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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Judgment Dated: 06th September, 2016***

+ W.P.(C) 1226/2016
STATE OF HARYANA Petitioner

Through : Mr. Shekhar Raj Sharma, Advocate

versus

K.L. MANHAS Respondent

Through : Respondent in person.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE I.S. MEHTA

G.S.SISTANI, J (ORAL)

1. Challenge in this writ petition is to the order dated 26.08.2015 passed by the Central Administrative Tribunal (hereinafter referred to for short as 'the Tribunal') by which the OA No.3848/2014 filed by the respondent stands allowed only on the ground that the charge sheet was not approved by the Disciplinary Authority, which in the present case is the Chief Minister of the State.
2. On the last date of hearing, i.e. 26.05.2016, this Court had directed the petitioner to bring the original file to Court. The original file has been examined. We have asked the learned counsel for the petitioner as to whether the charge sheet has been approved by the Disciplinary Authority or not. The learned counsel for the petitioner has drawn our attention to the order dated 17.12.2004 where the proposal to take disciplinary proceedings against the respondent has been approved by the Chief Minister. The petitioner has failed to point out that the charge sheet was also approved by the Chief Minister.
3. In this case, the respondent had approached the Tribunal seeking the

following reliefs:

- “1) To set aside and quash the impugned order dated 19.09.2014 (A1), charge Memo dated 13.05.2005 (A2), inquiry report dated 19/20.11.2008 (A3), revised penalty order dated 26.11.2012 (A4), alongwith the order dated 18.12.12 of demotion of the applicant (A5), the advice dated 28.09.2012 (A6) & advice dated 26.08.14 (A7) of the UPSC and all the orders passed in consequence thereof which put the career of the applicant in a disadvantageous position.
- 2) To allow the applicant all the consequential benefits including promotions without taking into consideration the impugned charge Memo as well as other relevant actions taken/orders passed by the respondents in consequence thereof.
- 3) To direct respondent no.2 to pay the consequential arrears of pay together with interest thereon @ 18% till the date of payment.
....”

4. The sole ground urged by the respondent before the Tribunal was that in the absence of approval of the charge sheet by the competent authority, the charge memo itself as well as the consequential disciplinary proceedings including the punishment order and the order passed are vitiated. To this end, the respondent relied upon the judgment of the Supreme court in ***Union of India v. B.V. Gopinath***, reported at (2014) 1 SCC 351.
5. The learned counsel for the petitioner has urged before us that in view of Rule 28 of the Rules of Business of the Government of Haryana, 1977 and Rule 7 of the All India Services (Discipline and Appeal) Rules, 1969, it was not necessary for the Chief Minister to approve the charge sheet. We find that no such ground was raised by the petitioner before the Tribunal. Even otherwise, in the present case the Tribunal has correctly applied the law laid down in the case of ***B.V. Gopinath*** (**supra**). The relevant paras of which read as under:

“29. The learned Senior Counsel also submitted that the drawing up charges of misconduct and issuance/service of charge memo

is a crucial function for conducting an inquiry, which require the independent and unbiased application of mind and approval, directly and solely by the Finance Minister and not by any other subordinate authority.

30. According to the learned Senior Counsel, the most important issue to be decided by this Court is that whether the stage of initiating disciplinary proceedings is the same as issuing a charge-sheet/charge memo? A plain reading of Rule 14(2) and Rule 14(3) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 makes it amply clear and the only interpretation possible is that the stage of initiating the disciplinary proceedings under Rule 14(2) is distinct and separate from issuing a charge memo under Rule 14(3) and it is not a continuing act because it is not necessary that every disciplinary proceeding initiated would definitely result in issuing a charge memo because after initiating disciplinary proceedings it may be found from the material on record that, the memo of charge need not be served because the charges may not be made out or a lesser charge could be made out. Mind has to be applied to the evidence and material on record pursuant to initiation of disciplinary proceedings to again come to a fresh decision as to whether now, a charge memo deserves to be issued. Thus, the material before the disciplinary authority is different at both the stages of Rule 14(2) and Rule 14(3) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965.

...

40. Article 311(1) of the Constitution of India ensures that no person who is a member of a civil service of the Union or an all-India service can be dismissed or removed by an authority subordinate to that by which he was appointed. The overwhelming importance and value of Article 311(1) for the civil administration as well as the public servant has been considered, stated and restated by this Court in numerous judgments since the Constitution came into effect on 19-1-1950 (sic). Article 311(2) ensures that no civil servant is dismissed or reduced in rank except after an inquiry held in accordance with the rules of natural justice. To effectuate the guarantee contained in Article 311(1) and to ensure compliance with the mandatory requirements of Article 311(2), the Government of India has promulgated the CCS (CCA) Rules, 1965.

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.

...

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.”

(Emphasis Supplied)

6. This Court in the case of ***Dr. Sahadeva Singh v. Union of India & Anr***, reported at 2016 SCC Online Del 4233, has held as under:

*“16. **B.V. Gopinath** (supra) has laid down the principle that there are two distinct and separate stages of conducting disciplinary inquiry which are as follows:*

Stage I Granting of approval for initiation of disciplinary proceedings

Stage II Approval of framing of charges.

17. We may also note that the rationale for dividing the disciplinary proceedings in two distinct and separate stages emanates out of Article 311 of the Constitution. If we presume that once the disciplinary authority approves the initiation of disciplinary proceedings, the charge-sheet can be prepared by any other authority. The same would severely undermine the protections enshrined under Article 311 (1) and 311 (2) of the Constitution. They ensure that a public servant is not dismissed, removed or suspended without following a fair procedure and giving him a reasonable opportunity to meet the allegations against him. Coming to the dichotomy of Sections [sic: Rules] 14 (2) and 14 (3) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, it is not necessary that initiation

of every disciplinary proceedings will inevitably result in the issuing of charges. It may be that after initiation of disciplinary proceedings it may come to light that charges need not be issued as charges may not be made out or lesser charge may be made out. Consequently, it would necessitate the application of mind by the disciplinary authority on the stage of issuance of charge as well. Thus, approval of the disciplinary authority is required upon both the stages of Section 14 (2) and Section (3)."

(Emphasis Supplied)

7. In view of the foregoing, there can be no doubt that the Tribunal has already applied the law in the present matter.
8. We find no merit in the petition. The writ petition is dismissed.

CM.APPL 5410/2016(stay)

9. The application stands dismissed in view of the orders passed in the present writ petition.

G.S.SISTANI, J

I.S. MEHTA, J

SEPTEMBER 06, 2016

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