

Court No. - 6

Case :- WRIT - A No. - 1692 of 2024

Petitioner :- Pragyesh Mishra

Respondent :- State Of U.P Thru. Addl. Chief Secy. Deptt. Civil Aviation Civil Sect. Lko.

Counsel for Petitioner :- Shireesh Kumar,Utkarsh Kumar

Counsel for Respondent :- C.S.C.

Hon'ble Abdul Moin,J.

1. The counter affidavit filed today is taken on record.
2. Heard Shri Shireesh Kumar, learned counsel for the petitioner as well as Shri Aniruddh Singh, learned Standing counsel appearing on behalf of the respondents.
3. Shri Shireesh Kumar, learned counsel for the petitioner states that he does not intend to file any reply to the counter affidavit and prays that the matter may be heard and decided finally.
4. Accordingly,, the Court proceeds to hear and decide the matter finally.
5. The instant petition has been filed praying for quashing of the punishment order dated 07.02.2024, a copy of which is annexure 13 to the petition. Further prayer is for a mandamus commanding the respondents to treat the petitioner entitled for all the consequential service benefits on quashing of the punishment order dated 07.02.2024.
6. The case set forth by the learned counsel for the petitioner is that while the petitioner was working as Government Pilot in the Department of Civil Aviation, he was served with a charge sheet dated August, 2021 on 05.10.2021, a copy of charge sheet is annexed as annexure 2 to the petition.

7. As the charge sheet was not in consonance to Rule 7 (ii) proviso of the U.P. Government Servant (Discipline and Appeal) Rules, 1999 (hereinafter referred to as "Rules, 1999" which provides that where the appointing authority of a person is the Governor, the charge sheet may be approved by the Principal Secretary or the Secretary, as the case may be, of the concerned department, as such, the petitioner while filing his reply to the charge sheet, which was filed on 09.09.2022, a copy of which is annexure 10 to the petition, had specifically raised the ground that the charge sheet was not in consonance to the Rules, 1999. No heed was paid to the same. Subsequently, the inquiry proceeded and the inquiry report dated 07.10.2022, a copy of which is annexure 11 to the petition, was also drawn up in which the charges were found established against the petitioner. A show cause notice dated 08.12.2022 was issued to the petitioner to which the petitioner submitted his reply on 22.12.2022, a copy of which is annexure 12 to the petition, wherein again the petitioner, apart from raising the objections to the inquiry report, also raised the aforesaid objection of the charge sheet not conforming to the provisions of Rules, 1999. Again, no heed was paid to the objections, as raised by the petitioner, and the Disciplinary Authority vide the order impugned dated 07.02.2024, a copy of which is annexure 13 to the petition, imposed penalty of reduction by three stages in the time scale of pay and recovery.

8. Being aggrieved, the instant petition has been filed.

9. The legal argument, as raised by the learned counsel for the petitioner, is that Rule 7 (ii) proviso of the Rules, 1999 specifically provides that where the appointing authority is the Governor, the charge sheet has to be approved by the Principal Secretary or the Secretary, as the case may be, of the concerned

department. It is contended that though the charge sheet had been issued to the petitioner, yet it had not been approved by either the Principal Secretary or the Secretary of the concerned department which is also fortified by a perusal of the copy of the office noting which has been filed as annexure CA1 to the counter affidavit filed today.

10. Placing reliance on the aforesaid office noting as well as the Rules, 1999, the argument of learned counsel for the petitioner is that when the charge sheet itself was not properly drawn up as per Rules, 1999, consequently any punishment, which is passed on the basis of such irregular charge sheet which does not conform to the Rules, 1999, would also not be legally sustainable in the eyes of law and thus, the impugned punishment order merits to be set aside on this ground alone.

11. In this regard, reliance has been placed on the judgments of the Apex Court in the case of **State of Tamil Nadu Vs. Pramod Kumar, IPS and Another 2018 (17) SCC 677** as well as in the case of **Union of India and Others Vs. B.V. Gopinath 2014 (1) SCC 351**.

12. On the other hand, Shri Aniruddh Singh, on the basis of averments contained in the counter affidavit as well as on the basis of the copy of the office noting which has been filed as annexure CA1 to the counter affidavit, argues that the only requirement of Rule 7 (ii) proviso to the Rules, 1999 is an approval of the charge sheet by either the Principal Secretary or the Secretary of the concerned department.

13. Shri Singh has invited the attention of the Court towards the office noting, more particularly, at page 25 wherein upon a proposal being made in the office noting of the charge sheet to be approved by the Additional Chief Secretary, the Additional

Chief Secretary on 30.07.2021 has approved the said proposal and thus, it is contented that the requirements of the Rules, 1999 stand fulfilled and as such, the punishment order imposed upon the petitioner, on the basis of the said charge sheet, does not require any interference by this Court.

14. Heard learned counsels for the parties and perused the record.

15. From the arguments as raised by learned counsels for the parties and a perusal of the record, it emerges that a charge sheet dated August, 2021 was issued to the petitioner, which was received by him on 05.10.2021. While submitting the reply to the charge sheet, an objection was raised by the petitioner that the charge sheet did not conform to the provisions of Rule 7 (ii) proviso of the Rules, 1999 inasmuch as, the charge sheet had not been approved by the Principal Secretary or the Secretary of the concerned department. No heed was paid to the said objection as raised by the petitioner. The inquiry proceeded and the inquiry report was also drawn up and a show cause notice was also issued to the petitioner. Again, the petitioner, while submitting his reply to the inquiry report, highlighted the fact of the charge sheet not conforming to the Rules, 1999 which again has not been addressed by the Disciplinary Authority while passing the impugned order of punishment.

16. The argument of learned counsel for the petitioner is that Rule 7 (ii) proviso to the Rules, 1999 specifically provides for a charge sheet to be approved by the Principal Secretary or the Secretary of the concerned department which, so far as the department of the petitioner is concerned, should be Additional Chief Secretary as agreed by both the learned counsels for the parties.

17. For the sake of convenience, Rule 7 of the Rules, 1999 is reproduced below:

"7- Procedure for imposing major penalties- Before imposing any major penalty on a Government Servant, an inquiry shall be held in the following manner:

(i) The Disciplinary Authority may himself inquiry into the charges or appoint an Authority Subordinate to him as Inquiry Officer to inquire into the charges.

(ii) The Facts constituting the misconduct on which it is proposed to take action shall be reduced in the form of definite charge or charges to be called charge-sheet. The charge-sheet shall be approved by the Disciplinary Authority.

Provided that where the Appointing Authority is Governor, the charge-sheet may be approved by the Principal Secretary or the Secretary, as the case may be, of the concerned department.

(iii) The charge framed shall be so precise and clear as to give sufficient indication to the charged Government Servant of the facts and circumstances against him. The proposed documentary evidences and the name of the witnesses proposed to prove the same along with oral evidence, if any, shall be mentioned in the charge-sheet.

(iv) The charge Government Servant shall be required to put in a written statement of his defence in person on a specified date which shall not be less than 15 days from the date of issue of charge-sheet and to state whether he desires to cross-examine any witness mentioned in the charge-sheet and whether desires to give or produce evidence in his defence. He shall also be informed that in case he does not appear or file written statement on the specified date, it will be presumed that he has none to furnish and inquiry officer shall proceed to complete the inquiry ex-parte.

(v) The charge-sheet, along with the copy of the documentary evidences mentioned therein and list of witnesses and their statements, if any shall be served on the charged Government Servant personally or by registered post at the address mentioned in the official records in case the charge-sheet could not be served in aforesaid manner, the charge-sheet shall be served by publication in a daily newspaper having wide circulation:

Provided that where the documentary evidence is voluminous, instead of furnishing its copy with charge-sheet, the charge Government servant shall be permitted to inspect the same before the Inquiry Officer.

(vi) Where the charged Government Servant appears and admits charges, the Inquiry Officer shall submit his report to the Disciplinary Authority on the basis of such admission.

(vii) Where the charge Government Servant denies the charge the Inquiry Officer shall proceed to call the witnesses proposed in the charge-sheet and record their oral evidence in presence of the charge Government Servant who shall be given opportunity to cross-examine such witnesses. After recording the aforesaid evidences, the Inquiry Officer shall call and

record the oral evidence which the charged Government Servant desired in his written statement to be produced in his defence:

Provided that the Inquiry Officer may for reasons to be recorded in writing refuse to call a witness.

(viii) The inquiry officer may summon any witnesses to give evidence or require any person to produce documents before him in accordance with the provisions of the Uttar Pradesh Departmental inquiries (Enforcement of Attendance of witnesses and production of documents) Act 1976.

(ix) The Inquiry Officer may ask any question he pleases, at any time of any witness or from person charged with a view to discover the truth or to obtain proper proof of facts relevant to charges.

(x) Where the charged Government Servant does not appear on the date fixed in the inquiry or at any stage of the proceeding inspite of the service of the notice on him or having knowledge of the date the Inquiry Officer shall proceed with the inquiry ex-parte. In such a case the Inquiry Officer shall record the statement of witnesses mentioned in the charge-sheet in absence of the charged Government Servant.

(xi) The disciplinary Authority, if it considers if necessary to do so, may by an order appoint a Government Servant or a legal practitioner to be known as "Presenting Officer" to present on its behalf the case in support of the charge.

(xii) The Government servant may take the assistance of any other Government Servant to present the case on this behalf but not engage a legal practitioner for the purpose unless the presenting officer appointed by the Disciplinary Authority is a legal practitioner of the disciplinary Authority having regard to the circumstance of the case so permits.

Provided that the rule shall not apply in following cases:

(i) Where any major penalty is imposed on a person on the ground of conduct which has led to his conviction on a criminal charge; or

(ii) Where the Disciplinary Authority is satisfied, that for reason to be recorded by it in writing, that it is not reasonably practicable to hold an inquiry in the manner provided in these rules; or

(iii) Where the Governor satisfied that, in the interest of the security of the state, it is not expedient to hold an inquiry in the manner provided in these rules."

18. From a perusal of the Rule 7 of the Rules, 1999, it emerges that the same pertains to the procedure for imposing major penalties which provides that before imposing any major penalty on a government servant, an inquiry shall be held in the manner prescribed. So far as it is relevant to the facts of the instant case, the proviso to Rule (ii) of Rule 7 of the Rules,

1999 provides that where the appointing authority is the Governor, the charge sheet has to be approved by the Principal Secretary (in this case the Additional Chief Secretary) or the Secretary, as the case may be, of the concerned department.

19. A perusal of the charge sheet, as issued to the petitioner, would indicate that Dr. Satya Prakash Tiwari, Deputy Secretary has indicated that the charge sheet is approved by the appropriate authority. In the counter affidavit, which has been filed by the respondents, the office noting has also been annexed as annexure CA1 which indicates that an office note was put up for approval of the charge sheet by the Additional Chief Secretary through the Special Secretary. The Additional Chief Secretary has made an endorsement on 30.07 (2021) as "1. यथाप्रस्तावित। 2. आरोप पत्र पर उप सचिव द्वारा हस्ताक्षर कर दिए जाएं।".

20. From a perusal of the endorsement of the Additional Chief Secretary, it emerges that upon the proposal which had been put up to him, he has signed it "as proposed" and that "the charge sheet should be signed by the Deputy Secretary."

21. As already indicated above, the proposal in the office noting was for approval of the charge sheet through the Special Secretary by the Additional Chief Secretary and the Additional Chief Secretary in his wisdom has signed it "as proposed" instead of "approved", meaning thereby, that the office noting has not been approved by him as per the requirement of the proviso of Rule 7 (ii) of the Rules, 1999.

22. This aspect of the matter has been considered by the Hon'ble Supreme Court in the case of **B.V. Gopinath (supra)** wherein the Court has held as under:

"5. During the pendency of the inquiry proceedings, the respondents filed

OA No. 800 of 2008. In these proceedings, the respondents claimed that the charge-sheet dated 7-9-2005/8-9-2005 is without jurisdiction, therefore, liable to be quashed, as the charge memo had not been approved by the Finance Minister. We may also notice here that prior to the filing of the aforesaid OA, the respondent had already approached CAT twice: firstly, seeking direction(s) to the Union of India to supply all the documents relied upon in connection with the charge-sheet issued against him. Secondly, seeking a direction to the appellant for timely completion of the departmental proceedings against him. The directions given by the CAT in the aforesaid proceedings, however, have no bearing on the controversy involved herein.

6. In the present appeal, we are concerned with the legality or otherwise of the order passed by CAT on 5-2-2009 in *B.V. Gopinath v. Union of India*. By the aforesaid order, CAT quashed the charge-sheet dated 7-9-2005/ 8.9.2005 issued against the respondent on the ground that there was nothing on record to show that the Finance Minister approved the charge-sheet. The aforesaid order of CAT was challenged, by way of Writ Petition (Civil) No. 10452 of 2009, before the Delhi High Court. By order dated 28-7-2009, which has been impugned before this Court, the Delhi High Court dismissed the said writ petition.

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.**

42. In fact, issuance of Office Order No. 205 dated 19-7-2005 makes it evident that the respondents were aware of the legal position. The office order clearly sets out the levels of the decision-making authorities depending on the gravity of the consequences that would have to be faced by a delinquent public servant in case the decision is taken to proceed against the public servant. Clause (1) deals with closure of complaints which are anonymous/pseudonymous, if the decision is taken to close the complaint it can be taken by the CVO. But in case of verifiable facts, the complaints have to be referred to the next level of hierarchy CVB (Central Vigilance Bureau). For placing an officer under suspension, the decision has to be taken by the Finance Minister himself. Even review of suspension at quarterly/half-yearly interval rests with the Finance

Minister. This is so, as suspension during contemplation/pendency of enquiry, though may not be penal in nature per se, still has very serious adverse consequences on the professional as well as the personal life of the officer suspended. The office order recognising the gravity of the consequences ensures that the decision in relation to suspension/review of suspension shall be taken by the highest authority in the department i.e. the Finance Minister. In matters related to reference to CVC for first stage advice, the competent authority is the Secretary (Revenue). Similarly, for reconsideration of CVC's first stage advice, again the competent authority is the Secretary (Revenue), but in case of disagreement with CVC's first stage advice on approval for referring the case to Department of Personnel and Training, the competent authority is the Finance Minister.

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.**

55. Although number of collateral issues had been raised by the learned counsel for the appellants as well the respondents, **we deem it appropriate not to opine on the same in view of the conclusion that the charge-sheet/charge memo having not been approved by the disciplinary authority was non est in the eye of the law."**

23. Likewise, the Hon'ble Supreme Court in the case of **Pramod Kumar (supra)** has held as under:

"22. Rule 8(4) of the All India Services (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*. 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 & 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* 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 the Union of India which formed the basis of the judgment in *Gopinath* 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.

23. 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*). 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."

24. From a perusal of the judgments of the Apex Court in the cases of **B.V. Gopinath (supra)** as well as **Pramod Kumar (supra)**, it is apparent that the Hon'ble Supreme Court has categorically held that a charge sheet can only be issued upon approval by the appointing authority, consequently, in case the

charge sheet has not been approved by the disciplinary authority, it would be non est in the eyes of law.

25. Accordingly, when the instant case is seen in context of the law laid down by the Hon'ble Supreme Court in the cases of **B.V. Gopinath (supra)** and **Pramod Kumar (supra)**, the only conclusion to which the Court reaches is that when proviso to Rule 7 (ii) of the Rules, 1999 clearly prescribes that a charge sheet has to be approved by the Principal Secretary (in this case Additional Chief Secretary) or the Secretary, as the case may be, of the concerned department, then the method of approval as adopted by the Additional Chief Secretary, as emerges from a perusal of the office notice, a copy of which has been filed as annexure CA1 to the counter affidavit, would clearly not subscribe to the said Rule 7 (ii) proviso of the Rules, 1999 as there is no approval to the said proposal.

26. The matter can be seen from another perspective also. Blacks Law Dictionary 9th Edition defines "*approve*" as "*to give formal sanction: to confirm authoritatively*".

27. Rule 7(ii) proviso of the Rules, 1999 also provides the charge sheet to be approved by the Principal Secretary, in this case the Additional Chief Secretary. The office noting dated 03.07.2021 indicates that the charge sheet had been sent for approval by the Additional Chief Secretary through the Special Secretary to which the competent authority, in this case the Additional Chief Secretary, has indicated as "as proposed". As per the definition of the Black's Law Dictionary 9th Edition, the office noting should have been given a formal sanction or formal approval but the Competent Authority instead of approving the said noting by indicating "as approved" has indicated "as proposed" and thus, it cannot be said that there is any formal sanction to the office noting dated 30.07.2021 which

required the charge sheet to be approved by the Additional Chief Secretary.

28. Keeping in view of the aforesaid discussion, it cannot be said that there is any approval by the Competent Authority to the charge sheet. Thus, once the charge sheet is itself unapproved, consequently, any punishment order passed on the basis of the said charge sheet would be void ab initio. Accordingly, the writ petition is **allowed** and the impugned order dated 07.02.2024, a copy of which is annexure 13 to the petition, is **quashed**.

29. Consequences to follow.

30. However, it is provided that it would be open for the respondents to proceed against the petitioner in accordance with law.

Order Date :- 2.4.2024
S. Shivhare