

**(2021) 02 CAT CK 0021**

**In the Central Administrative Tribunal**

**Case No :** Original Application No. 2347 Of 2015, Miscellaneous Application No. 2111 Of 2015

S K Mathur

APPELLANT

Vs

Union Of India & Others

RESPONDENT

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**Date of Decision :** 01-02-2021

**Acts Referred:**

Code Of Criminal Procedure, 1973 — Section 313  
Central Civil Services (Pension) Rule, 1972 — Rule 9  
Central Civil Services (Classification, Control & Appeal) Rules, 1965 — Rule 14(18)  
Central Civil Services (Conduct) Rules, 1964 — Rule 3(1)(i), 3(1)(ii), 3(1)(iii), 4(3), 15(3)

**Citation :** (2021) 02 CAT CK 0021

**Hon'ble Judges :** L. Narasimha Reddy, J; Aradhana Johri, Member (A)

**Bench :** Division Bench

**Advocate :** Meenu Mainee, Rajeev Sharma, Dr. Ch. Shamshudin Khan

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**Judgement**

L. Narasimha Reddy, J

1. The applicant retired from the service of Prasar Bharti as Chief Producer, Doordarshan Kendra, New Delhi on 31.08.2000. He was issued a

charge memo on 21.10.2002 under Rule 9 of CCS (Pension) Rules, 1972 with three articles of charge. It was alleged that the applicant awarded

contracts of royalty based programmes and freelance programmes to certain agencies, owned by his wife and other relations. Details thereof were

furnished in the statement of imputations. The applicant submitted representation with a prayer to furnish certain documents. The issue went on quite

for some time. Ultimately, he submitted an explanation and thereafter, the inquiry commenced. In his report dated 08.04.2009, the Inquiry Officer (IO)

held that the articles of charge are proved. The Disciplinary Authority (DA)

obtained the second stage of advice from Central Vigilance Commission (CVC) that was given on 02.03.2012. The report of the IO and copies of second stage advice from CVC were forwarded to the applicant for his comments. On his part, the applicant submitted a detailed representation on 25.06.2012, raising several contentions. Thereafter, the DA obtained the advice of the Union Public Service Commission (UPSC) and ultimately, through order dated 17.12.2013, imposed the penalty of 50% cut in the monthly pension for a period of 5 years. The same is challenged in this O.A.

2. The applicant contends that several documents, which were applied for by him, were not furnished and a serious irregularity has taken place in the inquiry. It is also stated that the procedure prescribed under sub-rule (18) of Rule 14 of CCS (CCA) Rules, 1965 (for short, the Rules, 1965) was not followed. Another serious contention of the applicant is that the DA did not furnish the copy of advice received from the UPSC, and thereby, the order of punishment is vitiated. Reliance is placed upon certain provisions of law and the judgments rendered by the Honâ??ble Supreme Court and Honâ??ble High Court of Delhi.

3. On behalf of the respondents, a detailed counter affidavit is filed. It is stated that all the documents, that were relied upon and cited in the charge memo, were furnished to the applicant and with oblique motive, the applicant went on requesting for furnishing of documents, which were not available with them at all. It is also stated that the sub-rule (18) of Rule 14 of the Rules, 1965 was meticulously followed and the proceedings in this behalf speak for themselves.

4. As regards the alleged failure to furnish the copy of UPSC advice, it is stated that the Honâ??ble Supreme Court and Honâ??ble High Court of Delhi treated the requirement as not mandatory and that the disciplinary proceedings cannot be said to have been vitiated on account of the same. They further contended that the allegations against the applicant are serious in nature and the punishment imposed is commensurate with the seriousness of misconduct.

5. The applicant filed a rejoinder, dealing with the pleas raised by the respondents in the counter affidavit.

6. We heard the extensive arguments of Mrs. Meenu Mainee, learned counsel for applicant; and Dr. Ch. Shamshudin Khan, and Mr. Rajeev Sharma,

learned counsel for respondents, in detail.

7. The applicant retired from service in the year 2000. Shortly thereafter, he was issued a charge memo on 21.10.2002 under Rule 9 of CCS (Pension)

Rules, 1972. The articles of charge framed against him read:

#### Article-I

Shri S.K. Mathur while functioning as Chief Producer, Doordarshan Kendra, New Delhi during the year 1997-98, committed misconduct in as much

as he awarded contracts of royalty based programmes and freelance programmes and sanctioned/ approved expenditure to M/s Blue Chip Video

Creations, Yusuf Sarai, New Delhi owned by his wife Smt. Neena, M/s Pulse Impulse Communications, Hari Nagar, New Delhi owned by Shri

Pawan Mathur brother of his son-in-law and M/s Decent Video Creations owned by Shri Manohar Singh son of colleague of Shri Mathur though

these firms were not empanelled as stringers in terms of provisions contained in DG:DD's O.M. No.4/4/83-P.III dated 4.4.83.

That Shri S.K. Mathur while functioning as above during the said period 1997-98 also failed to give duration of programme and date of telecast while

according certificate on the body of the bills of firms managed by his wife Smt. Neena and others in terms of the guidelines issued by Director

General, Doordarshan vide O.M. No.4/4/83-P-III dated 04.04.1983. He also failed to protect financial interest of DDK and sanctions accorded by him

were not on reasonable rates.

By the above act, Shri Mathur failed to maintain absolute integrity, exhibited lack of devotion to duty and acted in a manner unbecoming of a

Government Servant thereby contravening the provisions of Rule 3(1)(i), 3(1)(ii) and 3(1)(iii) of Central Civil Services (Conduct) Rules, 1964.

#### Article-II

Shri S.K. Mathur while according sanctions for the royalty based programmes and free lance programmes neither took prior permission nor gave

intimation to the competent authority for giving business to firms owned by his wife, friends and relatives.

By the above act, Shri Mathur acted in a manner thereby contravening the provisions of Rule 4(3) of Central Civil Services (Conduct) Rules, 1964.

#### Article-III

Shri S.K. Mathur while functioning as above also failed to intimate to the department about the business of his wife through M/s Blue Chip Video

Creations, New Delhi and awarded the work to her.

By the above act, Shri Mathur committed misconduct and contravened the provisions of Rule 15(3) of Central Civil Services (Conduct) Rules, 1964.â??

8. The record discloses that the applicant did not submit his explanation to the articles of charge. Much time was spent in the correspondence as

regards furnishing of certain documents. It is not the complaint of the applicant that the documents, mentioned in the charge memo, were not furnished

to him. However, he wanted copies of 18 documents, mentioned in his representation. On their part, the respondents have given a succinct reply,

making their stand clear in respect of each and every such document. While those, which were available, were furnished, as regards others, it was

mentioned that either they are not available or cannot be traced. In the process, the inquiry was delayed. Ultimately, the IO proceeded with the

examination of witnesses, duly giving an opportunity to the applicant to cross-examine them.

9. A serious complaint is made that the IO did not comply with the requirement under sub-rule (18) of Rule 14 of Rules, 1965. The provision reads:

â??(18) The Inquiring Authority may, after the Government servant closes his case, and shall, if the Government servant has not examined himself,

generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Government servant to explain any

circumstances appearing in the evidence against him.â??

10. It places an obligation upon the IO to put to the delinquent official, the gist of evidence and the factors that may exist against the official. By and

large, it is comparable to the requirement under Section 313 Cr.PC. Though it cannot be said that non-compliance of the provision would, by itself,

vitiating the entire proceedings, in the instant case, the compliance was adequate. The IO put four questions to the applicant, summing up the factors,

that appeared against him. They read:-

â??Q.1 In brief, what you have to say about your case taking into account the proceedings so far?

Q.2 What system did you follow while approving rates financial sanctions in respect of royalty based or assignment based programmes?

Q.3 Were you aware that prior permission of the Competent Authority was required for giving business to a Govt. employeesâ?? relation/friends?

Q.4 Your defence statement also speaks about intimation to the Department and not about getting permission. Please clarify?

The applicant has also given his answers in detail and the IO has taken note of the same. Therefore, it cannot be said that there was non compliance with sub-rule (18) of Rule 14.

11. The IO submitted his report on 08.04.2009 and that, in turn, was furnished to the applicant. The representation of the applicant as well as report of the IO was forwarded to the CVC for its second stage advice. After it was obtained, a copy of the same was furnished to the applicant.

12. Maybe on account of the fact that the DA felt that the furnishing of the copy of second stage advice is adequate compliance, he did not furnish the copy of the advice of UPSC obtained in this behalf. Further, there was a conflict of views as to the requirement to furnish the copy of the UPSC

advice. However, in the recent past, the issue was resolved finally by the Honâ??ble Supreme Court in Union of India & others v. R P Singh, (2014)

7 SCC 340. Their Lordships held that the furnishing the copy of the report of advice of UPSC is mandatory. Since it was not furnished to the applicant, the impugned order is vitiated to certain extent.

13. It is no doubt true that the impugned order deserves to be set aside, since it was passed without furnishing copy of the advice of the UPSC to the applicant. However, the entire impact of the impugned order need not be taken, on that count. We are guided by the judgment of the Honâ??ble

Supreme Court in Managing Director, ECIL v. B. Karunakar & others, 1993 SCC (L&S) 1184. Their Lordships held that wherever any technical

flaw is noticed in the disciplinary proceedings, it would not be necessary to set aside the entire exercise and it would be sufficient to commence the proceedings from the stage, the defect occurred.

14. We, therefore, set aside the impugned order only for the limited purpose of requiring the DA to furnish a copy of the advice of the UPSC to the applicant. Since the advice is already made part of the record in this O.A., the applicant shall be entitled to submit his explanation to the same within four weeks from today. The DA, in turn, shall pass orders within four weeks thereafter, duly taking into account, the representation of the applicant.

Since the punishment imposed through the impugned order has already taken place, there is no necessity to issue any directions in this behalf. Much would depend upon the nature of order, which the DA may pass, as directed. In case the applicant feels aggrieved by any such order, it shall be open to him, to pursue the remedies in accordance with law. There shall be no order as to costs.