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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 18.04.2023

Judgment delivered on: 25.05.2023

+ W.P.(C) 6525/2017

ALL INDIA INSTITUTE OF MEDICAL SCIENCES

..... Petitioner

Through: Mr. Atul Kumar, Ms. Sweety Singh
and Mr. Rahul Pandey, Advocates.

versus

S.P. VASHISHT

..... Respondent

Through: Mr. Shanker Raju, Mr. Nilansh Gaur,
Ms. Anubha Bhardwaj and Mr. Rajesh
Sachdeva, Advocates.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

J U D G M E N T

ANOOP KUMAR MENDIRATTA, J.

1. The challenge in this writ petition is to an order dated February 03, 2016 passed by the Central Administrative Tribunal (hereinafter referred to as the 'Tribunal') whereby the charge-sheet issued by the petitioner against the respondent herein has been held to be *void ab initio* along with action taken by the petitioner against the respondent on the charge-sheet, including the inquiry report as well as the punishment order dated July 18, 2013 imposing the penalty of compulsory retirement. However, the petitioner has been given liberty to initiate fresh disciplinary inquiry against the respondent by following the procedure under CCS (CCA) Rules, 1965 and in terms of law laid down by the Hon'ble Supreme Court in *Union of India v. B.V. Gopinath*, (2014) 1 SCC 351.

2. (i) In brief, as per the case of the petitioner, Shri S.P. Vashisht (respondent) was appointed to the post of Hawaldar in All India Institute of Medical Sciences (AIIMS) on September 27, 1983 and subsequently promoted to the post of Sanitary Officer. On the basis of a surprise check by the Central Bureau of Investigation (CBI), ACB, New Delhi at the main hospital store and C.N. Centre stores of AIIMS, an FIR was registered on March 03, 1999 under Sections 120-B/420 IPC and Section 13 (2) read with Section 13 (1)(d) of the Prevention of Corruption Act, 1988, for causing undue pecuniary advantage to one Mr. Rajeev Rastogi of M/s Rajeev Enterprises, by ignoring AIIMS rate contract with its approved suppliers. Allegations also pertained to supply of surgical items by firms not having license from the Drugs Controller, NTC, Delhi and supply of various sub-standard items in the Hospital. DIG, CBI, ACB also forwarded a copy of the report of S.P. CBI, ACB recommending for major penalty proceedings against the erring officials of AIIMS on September 05, 2001.

(ii) On October 17, 2001, a proposal for consideration of request of CBI, ACB, New Delhi for (a) grant of sanction for prosecution, (b) initiation of regular disciplinary proceedings for major penalty and (c) follow up action/suspension subsequent to decision on (a) & (b) above, was placed before the Governing Body of AIIMS, which authorised the President, AIIMS to constitute a Committee to look into the matter and submit its recommendations to the Governing Body.

(iii) A two member Committee was accordingly constituted and recommendations of Committee were submitted to the President AIIMS for consideration. The report of the committee was further placed before the

Governing body in its meeting held on April 03, 2002 which recommended that in absence of material substance pertaining to any *malafide* intention on the part of Dr. D.K. Sharma, the case be referred back to CBI for reconsideration and for dropping of his name for prosecution. The Governing Body did not discuss the case in respect of remaining officials. The observations of Governing Body were communicated to CBI and also referred to CVC.

(iv) On January 08, 2003, DIG, CBI requested for prosecution sanction in respect of remaining nine officials except Dr. D.K. Sharma. It was thereafter informed by CBI that since three officials, namely Shri C.S. Rawat, Shri Jagdish Raj and Shri Ramphat had retired in the meanwhile, the prosecution sanction was required for six officials.

(v) Bereft of other unnecessary details, on April 25, 2005, Director (CHS), Ministry of Health and Family Welfare conveyed prosecution sanction accorded by the President in respect of S.S. Rawat, Store Keeper. Further, in respect of Group 'C' Officers, Director AIIMS was requested to take necessary action. Director (CHS), Ministry of Health and Family Welfare also conveyed that the case of Group 'A' Officers be placed before the Governing Body, which is the Disciplinary Authority for major penalty in respect of Group 'A' officers. Accordingly, the proposal in respect of Group 'C' officials namely Attar Singh, UDC, M.L. Sharma, UDC and M.L. Arya, Store Keeper was considered by Director and Disciplinary Authority, AIIMS and accorded sanction in respect of said officials.

(vi) The request of CBI, ACB for grant of sanction for prosecution in

respect of R.L. Prasad, Stores Officer and S.S. Bhadoria, Assistant Stores Officer was placed before the Governing Body in the meeting held on July 05, 2005 which decided to grant the prosecution sanction. It was also decided therein that departmental inquiry be initiated against some other officers including respondent S.P. Vashisht, Sanitary Inspector.

(vii) The Central Vigilance Commission vide Office Memorandum dated December 29, 2005 gave advice for initiating departmental proceedings against the concerned officials. Accordingly, on November 14, 2008 after receipt of relevant documents from CBI, the charge-sheet was issued to the respondent.

(viii) It is further the case of the petitioner that Shri S.P. Vashisht (respondent) was holding a Group 'B' Post and Director, AIIMS is one of the Disciplinary Authority in his case. Taking into consideration Rule 13 of CCS (CCA) Rules, the charge-sheet was issued with the approval of Director, AIIMS and after completing all the procedures, the matter was placed before the President, AIIMS for final decision. Further, after considering all the relevant facts/circumstances and complying with the procedural requirements including second stage advice of CVC, the President, AIIMS decided to impose the penalty of compulsory retirement.

(ix) The appeal filed by the respondent was thereafter placed before the Governing Body since as per Schedule 2 of the AIIMS Regulations, 1999, the Governing Body is the Appellate Authority for consideration. However, the same was not considered by the Governing Body as respondent had already approached the Tribunal by filing of OA. It has also been pointed

out that respondent was due to retire from the services of the Institute on June 30, 2014 and the penalty was imposed on July 18, 2013. The same had no impact on the pension benefits since the respondent had been granted 100% pension.

3. Aggrieved against the penalty imposed vide order dated July 18, 2013, the respondent preferred O.A. No.174/2014 before the Tribunal for quashing of the impugned penalty order dated 18.07.2013 (Annex. A/1) along with charge sheet dated 14.11.2008 (Annex. A/2), Inquiry Officer report dated 20.06.2011 (Annex. A/5) and whole inquiry proceedings and for directing the respondents to reinstate the applicant in service from the date of compulsory retirement with all consequential benefits including the arrears of back period pay and allowances with interest.

4. Considering the fact that the charge-sheet had been issued by the Director, AIIMS under his own signatures and did not reflect the approval of the President, AIIMS and relying upon the law laid down by the Hon'ble Supreme Court in *B.V. Gopinath (supra)*, the Tribunal held that the charge-sheet is *ab initio void* along with further action taken by the petitioner based upon the charge-sheet, including Inquiry Officer's Report as well as the impugned punishment order passed by the petitioner. The reasons recorded by the Tribunal in paras 4 to 9 of order dated March 03, 2016 may be reproduced for reference:-

"4. The learned counsel for the applicant submitted, inter alia, that the President, AIIMS, who is also Union Minister for Health and Family Welfare, is the DA of the applicant, as is clearly evident from Annexure A-1 impugned order; whereas the Annexure A-2 charge-sheet has been issued by the Director, AIIMS. He further submitted that the Hon'ble Apex Court has laid down law in the case of Union of India v. B.V.

Gopinath, [(2014) 1 SCC 351], holding that the charge-sheet should have approval of the DA, if it is not done, then the charge-sheet as well as the disciplinary proceedings and any consequential action taken thereafter would be void ab initio. The learned counsel emphatically argued that in the instant case the charge-sheet does not have the approval of the competent authority, i.e., the President, AIIMS; it has been issued by Director, AIIMS.

5. Without going into various other aspects of the case argued by the learned counsel of the parties orally as well as in the pleadings, we would first like to go into the issue whether the law laid down by the Hon'ble Apex Court in the case of *B.V. Gopinath* (supra) has, in fact, been followed or not.

6. A plain reading of the impugned order makes it clear that the President, AIIMS is the DA for the applicant. In this connection we would like to reproduce the relevant extract from the impugned order and the same reads as under:

"NOW THEREFORE, after careful consideration of article of charge, findings of the Inquiry Officer, representation of Shri S.P. Vashisht, Sanitation Officer and all other relevant material/facts and circumstances of the case, the President, AIIMS being Disciplinary Authority in exercise of the powers conferred by Rule 15 of the CCS (CCA) Rules, 1965 read with regulation 33 (2) of the AIIMS regulations (as amended), 1999, now for good and sufficient reasons has decided to impose the penalty of "Compulsory Retirement" on Shri S.P. Vashisht, Sanitation Officer. Accordingly, the penalty of "Compulsory Retirement" is hereby imposed on Shri S.P. Vashisht, Sanitation Officer with immediate effect."

7. We also notice that Annexure A-2 charge-sheet has been issued-by the Director, AIIMS under his own signature. The charge-sheet nowhere states that it has the approval of the President, AIIMS, who is the DA.

8. In view of the above position, without looking into other aspects of this case, we are of the view that the law laid down by the Hon'ble Apex Court in the case of *B.V. Gopinath* (supra) has not been followed by the respondents. On this ground itself the charge-sheet becomes ab initio void and so also all further action taken by the respondents based on the chargesheet, including the Inquiry Officer's report as well as the impugned Annexure A-1 punishment order passed by respondent No.2. Under these circumstances, we set aside the Annexure A-1 impugned order as well as Annexure A-2 charge-sheet. The respondents are at liberty to initiate fresh disciplinary inquiry against the applicant by following the procedure laid down in the CCS, (CCA) Rules, 1965, and in terms of the law laid down by the Hon'ble Supreme Court in the case of *B.V. Gopinath* (supra).

9. *With the above direction, the OA is disposed of.”*

5. Learned counsel for the petitioner submits that under AIIMS Act, 1956 along with Regulations and Rules framed thereunder, the Director, AIIMS is competent to issue the charge-sheet against the respondent. Relying upon Rule 13 (2) of CCS (CCA) Rules, 1965, it is submitted that the Director, AIIMS being the Disciplinary Authority and competent to impose any of the penalties specified in clauses (i) to (iv) of Rule 11 of CCS (CCA) Rules could institute the disciplinary proceedings against any of the Government servant for imposition of any of the penalties specified under Rule (v) to (ix), notwithstanding that such Disciplinary Authority is not competent under the said Rule to impose any of the latter penalties. The articles of charge are further stated to have been partly proved as per inquiry report dated June 20, 2011, on the basis of which the President, AIIMS being the Disciplinary Authority in exercise of powers conferred under Rule 15 of CCS (CCA) Rules, 1965 imposed the penalty of compulsory retirement of the respondent. It is urged that the impugned order passed by the learned Tribunal is contrary to law since the charge-sheet cannot be quashed unless prejudice is shown to be caused to the delinquent officer and as the charge-sheet had been issued by the Director, AIIMS, who was competent to institute the departmental proceedings. It is further contended that institution of disciplinary proceedings can be by an Officer subordinate to the Appointing Authority but the only requirement is that the dismissal/removal shall not be by an authority subordinate to the Appointing Authority. It is urged that the drawing up of the charge memo commences when the approval is sought for initiation of disciplinary proceedings and the actual

drawing up of the charge-memo is incidental to the approval to initiate disciplinary proceedings and is a ministerial act.

6. On the other hand, learned counsel for the respondent submits that the President, AIIMS who is also the Union Minister of Ministry of Health and Family Welfare is the Disciplinary Authority to impose major penalty proceedings whereas the charge-sheet had been issued by the Director, AIIMS. It is argued that the charge-sheet does not have the approval of the competent authority i.e. President, AIIMS and in view of law laid down in the case of *B.V. Gopinath (supra)*, if the charge-sheet does not have the approval of DA (Disciplinary Authority) competent to impose the major penalty, the charge-sheet as well as the disciplinary proceedings and any consequent action taken thereafter is *void ab initio*.

It is further urged that even assuming but not admitting that the Director, AIIMS was authorized to institute the proceedings, he could not have approved the charge-sheet as required under Rule 14 (2) & (3) of CCS (CCA) Rules. Reliance upon Section 13 (2) by the learned counsel for the petitioner is strongly disputed and it is contended that institution of disciplinary proceedings by the Director did not dispense with the requirement of placing the file before the President, who happens to be the Disciplinary Authority in respect of the penalties proposed under clauses (v) to (ix) of Rule 14 of the CCS (CCA) Conduct Rules. Reliance is further placed upon the judgment passed in *B.V. Gopinath (supra)* and ***Sunny Abraham vs. Union of India and Another, 2021 SCC OnLine SC 1284.***

7. We have given considered thought to the contentions raised.

At the outset, the Appointing Authority, the Disciplinary Authority, the penalties that may be imposed and the Appellate Authority for various posts in the Institute, prescribed in Schedule II, as per Regulation 33 of All India Institute of Medical Sciences Regulations framed in exercise of the powers conferred under Sub-section (1) of Section 29 of All India Institute of Medical Sciences Act 1956, the CCS (CCA) Rules, as modified from time to time may be noticed:-

SCHEDULE II

(See regulation 33)

The Appointing, Disciplinary and Appellate Authority for the various posts in the Institute

Sl. No.	Description of Posts	Appointing Authority	Authority competent to impose penalty or penalties which it may impose with reference to Rule-11 of the Central Civil Services (Classification Control and Appeal) Rules, 1965		Appellate Authority
			Disciplinary Authority	Penalties under Rule-11 of the Central Civil Services (Classification Control and Appeal) Rules, 1965	
1	2	3	4	5	6
1	Group 'A' Posts (i) Director	Institute subject to Rule-7 of the All India Institute of Medical Sciences Rules	Institute	All, subject to condition that penalties (v) to (ix) shall not be imposed without the prior approval of the Central Government	
	(ii) Other Posts	--	--	--	--
2	Group 'B' Posts	President	(c) President (d) Director	(c) All Penalties (d) Penalties (i) to (iv)	(b) Governing Body (c) President

3	Group 'C' Posts	--	--	--	--
4	Group 'D' Posts	--	--	--	--

- (i) Authorisation of the Director, All India Institute of Medical Sciences to issue the Charge-sheet and statement of allegation, penalties and suspension orders after obtaining the approval of the Governing Body, the President, All India Institute of Medical Sciences, as the case may be. The notice, the charge-sheet and statement of allegations shall be signed by the Director for and on behalf of the Governing Body or the President, as the case may be, and the documents shall also expressly state this fact. Phrases like "By order of the Governing Body" or "the President" or the "approval by the Governing Body" or the "President" can be used on such documents.
- (ii) Since the Governing Body meeting are fixed at intervals, the Chairman of the Governing Body is authorised to initiate disciplinary proceedings against employees of Group A and faculty members and the final decision on penalty shall be taken in the Governing Body meeting.

8. A perusal of Schedule II of the Regulations referred to above, indicates that Appointing Authority for the Group 'B' posts with reference to the respondent, is the 'President' of the Institute. Further, Director is the Disciplinary Authority for the purpose of imposing penalties under clauses (i) to (iv) of Rule 11 of the CCS (CCA) Rules, while for all other penalties, the President is the prescribed Disciplinary Authority. Accordingly, the corresponding Appellate Authority in respect of the penalties specified under clauses (i) to (iv) of Rule 11 is the President and for all other penalties, the Appellate Authority is the Governing Body of the Institute.

It is also pertinent to note that in the note beneath Schedule II, the Chairman of the Governing Body has been authorised to initiate departmental proceedings against the employees of Group 'A' and faculty members and the final decision of penalty shall be taken in the Governing Body meeting. However, no such authorisation to initiate departmental proceedings has been specified in favour of any particular officer in respect of Group 'B' posts and, as such, the resort is sought only under Rule 13(2) of the CCS (CCA) Rules by the petitioner in support of its contentions.

9. As per the case of the respondent, the charge-sheet for major penalty proceedings was issued by the Director, AIIMS though the competent Disciplinary Authority as per Schedule II for imposing the penalty in respect of clauses (v) to (ix) of Rule 11 of CCS (CCA) Rules is the President of the Institute. It is pressed that the charge-sheet was not issued after approval of the competent Disciplinary Authority i.e. President of the Institute in terms of Rule 14(3) of CCS (CCA) Rules and, as such, the same is in violation of mandate of law laid down in *B.V. Gopinath (supra)*, even assuming that there was approval for grant of sanction for prosecution and initiating regular departmental proceedings for major penalty in terms of the minutes of 135th meeting of the Governing Body held on 05.07.2005.

10. In order to appreciate the contentions raised on behalf of the counsels, it may be noticed that Rule 14 of the CCS (CCA) Rules, 1965 provides for holding a departmental inquiry as per the provisions of Article 311(2) of the Constitution of India. Further, it contemplates approval of Disciplinary Authority for initiation of disciplinary proceedings and drawing up of charges of misconduct before a punishment may be imposed on the public servant if the charges are proved on inquiry.

11. The approval to initiate the departmental proceedings and the subsequent approval of the charge memorandum in terms of Rule 14(3) of CCS (CCA) Rules are two distinct stages which need to be approved by the Disciplinary Authority. The rationale for obtaining such approval in terms of Rule 14(2) & (3) of CCS (CCA) Rules is that the Disciplinary Authority may apply its mind to determine whether the inquiry is to be 'initiated' and if the proposed charges are made out or the proceedings may necessitate

issuance of a lesser charge.

It has been settled in *B.V. Gopinath (supra)* that initial and general approval granted for ‘initiation’ of disciplinary proceedings cannot be construed as an approval to the issuance of charge memo/charge-sheet by the Disciplinary Authority under Rule 14(3) of CCS (CCA) Rules. Accordingly, the charge memorandum without the approval of the Disciplinary Authority (i.e. the Hon’ble Finance Minister in the said case) was held to be *non-est* in a concluded proceeding though the initial and general approval was obtained for ‘initiation’ of disciplinary proceedings. The observations in para 41, 43, 44 & 45 may be beneficially reproduced:-

“41. Disciplinary proceedings against the respondent herein were initiated in terms of Rule 14 of the aforesaid Rules. Rule 14(3) clearly lays down that where it is proposed to hold an inquiry against a government servant under Rule 14 or Rule 15, the Disciplinary Authority shall draw up or cause to be drawn up the charge-sheet. Rule 14(4) again mandates that the Disciplinary Authority shall deliver or cause to be delivered to the government servant, a copy of the articles of charge, the statement of the imputations of misconduct or misbehaviour and the supporting documents including a list of witnesses by which each article of charge is proposed to be proved. We are unable to interpret this provision as suggested by the Additional Solicitor General, that once the Disciplinary Authority approves the initiation of the disciplinary proceedings, the charge-sheet can be drawn up by an authority other than the Disciplinary Authority. This would destroy the underlying protection guaranteed under Article 311(1) of the Constitution of India. Such procedure would also do violence to the protective provisions contained under Article 311(2) which ensures that no public servant is dismissed, removed or suspended without following a fair procedure in which he/she has been given a reasonable opportunity to meet the allegations contained in the charge-sheet. Such a charge-sheet can only be issued upon approval by the appointing authority i.e. Finance Minister.

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43. Clause (8) of the circular makes it abundantly clear that it relates to approval for issuing charge memo/sanction of prosecution. A plain

reading of the aforesaid clause shows that it relates to a decision to be taken by the Disciplinary Authority as to whether the departmental proceedings are to be initiated or prosecution is to be sanctioned or both are to commence simultaneously. The competent authority for approval of the charge memo is clearly the Finance Minister. There is no second authority specified in the order. We do not agree with Ms Indira Jaising, learned Additional Solicitor General that the use of the words “approval of” is not an expression distinct from “approval for” initiating major penalty proceedings.

44. Under Clause (9), the department firstly puts up the file before the Finance Minister seeking “approval for issuing charge memo/sanction of prosecution”. The department is seeking an order as to whether the officer is to be proceeded against departmentally or criminal proceedings are to be initiated or both proceedings are to be commenced simultaneously. When the decision is taken by the Finance Minister that the departmental proceedings are to be held (initiation), only then the question of approval of charge memo arises. The department would thereafter complete the necessary formalities and then place the file before the Finance Minister, for “approval of” charge memo. This provision is in harmony with the mandate contained under Articles 311(1) and (2) that no civil servant shall be dismissed or removed by an authority subordinate to that by which he was appointed. The second limb of the same direction is that punishment on a public servant of dismissal, removal or reduction in rank can only be imposed when the charges have been proved against him in a departmental enquiry held in accordance with the rules of natural justice.

45. Rule 14 of the CCS (CCA) Rules provides for holding a departmental enquiry in accordance with the provisions contained in Article 311(2) of the Constitution of India. Clause (8) also makes it clear that when the Finance Minister is approached for approval of charge memo, approval for taking ancillary action such as appointing an inquiry officer/presiding officer should also be taken. Clause (9) in fact reinforces the provisions in Clause (8) to the effect that it is the Finance Minister, who is required to approve the charge memo. Clause (9) relates to a stage after the issuance of charge-sheet and when the charge-sheeted officer has submitted the statement of defence. It provides that in case the charge-sheeted officer simply denies the charges, CVO will appoint an inquiry officer/presiding officer. In case of denial accompanied by representation, the Chairman is to consider the written statement of defence. In case the Chairman comes to a tentative conclusion that written statement of defence has pointed out certain issues which may require modification/amendment of charges then the file has to be put up to the Finance Minister. **So the intention is clearly**

manifest that all decisions with regard to the approval of charge memo, dropping of the charge memo, modification/amendment of charges have to be taken by the Finance Minister.”

12. It has further been held in ***Sunny Abraham v. Union of India, 2021 SCC OnLine SC 1284*** that the fact that ‘initiation’ of proceedings received approval of the Disciplinary Authority could not lighten the obligation on the part of the employer in complying with the requirement of Rule 14(3) of CCS (CCA) Rules, 1965, since Rule 14(2) & (3) contemplate independent approval of the Disciplinary Authority at both stages, for ‘initiation’ of inquiry and also for ‘drawing up’ or ‘cause to be drawn up’ the charge memorandum. In the event, the requirement of Rule 14(2) is complied with, not having the approval at the time of issue of charge memorandum under Rule 14(3) would still render the charge memorandum fundamentally defective, not capable of being validated retrospectively. The observations in para 13 and 14 may be aptly quoted:-

*“13. The next question we shall address is as to whether there would be any difference in the position of law in this case vis-à-vis the case of B.V. Gopinath (supra). In the latter authority, the charge memorandum without approval of the Disciplinary Authority was held to be non est in a concluded proceeding. The High Court has referred to the variants of the expression non est used in two legal phrases in the judgment under appeal. In the context of our jurisprudence, the term non est conveys the meaning of something treated to be not in existence because of some legal lacuna in the process of creation of the subject-instrument. It goes beyond a remediable irregularity. That is how the Coordinate Bench has construed the impact of not having approval of the Disciplinary Authority in issuing the charge memorandum. In the event a legal instrument is deemed to be not in existence, because of certain fundamental defect in its issuance, subsequent approval cannot revive its existence and ratify acts done in pursuance of such instrument, treating the same to be valid. **The fact that initiation of proceeding received approval of the Disciplinary Authority could not lighten the obligation on the part of the employer (in this case the Union of India) in***

complying with the requirement of sub-clause (3) of Rule 14 of CCS (CCA), 1965. We have quoted the two relevant sub-clauses earlier in this judgment. Sub-clauses (2) and (3) of Rule 14 contemplates independent approval of the Disciplinary Authority at both stages - for initiation of enquiry and also for drawing up or to cause to be drawn up the charge memorandum. In the event the requirement of sub-clause (2) is complied with, not having the approval at the time of issue of charge memorandum under sub-clause (3) would render the charge memorandum fundamentally defective, not capable of being validated retrospectively. What is non-existent in the eye of the law cannot be revived retrospectively. Life cannot be breathed into the stillborn charge memorandum. In our opinion, the approval for initiating disciplinary proceeding and approval to a charge memorandum are two divisible acts, each one requiring independent application of mind on the part of the Disciplinary Authority. If there is any default in the process of application of mind independently at the time of issue of charge memorandum by the Disciplinary Authority, the same would not get cured by the fact that such approval was there at the initial stage. This was the argument on behalf of the authorities in the case of B.V. Gopinath (supra), as would be evident from paragraph 8 of the report which we reproduce below:-

“8. Ms. Jaising has elaborately explained the entire procedure that is followed in each and every case before the matter is put up before the Finance Minister for seeking approval for initiation of the disciplinary proceedings. According to the learned Additional Solicitor General, the procedure followed ensures that entire material is placed before the Finance Minister before a decision is taken to initiate the departmental proceedings. She submits that approval for initiation of the departmental proceedings would also amount to approval of the charge memo. According to the learned Additional Solicitor General, CAT as well as the High Court had committed a grave error in quashing the departmental proceedings against the respondents, as the procedure for taking approval of the disciplinary authority to initiate penalty proceeding is comprehensive and involved decision making at every level of the hierarchy.”

14. But this argument was repelled by the Coordinate Bench, as would be evident from the opinion of the Bench reflected in paragraphs 49 & 50 of the report, which reads:-

“49. We are unable to accept the submission of the learned Additional Solicitor General. Initially, when the file comes to the Finance Minister, it is only to take a decision in principle as to

whether departmental proceedings ought to be initiated against the officer. Clause (11) deals with reference to CVC for second stage advice. In case of proposal for major penalties, the decision is to be taken by the Finance Minister. Similarly, under Clause (12) reconsideration of CVC's second stage advice is to be taken by the Finance Minister. All further proceedings including approval for referring the case to DoP&T, issuance of show-cause notice in case of disagreement with the enquiry officer's report; tentative decision after CVC's second stage advice on imposition of penalty; final decision of penalty and revision/review/memorial have to be taken by the Finance Minister.

*50. In our opinion, the Central Administrative Tribunal as well as the High Court has correctly interpreted the provisions of Office Order No. 205 of 2005. Factually also, a perusal of the record would show that the file was put up to the Finance Minister by the Director General of Income Tax (Vigilance) seeking the approval of the Finance Minister for sanctioning prosecution against one officer and for initiation of major penalty proceeding under Rules 3(1)(a) and 3(1)(c) of the Central Civil Services (Conduct) Rules against the officers mentioned in the note which included the respondent herein. Ultimately, it appears that the charge memo was not put up for approval by the Finance Minister. **Therefore, it would not be possible to accept the submission of Ms. Indira Jaising that the approval granted by the Finance Minister for initiation of departmental proceedings would also amount to approval of the charge memo.***

13. Further, the observations in para 17, 18 & 19 following the *ratio decendi* of *B.V. Gopinath (supra)* in **Civil Appeal No.8427-8428 of 2018 [State of Tamil Nadu Rep. By Secretary to Govt. (Home) vs. Promod Kumar IPS & Another]** are also pertinent to be noticed:-

*“17. It is clear that the approval of the disciplinary authority was taken for initiation of the disciplinary proceedings. It is also clear from the affidavit that no approval was sought from the disciplinary authority at the time when the charge memo was issued to the delinquent officer. **The submission made on behalf of the Appellant is that approval of the disciplinary authority for initiation of disciplinary proceedings was sufficient and there was no need for another approval for issuance of charge memo. The basis for such submission is that initiation of disciplinary proceedings and issuance of charge memo are at the same***

stage. We are unable to agree with the submission in view of the judgment of this Court in B.V. Gopinath (supra). In that case the charge memo issued to Mr. Gopinath under Rule 14(3) of the Central Civil Service (Classification, Control and Appeal) Rules, 1965 was quashed by the Central Administrative Tribunal on the ground that the Finance Minister did not approve it. The judgment of the Tribunal was affirmed by the High Court. The Union of India, the Appellant therein submitted before this Court that the approval for initiation of the departmental proceedings includes the approval of the charge memo. Such submission was not accepted by this Court on an interpretation of Rule 14(3) which provides that the disciplinary authority shall “draw up or cause to be drawn up” the charge memo. It was held that if any authority other than the disciplinary authority is permitted to draw the charge memo, the same would result in destroying the underlying protection guaranteed under Article 311 (2) of the Constitution of India.

18. Rule 8 (4) of the All India Service (Discipline and Appeal) Rules, 1969 also mandates that the disciplinary authority shall “draw up or cause to be drawn up” the charge memo. We see no reason to take a view different from the one taken by this Court in B.V.Gopinath (supra). We also see no substance in the submission made by the Senior Counsel for the State that the said judgment needs reconsideration. Assuming that Mr.Giri is right in his submission that the initiation of disciplinary proceedings and issuance of charge memo are at the same stage, the mandatory requirement of Rule 8 which provides for the charge memo to be drawn by the disciplinary authority cannot be ignored. We reject the submission on behalf of the Appellant that Gopinath’s case can be distinguished on facts. We are not in agreement with the contention of the Appellant that the business rules and standing orders of the State of Tamil Nadu are quite different from the office orders and circulars issued by Union of India which formed the basis of the judgment in Gopinath’s case. A close reading of the said judgment would disclose that reliance on the office note was only in addition to the interpretation of the Rule.

19. It is also settled law that if the rule requires something to be done in a particular manner it should be done either in the same manner or not at all- Taylor v. Taylor (1875) 1 Ch.D. 426, 431. In view of the mandatory requirement of Rule 8 (4) and the charge memo being drawn up or cause to be drawn up by the disciplinary authority is not complied with, we are of the considered opinion that there is no reason to interfere with the judgment of the High Court on this issue. The only addition we would like to make is to give liberty to the disciplinary authority to issue a charge memo afresh after taking approval from the disciplinary authority.”

14. As such, it is well settled that the approval for initiation of departmental proceedings does not include the approval of charge memo in specific. In the present case, the petitioners have only relied upon the minutes of the Governing Body held on July 05, 2005 to contend that the departmental inquiry proceedings were initiated against the respondent and other officers after approval by the Governing Body. No documents have been placed on record to reflect in case the approval of the Disciplinary Authority competent to impose the penalties specified in clauses (v) to (ix) of Rule 11 of CCS (CCA) Rules i.e. President, AIIMS, was obtained for approval of charge memo.

15. The contention raised on behalf of the petitioner is that since Shri S.P Vashisht was holding a Group B post, the Director AIIMS being one of the Disciplinary Authorities to impose penalty in respect of clauses (i) to (iv) of Rule 11 of CCS (CCA) Rules could 'institute' the disciplinary proceedings in view of Rule 13(2) of CCS (CCA) Rules, and as such the approval of the 'President' who is Competent Authority to impose the penalty under clauses (v) to (ix) of Rule 11 was not required for approval of charge memo. The initiation of departmental proceedings for major penalty is stated to have been authorised by the Governing Body in its meeting held on July 05, 2005 and the Report of the Inquiry Officer is stated to have been finally placed for consideration of the President, AIIMS who is the Disciplinary Authority, in respect of penalties which may be imposed under clauses (v) to (ix) of Rule 11 of CCS (CCA) Rules. The matter is also stated to have been duly referred to CVC for second stage advice.

16. In order to appreciate the contentions raised by learned counsel for the petitioner, it may be appropriate to refer to Rule 13 of the CCS (CCA) Rules, which provides as under:-

“Rule 13 - Authority to institute proceedings

(1) The President or any other authority empowered by him by general or special order may :

(a) institute disciplinary proceedings against any Government servant;

(b) direct a Disciplinary Authority to institute disciplinary proceedings against any Government servant on whom that Disciplinary Authority is competent to impose under these rules any of the penalties specified in Rule 11.

(2) A Disciplinary Authority competent under these rules to impose any of the penalties specified in Clauses (i) to (iv) of Rule 11 may institute disciplinary proceedings against any Government servant for the imposition of any of the penalties specified in Clauses (v) to (ix) of Rule 11 notwithstanding that such Disciplinary Authority is not competent under these rules to impose any of the latter penalties.”

17. A bare perusal of Rule 13(2) of CCS (CCA) Rules reflects that the Disciplinary Authority not competent under these Rules to impose any of the latter penalties under clauses (v) to (ix) of Rule 11 may also ‘**institute**’ disciplinary proceedings against any Government servant.

18. However, the question for consideration is, whether the “Director, AIIMS” was required to place the file before the President, AIIMS who is the competent authority for imposing the penalty under clauses (v) to (ix) of Rule 11 of CCS (CCA) Rules for approval, for purpose of drawing up or cause to be drawn the substance of imputation of misconduct or misbehavior into definite and distinct articles of charge under Rule 14(3) of CCS (CCA)

Rules. Consequently, if the inquiry proceeding is *non-est* if the charge-sheet was not placed for approval of the President, AIIMS who is the Competent Disciplinary Authority to impose the penalties under clauses (v) to (ix) of Rule 11 of the CCS (CCA) Rules, as expounded in *Union of India v. B.V. Gopinath (supra)*.

19. Undisputedly, the proceedings held against a public servant under the CCS (CCA) Rules to determine whether the delinquent official is guilty of the charges, is in nature of ‘quasi judicial’ proceedings. An important exercise of power for ‘initiation’ of proceedings as well as issuance of ‘charge memo’ under Rule 14(2) & (3) of CCS (CCA) Rules, cannot be deemed to be delegated by virtue of provisions of Rule 13(2) of CCS (CCA) Rules and the same merely permits the ‘institution’ of the disciplinary proceedings against a government servant to impose penalties specified in clauses (i) to (iv) of Rule 11 of CCS (CCA) Rules.

We are of the considered view that if any authority other than the Disciplinary Authority competent to impose the penalty permissible under the Rules is permitted to draw the charge memo, the same would destroy the underlined protection guaranteed under Article 311(2) of the Constitution unless specifically permitted under the Rules framed in this regard. Further, in the light of the proposition of law settled in *B.V. Gopinath (supra)* as well as *Sunny Abraham (supra)*, though under Rule 13(2) of the CCS (CCA) Rules, a Disciplinary Authority competent under the said Rules to impose the penalties specified in clauses (i) to (iv) of Rule 11 may ‘institute’ the disciplinary proceedings against the government servant for imposition of any of the penalties specified in

clauses (v) to (ix) of Rule 11, notwithstanding that such Disciplinary Authority is not competent under the CCS (CCA) Rules to impose any of the latter penalties but the same does not lighten the obligation to seek the approval of the 'Disciplinary Authority competent to impose the penalty under the Rules' for approval of charge memo. By virtue of Rule 13(2) of CCS (CCA) Rules, the Director, AIIMS being authorized to 'institute' the proceedings could have only 'drawn up' the distinct Articles of Charge which could be only finalized after approval by the Disciplinary Authority competent to impose the penalty i.e. President, AIIMS. In the aforesaid context, it may also be appropriate to refer to observations in para 51 & 52 of *B.V. Gopinath (supra)*:-

"51. Ms Indira Jaising also submitted that the purpose behind Article 311, Rule 14 and also the Office Order of 2005 is to ensure that only an authority that is not subordinate to the appointing authority takes disciplinary action and that rules of natural justice are complied with. According to the learned Additional Solicitor General, the respondent is not claiming that the rules of natural justice have been violated as the charge memo was not approved by the disciplinary authority. Therefore, according to the Additional Solicitor General, CAT as well as the High Court erred in quashing the charge-sheet as no prejudice has been caused to the respondent."

52. In our opinion, the submission of the learned Additional Solicitor General is not factually correct. The primary submission of the respondent was that the charge-sheet not having been issued by the disciplinary authority is without authority of law and, therefore, non est in the eye of the law. This plea of the respondent has been accepted by CAT as also by the High Court. The action has been taken against the respondent in Rule 14(3) of the CCS (CCA) Rules which enjoins the disciplinary authority to draw up or cause to be drawn up the substance of imputation of misconduct or misbehaviour into definite and distinct articles of charges. The term "cause to be drawn up" does not mean that the definite and distinct articles of charges once drawn up do not have to be approved by the disciplinary authority. The term "cause to be drawn up" merely refers to a delegation by the disciplinary authority to a subordinate authority to perform the task of drawing up substance

of proposed “definite and distinct articles of charge-sheet”. These proposed articles of charge would only be finalised upon approval by the disciplinary authority. Undoubtedly, this Court in P.V. Srinivasa Sastry v. CAG [(1993) 1 SCC 419 : 1993 SCC (L&S) 206 : (1993) 23 ATC 645] has held that Article 311(1) does not say that even the departmental proceeding must be initiated only by the appointing authority. However, at the same time it is pointed out that: (SCC p. 422, para 4)

“4. ... However, it is open to the Union of India or a State Government to make any rule prescribing that even the proceeding against any delinquent officer shall be initiated by an officer not subordinate to the appointing authority.”

It is further held that: (SCC p. 422, para 4)

“4. ... Any such rule shall not be inconsistent with Article 311 of the Constitution because it will amount to providing an additional safeguard or protection to the holders of a civil post.”

In the light of settled position of law, in the instant case, in the absence of the approval of charge memo by the competent Disciplinary Authority i.e. the President, AIIMS, who is empowered to impose the penalties under clauses (v) to (ix) of Rule 11 of CCS (CCA) Rules, the very foundation of issuing the charge-sheet becomes fundamentally defective and is not capable of being validated by merely placing the file before the Disciplinary Authority (i.e. the President, AIIMS) at the final stage. As the initial action itself is not in accordance with law, the subsequent inquiry proceedings and the decision taken thereupon would fall to the ground.

20. For the foregoing reasons, we agree with the findings of the Tribunal. However, we modify the operational part of the order whereby the liberty has been granted to initiate fresh disciplinary inquiry against the respondent by following the procedure laid down in CCS (CCA) Rules, 1965 and in terms of the law laid down by the Hon’ble Supreme Court in case of *B.V.*

Gopinath (supra) by directing for initiating the proceedings not beyond a period of three months from today and, thereafter, the proceedings shall take its own course, as per law.

Petition is accordingly disposed of. No order as to costs. Pending applications, if any, also stand disposed of.

(ANOOP KUMAR MENDIRATTA)

JUDGE

(V. KAMESWAR RAO)

JUDGE

MAY 25, 2023/A/sd

