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

\+ **W.P.(C).3676/2013 & CM.APPL 13000/2015**

% ***Judgment Dated: 13th July, 2016***

DR. SAHADEVA SINGH ..... Petitioner

Through : Mr.Suhail Dutt, Senior Advocate with Mr. Sankalp Goswami, Advocate

versus

UNION OF INDIA & ANR ..... Respondents

Through : Mr. Anil Soni, CGSC with Mr. Naginder Benipal, Advocate

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE I.S. MEHTA

G.S.SISTANI, J (*ORAL*)

1. Pleadings in this writ petition are complete.
2. With the consent of the parties, the petition is set down to final hearing and disposal.
3. Challenge in this writ petition is to the order dated 5th December, 2012 passed by the Central Administrative Tribunal, (hereinafter referred to as 'the Tribunal' in short) in OA No.3366/2011. Necessary facts to be noticed for disposal of this writ petition as urged by the petitioner are that on 30thJune, 2008, the department of Agriculture and Cooperation had issued transfer orders in respect of the petitioner. The petitioner filed a complaint in the court of Metropolitan Magistrate, Patiala House Court, against the officials of the department and against an unknown local goon. The petitioner on receipt of the transfer orders dated 20th

October, 2008, reported at National Rainfed Area Authority (hereinafter referred to 'NRAA') on the same day.

4. On 15th September, 2009, the Metropolitan Magistrate, Patiala House Court, issued summons to one Sh. Amit, Assistant in the Department of Agriculture and Cooperation and also observed that in the absence of sufficient evidence against the other accused would not require summoning. The petitioner was required to hand over the keys and possession of the Room No. 440, Krishi Bhawan which was being occupied by the petitioner before his transfer to NRAA. Instead of handing over the keys of the room to the department, he intimated the department that the keys of the room were not kept by him.

5. On 28th July, 2011, the petitioner was suspended and a Memo of Charge was issued against him. On 18th August, 2011, an order of compulsory retirement of the petitioner was issued which was challenged by the petitioner by filing a separate OA. By an order dated 20th September, 2011, it was directed that the inquiry would continue upon the order of compulsory retirement under the provisions of Rule 9 of CCS (Pension Rules). The petitioner, thereafter filed OA 3366/2011 before the Tribunal seeking a direction to quash the suspension order dated 28th July, 2011 and also to quash the Charge Memo dated 28th July, 2011. Since the Memo of Charges was not quashed, being aggrieved by the aforesaid decision has led to the filing of the present writ petition.

6. Mr. Sohail Dutt, learned Senior counsel for the petitioner submits that the case of the petitioner is fully covered by the decision rendered by the Apex Court in the case of ***Union of India & Others* v. *B.V. Gopinath,*** *(2014) 1 SCC 351*. It is contended that the disciplinary authority in the case of petitioner is the Agriculture Minister. He submits that while the initiation of disciplinary proceedings were

approved by the disciplinary authority, the charge-sheet was not approved by the disciplinary authority, and thus, the charge-sheet is liable to be quashed.

7. Mr. Sohail Dutt, learned Senior counsel for the petitioner also pointed out that during the pendency of the matter before the Tribunal, the petitioner had made an application under the Right to Information Act to the respondent seeking copies of the note-sheets by which approval on the articles of charge was granted by the disciplinary authority. However, the request was declined on the ground that the matter was sub-judice. He submits that after the decision was rendered by the Tribunal, the relevant note-sheets were provided to the petitioner which would categorically show that while the Agriculture Minister, being the disciplinary authority, granted approval of initiation of departmental proceedings, the articles of charge were approved subsequently by another officer, who was not the disciplinary authority of the petitioner. A copy of the note received by the petitioner under the Right to Information Act has been placed on record along with an affidavit. The original file has been produced before us in the court by the respondents.

8. Learned counsel for the respondent submits that when the proposal for initiation of the disciplinary proceedings against the petitioner was formulized, approved articles of charge were also placed before the Hon'ble Minister which is evident upon reading of the original file. He submits that the approval of the Articles of Charge by the Minister is tacit and thus, no benefit can accrue to the petitioner based upon the decision rendered in the case of ***B.V. Gopinath*** *(supra)*. Learned counsel also submits that the note placed before the Minister was a detailed note and the formal charges which were framed subsequently

are not different from the draft charges which were in the knowledge of the Minister.

9. We have heard the learned counsel for the parties. We have also examined the original file which has been produced before us. No doubt, the original file reveals that a detail note was prepared before the matter was placed before the concerned Minister. It is not necessary for us to detail the entire note but the hand written note, a copy of which has been placed on record reads as under:-

> " From pre page
>
> A.M. may kindly see notes at 1-4/N. Dr. Singh has defied govt. Orders and stooped so low as to file false criminal cases against officials of this Ministry including the then Secretary. The Addl. Sessions Judge has held that he filed the criminal case to take revenge consequent to his transfer.
>
> Under these circumstances A.M. may like to approve proposal of placing Dr. Singh under suspension and starting departmental proceeding against him as proposed in para 13 of page 4/N.
>
> sd/-
> 13/7/2011
>
> A.M. sd/-
> 15/7
>
> Secy(A& C)
>
> sd/-
> 18/7/11
>
> AS(V)
>
> sd/-
> 18/7/11
>
> JS(A)

sd/-
18.7.2011

DS(P)

sd/-
18/7/11

US(P-II)
SO/E-II/A
Ill./-"

10. After the Minister had granted his approval, the following note was prepared:

"Reference: notes on pre-page
Draft memo and order of suspension submitted for approval, please.
sd/-
18.7.2011

sd/-
18/7

<u>SO (E.II)</u>
US P (II)

Draft order of suspension on the lines proposed on pre-page and as amended is placed below for approval please.

sd/-
18/7/2011

DS(P)

sd/-
19/7/11

JS (A)

sd/-
20/26.7.2011

AS (VV)

sd/-
26.7.11

JS(A)

sd/-
27.7.2011

DS (P) on leave
US (P-II) Signed Pl. issue

sd/-
28/7/2011

SO (E-II) sd/-
Sh APS S.No. 1 (I) P. 252-296"

11. Counsels for the parties are in agreement that after the second note, the file was not sent to the minister. However, it is the case of the Respondent that when the first note was prepared, draft charge sheet was also prepared and when the Minister granted his approval, the approval was for initiating disciplinary proceedings as also the charges which had been prepared.

12. Since strong reliance has been placed by Mr. Dutt, learned Senior Counsel, on the judgment of ***B.V. Gopinath*** *(supra),* we deem it appropriate to notice the facts of the case. The issue which came up for consideration before the Supreme Court was whether the Charge-sheet issued against Sh. B.V. Gopinath was without jurisdiction or not. In view of the fact that the disciplinary authority, which in the said case was the Finance Ministry, had not given approval for issuing the Charge Memo despite the fact that it had given the approval for initiation of a major penalty proceedings against Sh. B.V. Gopinath. The submissions made by the learned counsel for the respondent are somewhat identical

to the submissions made before the Supreme Court by the Union of India. The paragraphs No. 1 and 8 of the judgment reads as under :-

> "*1. Leave granted in all the SLPs. The central issue that arises for consideration in these appeals is: whether the charge-sheet issued against the respondents is without jurisdiction, in view of the fact that the disciplinary authority i.e. the Finance Minister, had not given approval for issuing the charge memo, even though he had given approval for initiation of major penalty proceedings against the respondents.*
>
> *...*
>
> *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 hierarch.*"

13. Mr. Dutt, learned Senior counsel for the petitioner, submits that necessary safeguards have been provided under the Constitution of India which are to be scrupulously followed. In this regard, reliance has been placed upon ***Sh. B.V. Gopinath*** *(supra)* and the judgment of this Court in ***Vikram Singh*** **v.** ***Union of Indian & Anr.***, *W.P.(C) 6694/2014*. More particularly the learned counsel has drawn our attention to Paragraphs 29, 30, 40, 41, 49 and 50 of ***B.V. Gopinath***

(supra), 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? <u>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.</u> 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)

14. While learned counsel for the respondent submits that Para 13 at page 4 of the note, two proposals were placed before the concerned Minister, firstly to issue Charge-sheet in terms of two Articles of charge and secondly, to place the petitioner under suspension. It is thus, contended that the judgment in the case of ***B.V. Gopinath*** *(supra)* would not apply to the facts of the present case. Per contra, learned Senior Counsel for the petitioner submits that as per the law laid down by the Supreme Court and even as per the understanding of the respondent, initiation of the departmental proceedings and formulizing the Articles of Charge are two different, distinct and separate stages.

15. We find force in the submission of the learned Senior Counsel for the

petitioner that drawing of charges of misconduct and issuance of charge sheet is a crucial function for conducting an inquiry, which requires an independent and unbiased application of mind and approval of the disciplinary authority; which in this case is the Minister and not a subordinate authority, who has granted the approval as is evident upon reading the original note at the second stage as is reproduced above in Paragraph 9. The relevant line reads as "*Draft memo and order of suspension submitted for approval, please.*" But the file has not been sent to the Minister thereafter. Further, in case, the charge had been approved by the concerned Minister and if this was the understanding of the respondent department, no fresh approval would have been sought much less from an authority which was not the disciplinary authority in this case.

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 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).

18. Since, no approval having been granted at the second stage in the instant matter, the charge issued is quashed. However, we make it clear that this order will not come in the way of respondent should they so desire to initiate fresh proceedings against the petitioner by taking necessary approval in accordance with law. Original file has been seen and returned.

19. The writ petition stands disposed of in the above terms.

G.S.SISTANI, J

I.S. MEHTA, J

JULY 13, 2016

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