IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2017

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.No.14592 of 2017 and
W.M.P.No.15813 of 2017

J.Velayutham ... Petitioner

-vs-

1.Union of India, rep.by the
Secretary to Government,
Ministry of Finance, Department of Revenue,
Central Board of Direct Taxes,
North Block, New Delhi-110 001.

2.The Registrar,
Central Administrative Tribunal,
Chennai Bench, Chennai. ... Respondents

Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus calling for the records of the second respondent relating to his order dated 25.04.2017 made in O.A.No.658 of 2017, quash the same and consequently allow the O.A.as prayed for.

For Petitioner :: Mr.Menon Karthik

For Respondents :: Mr.M.T.Arunan for R1
R2-Tribunal

ORDER
(Order of the Court was made by
R.SURESH KUMAR, J.)

This writ petition has been filed challenging the order passed by the Central Administrative Tribunal, Chennai Bench in O.A.No.658 of 2017 dated 25.04.2017.

2.The minimum facts that are necessitated for the disposal of this writ petition, are as follows:

(i)According to the petitioner, he retired from service as Deputy Commissioner of Income-tax on attaining the age of superannuation on 31.12.2008. Prior to his retirement, a charge memo under Rule 14 of the CCS(CCA) Rules, 1965 was issued to him on 15.12.2008, on certain misconduct while he was discharging duties as Assistant Commissioner of Income-tax in the year 2002.

(ii)Though the petitioner denied the charges, subsequently another charge memo dated 30.12.2008 was issued to him. A common enquiry was conducted in respect of both the charge memos.

(iii)It seems that, during the pendency of the enquiry, in view of the judgment rendered by the Hon'ble Apex Court in C.A.No.7719 of 2013 in the matter of Union of India v. B.V.Gopinath, that there should be specific approval of the disciplinary authority before issuing the charge memorandum under Rule 14(3) of the CCS (CCA) Rules, 1965 and according to the petitioner, in the case on hand, since the charge memo dated 30.12.2008 had not been approved by the competent authority before its issuance, he raised the ground that the said charge memo cannot be proceeded further.

3.Subsequent upon the said judgment, the matter was placed before the competent authority, ie, Government of India, Ministry of Finance and on 16.03.2017, the competent authority also has given approval to the charge memo, pursuant to which the following Office Memorandum has been issued on 21.03.2017:

OFFICE MEMORANDUM

> WHEREAS, disciplinary proceedings under Rule 14 of the CCS (CCA) Rules, 1965 were initiated against Shri.J.Velayutham, DCIT(Retd.) with the approval of the disciplinary authority on 26.12.2008 and consequently a Memorandum from F.No.C-14011/30/08-V&L dated 30.12.2008 was issued to him.
>
> AND WHEREAS, in view of the judgment dated 5th September 2013 of the Supreme Court in the case of Union of India vs. B.V.Gopinath & others (SLP No.6348 of 2009), the Memorandum from F.No.C-14011/30/08-V&L dated 30.12.2008 issued to Shri.J.Velayutham, DCIT (Retd.) was placed before the Disciplinary Authority, who after examining the facts and circumstances of the case, has accorded approval to the same on 16.03.2017;
>
> AND WHEREAS, the Disciplinary Authority has also approved continuation of disciplinary proceedings from the stage where the proceedings stood before the Charge Memorandum F.No.C-14011/30/08-V&L dated 30.12.2008 was formally approved by the Disciplinary Authority;

NOW THEREFORE, Shri. J.Velayutham, DCIT(Retd.) is hereby informed that the Charge Memorandum F.No.C-14011/30/08-V&L dated 30.12.2008 has been duly approved by the Disciplinary Authority and that the disciplinary proceedings in the matter would continue from the stage where the proceedings stood before the Charge Memorandum F.No.C-14011/30/08-V&L dated 30.12.2008 was formally approved by the Disciplinary Authority.

(By order and in the name of the President of India)

(V.Vinod Kumar)
Under Secretary to the Government of India

4.Not satisfied with the said approval given by the competent authority, the petitioner filed an application before the Central Administrative Tribunal in O.A.No.658 of 2017 challenging the very charge memo dated 30.12.2008, stating that post facto approval cannot cure the initial defect and therefore the charge memo has to go.

5.The said Original Application was considered by the Central Administrative Tribunal and by the impugned order dated 25.04.2017, the Tribunal rejected the plea of the petitioner on the ground that the charge memo dated 30.12.2008 had been approved by the competent authority. It was also observed that, the proceedings should commence from the stage where it stood before the charge memo dated 30.12.2008. Accordingly, the said original application was dismissed. Challenging the same, the present writ petition has been filed.

6.We have heard Mr.Karthik, learned counsel for the petitioner and Mr.M.T.Arunan, learned counsel appearing for the first respondent.

7.Mr.Karthik, learned counsel for the petitioner heavily relied upon the judgment of the Hon'ble Supreme Court in Union of India v. B.V.Gopinath, reported in (2014) 1 SCC 351. To substantiate his contention, the learned counsel for the petitioner has relied upon the following paragraphs of the said judgment:

> "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.

... ...

52.In our opinion, the submission of the learned Addl. 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 law. This plea of the respondent has been accepted by the 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 finalized upon approval by the disciplinary authority. Undoubtedly, this Court in the case of P.V.Srinivasa Sastry & Ors. Vs. Comptroller and Auditor General & Ors.[19] 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 "However, it is open to 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 "Any such rule shall not be inconsistent with Article 311 the Constitution because it will amount to providing an additional safeguard or protection to the holders of a civil post."

53.Further, it appears that during the pendency of these proceedings, the appellants have, after 2009, amended the procedure which provides that the charge memo shall be issued only after the approval is granted by the Finance Minister.

54.Therefore, it appears that the appeals in these matters were filed and pursued for an authoritative resolution of the legal issues raised herein.

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 law.

56.For the reasons stated above, we see no merit in the appeals filed by the Union of India. We may also notice here that CAT had granted liberty to the appellants to take appropriate action in accordance with law. We see no reasons to disturb the liberty so granted. The appeals are, therefore, dismissed."

8.The learned counsel for the petitioner has also relied upon the decision of the Hon'ble Supreme Court in Tej Pal Singh v. State of U.P.and another, reported in (1986) 3 SCC 604. In support of his contention, he relied upon the following paragraph:

"13. ... . Under the Rules obtaining in the Allahabad High Court, the Administrative Committee could act for and on behalf of the Court but the Administrative Judge could not have. Therefore, his agreeing with the Government proposal was of in consequence and did not amount to satisfaction of the requirement of Article 235 of the Constitution. It was only after the Governor passed the order on the basis of such recommendation, the matter was placed before the Administrative Committee before the order of retirement was actually served on the appellant. The Administrative Committee may not have dissented from

> the order of the Governor or the opinion expressed by the Administrative Judge earlier. But it is not known what the Administrative Committee would have done if the matter had come up before it before the Governor had passed the order of premature retirement. In any event the deviation in this case is not a mere irregularity which can be cured by the ex post facto approval given by the Administrative Committee to the action of the Governor after the order of premature retirement had been passed. The error committed in this case amounts to an incurable defect amounting to an illegality. We may add that while it may be open to the Government to bring to the notice of the High Court all materials having a bearing on the conduct of a District Judge or a subordinate judicial officer? which may be in its possession, the Government cannot take the initiative to retire prematurely a District Judge or a subordinate judicial officer. Such initiative should rest with the High Court."

9.The learned counsel for the petitioner would also rely upon yet another decision of the Hon'ble Supreme Court in the case of Marathwada University v. Seshrao Balwant Rao Chavan, reported in (1989) 3 SCC 132.

10.By relying upon these judgments, the learned counsel for the petitioner would submit that, it becomes mandatory on the part of the competent authority to approve the charge memo before its issuance to the delinquent and since the said approval in the present case, having not been given before it has been issued to the delinquent, the said action is fatal to the very charge memo itself and hence the charge memo is vitiated because of the non-approval by the competent authority.

11.In this context, the learned counsel for the petitioner has submitted that, once the charge memo has been issued without approval by the competent authority, if any enquiry is conducted pursuant to its issuance, the same cannot be cured or rectified by post facto approval. In this regard, the learned counsel for the petitioner has relied upon the judgment of the Hon'ble Supreme Court in Tej Pal Singh v. State of U.P.and another, reported in (1986) 3 SCC 604, and argued that, an irregularity cannot be cured by post facto approval and therefore what has been approved by the competent authority in the year 2017 relating to charge memo of the year 2008 cannot be treated as rectification and therefore the entire charge memo gets vitiated and the entire proceedings has to go. Stating so, the learned counsel has argued that, the Tribunal erred in giving such a finding that the charge memo could be proceeded in view of the post facto approval and therefore, the rejection of the claim of the petitioner by the Tribunal by way of passing the impugned order, is liable to be interfered with.

12.Per contra, the learned counsel for the first respondent, relied upon the proceedings of the Deputy DIT(Vig.) & CPIO, New Delhi, dated 21.09.2016, which, we are extracting hereunder for easy reference:

Sub: Application under RTI Act, 2005 - Reg.

Please refer to your application dated 20.08.2016 received in this office on 24.08.2016 and an identical application dated 20.12.2016 received in this office on 01.09.2016 on transfer from CPIO and US (V&L)-I, Ministry of Finance, Department of Revenue, New Delhi.

2.The reply of the RTI is given below:

Query	Reply
1. F.No.C-14011/30/2008-V&L	As per the custodian of the information it is intimated that in this case the DA gave approval to initiate major penalty proceedings on 08.12.2008. Subsequently, the draft charge sheet was approved by the DGIT (V) on 10.12.2008 (Copy enclosed). Now, the file is submitted to take post facto approval of the charge sheet dated 15.12.2008 from the DA.

Query	Reply
2. F.No.C-14011/30/2008-V&L	As per the custodian of the information it is intimated that in this case the DA gave approval to initiate major penalty proceedings on 26.12.2008. Subsequently, the draft charge sheet was approved by the DGIT (V) on 29.12.2008 (Copy enclosed). Now, the file is submitted to take post facto approval of the charge sheet dated 30.12.2008 from the DA.

3.It is also informed that if you are not satisfied with the reply, you may file an appeal under the RTI Act, 2005 against the above decision within 30 days from the receipt of this letter. The Appellate Authority in this case is the Additional Director General of Income-Tax (Vigilance) (Hqrs.)-2, First Floor, Dayal Singh Public Library Building, 1 Deen Dayal Upadhayaya Marg, New Delhi-110 002.

Encl: as above Yours faithfully,

(Akhilesh Kumar Yadava)
Dy.DIT(Vig.) & CPIO
O/o.the Pr.DGIT(Vig.), New Delhi

13.By relying upon the above proceedings, the learned standing counsel appearing for the first respondent would submit that in the information obtained as per the Right to Information Act, it is clearly found that the Disciplinary Authority gave approval to initiate major penalty proceedings on 26.12.2008 and subsequently draft charge memo also was approved by DGIT(V) on 29.12.2008 and based on such approval, charge memo was issued on 30.12.2008. Therefore, he submitted that, it cannot be argued on the side of the petitioner that the charge memo has never been approved by the competent authority. The draft charge memo has been approved as per the practice that is in vogue. The learned standing counsel would further submit that, since a specific objection has been raised on the side of the petitioner, pursuant to the law declared by the Hon'ble Supreme Court in the matter of Union of India v. B.V.Gopinath (cited supra), the matter was placed before the competent authority, ie, Government of India, Ministry of Finance and on 16.03.2017, the competent authority also has given approval to the charge memo, pursuant to which the Office Memorandum has been issued on 21.03.2017 (which has been extracted above).

14.The learned standing counsel would further submit that, in view of the approval having been given for the draft charge memo even before its issuance and also the subsequent post facto approval given by the competent authority with a rider that the proceedings would continue from the stage where the proceedings stood before the Charge Memorandum F.No.C-14011/30/08-V&L dated 30.12.2008, the petitioner cannot have any grievance. He further submitted that, the technical objection raised by the petitioner has also been complied with by the official respondents, pursuant to the law declared by the Hon'ble Supreme Court in B.V.Gopinath's case and hence the impugned order of the Tribunal requires no interference by this Court.

15.We have considered the rival submissions made by the learned counsel on either side and have perused the materials placed before this Court.

16.As has been rightly pointed out by the learned standing counsel appearing for the first respondent, the draft charge memo has been approved by DGIT(V) on 29.12.2008 pursuant to which the charge memo dated 30.12.2008 was issued and the proceedings went on. In view of the law declared by the Hon'ble Supreme Court in B.V.Gopinath's case, since a technical objection was raised by the petitioner, in order to comply with the same, the charge memo had been placed for post facto approval by the competent authority and accordingly the said approval was obtained on 16.03.2017.

17.In the office memorandum dated 21.03.2017 issued by the Government of India, Ministry of Finance, New Delhi, it is specifically mentioned that, the charge memo dated 30.12.2008 has been duly approved by the disciplinary authority and that the disciplinary proceedings would continue from the stage where the proceedings stood before the Charge Memorandum dated 30.12.2008, was formally approved by the Disciplinary Authority.

18.Therefore, in view of the approval now given by the competent authority on 16.03.2017 and the same has been mentioned in the Office Memorandum dated 21.03.2017 and the charge memo has been approved by the competent authority as it stood before Charge Memorandum dated 30.12.2008, it is clear that the proceedings will commence pursuant to the charge memo only from 30.12.2008. Once the said gesture has been shown by the competent authority / disciplinary authority after having rectified the technical objection raised by the petitioner, we are of the considered view that, there cannot be any objection to proceed with the disciplinary proceedings.

19.That apart, in so far as the judgment of the Hon'ble Supreme Court in Tej Pal Singh vs. State of U.P.and another (cited supra), which has been relied upon by the petitioner, is concerned, in that case, the competent authority was the Administrative Committee. Without its approval, since the matter was approved and thereafter placed before the Committee for post facto approval. In such circumstance, it was held that the approval cannot be considered as valid in the eye of law. In the case on hand, the draft charge was approved well in advance and subsequently by post facto approval the competent authority has also approved with a concession that the charge memo as stood on 30.12.2008 will be proceeded further. It is not the case in the nature of any defect which is incurable. If at all any irregularity is found because of this technical objection raised by the petitioner, for want of this approval, the same has now been rectified and such defect if any is not a incurable one. Therefore, the said judgment will not apply to the facts and circumstances of the present case.

20.Now coming to the judgment of the Hon'ble Supreme Court in Marathwada University v. Seshrao Balwant Rao Chavan, reported in (1989) 3 SCC 132, which has been relied upon by the learned counsel for the petitioner, there also, the competent authority was the Executive Council. Without its approval the matter was placed before the Vice Chancellor and thereafter it has been placed before the Council. In that case there was no prior delegation of power to the Vice Chancellor to take disciplinary action against the individual. In such view of the matter, the action of the Vice Chancellor was not considered to be valid in the eye of law. In the case on hand, the competent authority has approved the charge memo stating that the proceedings would continue from the stage where the proceedings stood before the Charge Memorandum F.No.C-14011/30/08-V&L dated 30.12.2008. Therefore, the above judgment of the Hon'ble Supreme Court would not be applicable to the present case.

21.As the said objection raised by the petitioner has been met with by the respondents properly and it has been explained and further it has been approved in the name of President of India by proceedings dated 21.03.2017, the Tribunal has held as follows:

> “4.We have heard the learned counsel for the applicant at the admission stage and perused the pleadings and documents on record. A perusal of Annexure A6 OM dated 21.3.2017 clearly states that the Charge Memorandum dated 30.12.2008 had been duly approved by the disciplinary authority and that the disciplinary proceedings in the matter would continue from the stage where the proceedings stood before the

Charge Memorandum dated 30.12.2008. Under such circumstances, the relief sought by the applicant at this stage cannot be granted since the relief sought for is based on the judgment in B.V.Gopinath's case (supra) as to the competency of the authority to pursue against him departmentally. Since the Charge Memorandum dated 30.12.2008 had been duly approved by the disciplinary authority and the disciplinary proceedings in the matter would continue from the stage where the proceedings stood before the Charge Memorandum dated 30.12.2008, there is nothing left for adjudication in the matter and accordingly, the OA is dismissed. No costs."

22.The Tribunal has gone into the relevant aspects in proper perspective and has rejected the claim of the petitioner on the ground that the charge memo dated 30.12.2008 has been duly approved by the competent authority and that continuation of disciplinary proceedings from the stage where the proceedings stood before the Charge Memorandum F.No.C-14011/30/08-V&L dated 30.12.2008 was formally approved by the Disciplinary Authority. Therefore, there cannot be any grievance for the petitioner.

23.In view of the above stated facts and circumstances, we find that there is no infirmity in the impugned order passed by the Tribunal. The writ petition fails and accordingly the same is dismissed. Consequently the connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary to Government,
Government of India,
Ministry of Finance, Department of Revenue,
Central Board of Direct Taxes,
North Block, New Delhi-110 001.

2.The Registrar,
Central Administrative Tribunal,
Chennai Bench, Chennai.

+1 cc to Mr.Menon Advocate sr 91757
+2 ccs to Mr.M.T.Arunan Advocate sr90636

W.P.No.14592 of 2017
and
W.M.P.No.15813 of 2017

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