P.K.Srivastava, S.O., and Sri Arjun Prasad ,S.O. as members. A raid was conducted by the police at House No. 8, SBI Colony, Dharampura Road, Jagdalpur on 19/20.5.2005 and arrested the man and women from the house indulging in flesh trade as reported in various local newspapers and it is also to be indicated that the said house was used as office-cum-residence by Sri C.B. Maithani, the applicant.

13. The said committee found the applicant guilty of misconduct and recommended for appropriate action against him as deemed fit by the competent authority. The committee has given the detailed report and has also examined the number of documents as well as number of witnesses were also examined and it is also indicated that the applicant was also given warning by the police. It is also indicated by the committee that the applicant was also questioned and examined and also confessed to have committed mistake. He later did again by doing so in writing and reference of documents are also mentioned by the committee in their page 5 and 6 of the report. The committee has drawn the following reference:-

“16.1 The information was given to the police by somebody indicating that some men and women were indulging in immoral activity in bungle No.8 SBI Colony, occupied by Sri Maithani and te information was correct (Ref: J-1/1).

16.2 There was a police raid on 19.5.2005 in the house No. 8, SBI Colony ,Dharampur Road, Jagdalpur (Ref. J-1/1) which is the official residence of Sri C.B. Maithani, Scientific Officer-C, as well as the office of LT-575 (6), drilling unit. This was also corroborated in his statement by Sri Maihani (Ref: G-1/1, G-2/2, M-1, and M-9).

16.3 Two men and two women were caught by the police under suspicious circumstances from Sri Maithani's house (Ref: J-1/1-2).

16.4 Sri C.B. Maithani had returned to his house from the market at the time of raid being conducted by the police in his house (Ref: J-1/1).The police report implies that he was also taken into the police station together with two men and two women.

16.5 The women were of suspected character as they were attempting to hid in the house and were charged by the police (Ref- J-1/2).

16.6 Sri Maithani was given a warning by the police and was let off (Ref: J-1/2).

14. Even the committee has examined the Security Guard at Nagpur on 13.6.2005. After the committee report, the charge sheet was served and enquiry officer was appointed. It is also to be indicted that the applicant submitted the defence written brief on October 18, 2007 in which he has denied the charges. The enquiry officer submitted the report and in the report , the enquiry officer came to the conclusion that charge No. 2 about misuse of office-cum residence is proved. Charge No. 4 and 6 were also stand proved and it is indicated by the enquiry officer that the applicant is guilty of offence so committed by him. The applicant was served with the copy of the enquiry report and he was asked to submit the reply to the same, though the reply

submitted by the applicant to the enquiry officer's report is not available on record.

15. Learned counsel for the applicant has vehemently argued that documents so demanded by the applicant were not provided to him and while imposition of the punishment upon the applicant, the copy of the UPSC advice has not been provided to him. The learned counsel for the applicant has also relied upon certain decisions of the Hon'ble Apex Court.

16. As per the decision in the case of **Punjab National Bank and others Vs. Kunj Behāri Misra (supra)**, the Hon'ble Apex Court has been pleased to observe as under:-

"The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof whenever the disciplinary authority disagrees with the inquiry authority on any article of charge then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the inquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favorable conclusion of the inquiry officer. The principles of natural justice, as we have already observed, require the authority, which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer."

17. In the case of **Yoginath D. Bagde (supra)**, the Hon'ble Apex Court observe as under:-

"In view of the provisions contained in the statutory Rule extracted above, it is open to the Disciplinary Authority either to agree with the findings recorded by the Inquiring Authority or disagree with those findings. If it does not agree with the findings of the Inquiring Authority, it may record its own findings. Where the Inquiring Authority has found the delinquent officer guilty of the charges framed against him and the Disciplinary Authority agrees with those findings, there would arise no difficulty. So also, if the Inquiring Authority has held the charges proved, but the Disciplinary Authority disagrees and records a finding that the charges were not established, there would arise no difficulty. Difficulties have arisen in all those cases in which the Inquiring Authority has recorded a positive finding that the charges were not established and the delinquent officer was recommended to be exonerated, but the Disciplinary Authority disagreed with those findings and recorded its own findings that the charges were established and

the delinquent officer was liable to be punished. This difficulty relates to the question of giving an opportunity of hearing to the delinquent officer at that stage. Such an opportunity may either be provided specifically by the Rules made under Article 309 of the Constitution or the Disciplinary Authority may, of its own, provide such an opportunity. Where the Rules are in this regard silent and the Disciplinary Authority also does not give an opportunity of hearing to the delinquent officer and records findings, different from those of the Inquiring Authority that the charges were established, "an opportunity of hearing" may have to be read into the Rule by which the procedure for dealing with the Inquiring Authority's report is provided principally because it would be contrary to the principles of natural justice if a delinquent officer, who has already been held to be 'not guilty' by the Inquiring Authority, is found 'guilty' without being afforded an opportunity of hearing on the basis of the same evidence and material on which a finding of "not guilty" has already been recorded."

18. In the case of **Lav Nigam Vs. Chairman and MD. ITI, Ltd**

(Supra), the Hon'ble Apex Court observed as under:-

"11. In **Punjab National Bank and others Vs. Kunj Behari Misra**, a bench of this Court considered Regulation 7(2) of the Punjab National Bank Officer Employees' (Discipline and Appeal) Regulations, 1977. The Regulation itself did not provide for the giving of any notice before the disciplinary authority different with the view of the enquiry officer. This Court held: (SCC p. 97 para 19)

"The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation, 7(2). As a result thereof whenever the disciplinary authority disagrees with the inquiry authority on any article of charge then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the inquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favorable conclusion of the inquiry officer. The principles of natural justice, as we have already observed, require the authority, which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer."

12. This view has been reiterated in **Yoginath D. Bagde Vs. State of Maharashtra**. In this case also Rule 992) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 did not specifically provide for a disciplinary authority to give an opportunity of hearing to the delinquent officer before different with the view of the enquiry officer. The court said (SCC page 758, para 29)

But the requirement of "hearing" in consonance with the principles of natural justice even at that stage has to be

read into Rule 9(2) and it has to be held that before the disciplinary authority finally disagrees with the findings of the enquiring authority, it would give an opportunity of hearing to the delinquent officer so that he may have the opportunity to indicate that the findings recorded by the enquiring authority do not suffer from any error and that there was no occasion to take a different view. The disciplinary authority, at the same time, has to communicate to the delinquent officer the "TENTATIVE" reasons for disagreeing with the findings of the enquiring authority so that the delinquent officer may further indicate that the reasons on the basis of which the disciplinary authority proposes to disagree with the findings recorded by the enquiring authority are not germane and the finding of "not guilty" already recorded by the enquiring authority was not liable to be interfered with."

19. Not only this, the Hon'ble Apex Court has also dealt with the issue of supply of UPSC advice prior to disciplinary authority pass an order. In the case of **Union of India and others Vs. S.K.Kapoor reported in 2011(4) SCC, 589**, the Hon'ble Apex Court observed as under:-

"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 employee concerned. However, if it is relied upon, then a copy of the same must be supplied in advance to the employee concerned, otherwise there will be violation of the principles of natural justice. This is also the view taken by this Court in **S.N, Narula Vs. Union of India** .

20. In the case of **S.N. Narula Vs. Union of India and others reported in 2011 (4) SCC 591**, the Hon'ble Apex Court observed as under:-

"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 para 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."

21. Not only this, the Hon'ble Apex Court in the case of **Union of India & Ors vs R.P. Singh (supra)** has been pleased to observe as under:-

"23. We have referred to the aforesaid decision in B. Karunakar case 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

24. We have been apprised by Mr. Raghvan, learned counsel for the respondents, 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."

25. 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."

22. The charges so levelled against the applicant reads as under:-

Article-1

Sri Chandra Ballabh Maithani, while functioning as Scientific Officer/C and Incharge of LT-575(6) Drilling Unit, Jagdalpur, Bastra Dist, Chattisgarh of Central Region of Atomic Minerals Directorate for Exploration & Research (AMD) has utilized the office-cum-residence at House No. 8, SBI Colony, Dharampur Road, Jagdalpur with pre-plan for illegal/immoral activity hired two women at the rate of Rs. 500/- each viz. Kum.Sita aged 19 years, daughter of Sri Kumar, resident of Kondagaon and Smt. Urmila Devangan aged 22 years, wife of Sri Ramu Devangan, resident of Nagarnar for fulfillment of sexual desires of himself and his two friends viz. Sri Surendra Sharma aged 38 years, son of Sri Rampal Sharma, a resident of fHakimpura, Jagdalpur and Sri Rampal aged 42 years son of Sri Ballooram Panjabi, a resident of Telipara,

Bilaspur on the evening hours of 19.5.2005. They also consumed liquor in the said Govt. accommodation on 19.5.2005.

2. Sri C.B. Maithani has been indulging in these immoral activities for some time. In other words, these immoral activities of flesh trade have been conducted in his official residence with his knowledge and consent and he has also been involved in the said flesh trade. This is not an isolated incident. Only that, this time the activities have come into the open. The fact that he has been deliberately avoiding deploying the security personnel in such a way that both of them are not available for security duty at certain hours to suit his requirement to enable him to carry on the illegal activity unnoticed and the fact that the matter has been reported to police by an informer, suggests that these immoral/illegal activities have been going on in the said premises for some time now.

3. It is an indisputable fact that a police raid was conducted in the house number mentioned above on two occasions, once at about 2030 hours of 19.5.2005 and another around midnight of the same day. It is also indisputable that four persons (two men and two women) were arrested by police namely Sri Surendra Sharma, Sri Rampal, Smt. Urmila and Kum Sita. As per one of the newspaper reports viz. "Haribhumi" dt. 21.5.2005, the total number of persons arrested is 3 (three) men and 2 (two) women. It is seen that the police raid has taken place on the office-cum-residence of Sri Maithani between 1930 hours to 2030 hours. It is clear from the police reports furnished to this

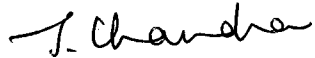
Directorate that the raid was conducted in the said official accommodation of Sri Maithani based on the information received from an informer, which means that such illegal/immoral activity was going on for some time and it cannot be said that Sri Maithani was unaware of the happenings in the office-cum-residence nor it can be said that Sri Maithani was not a party to such illegal activity. This goes to suggest that such activities have been going on with the connivance of Sri Maithani.

4. Sri C.B. Maithani while functioning as Scientific Officer /C (Drilling) during the period, when his family was away, from his office-cum-residence at H. NO. 8, SBI Colony, Dharampura Road, Jagdalpur was involved in the immoral/illegal activities along with his two friends by engaging two women of dubious character , consumed liquor in Govt. premises on 19.5.2005. Sri Maithani has allowed the official residence to be utilized for such highly objectionable immoral activity, which included consumption of liquor in the Govt. premises. Thus, he failed to maintain a responsible and decent standard of conduct in private life.

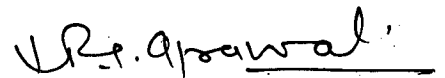
5. By the above said act, the said Sri Maithani has displayed lack of integrity and behaved in a manner unbecoming of a Govt. servant thereby contravening the provisions of sub-rule (1)(i) and (iii) of Rule 3 read with Rule 22 of CCS (Conduct) Rules, 1964."

23. The bare reading of disciplinary authority order is clear to the extent that the advice of the UPSC was communicated to the applicant along with the punishment order dated 15.7.2009 and the documents

so demanded by the applicant were not provided to the applicant, as such the impugned order requires interference. Accordingly, the impugned order dated 16.7.2009 as contained at Annexure No. 7 to the O.A. is quashed. O.A. is allowed. The applicant be reinstated in service forthwith. Since the applicant has not worked from the date of dismissal till today, as such he is not entitled for any back wages. The respondents are at liberty to provide the UPSC advice to the applicant and seek the reply from the applicant and thereafter, the disciplinary authority may take a decision in accordance with law. The same may be done within a period of six months from today. No order as to costs.



(Ms. Jayati Chandra)
Member (A)



(Navneet Kumar)
Member (J)

HLS/-