

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :: **04.01.2017**

Delivered on :: **12.01.2017**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

AND

THE HONOURABLE MR.**JUSTICE V.PARTHIBAN**

W.P. Nos.39989 and 38696 of 2016

W.P.No.39989 of 2016 :

Promod Kumar IPS ... petitioner

Vs

- 1 State of Tamil Nadu
Rep. by Secretary to Government (Home) Fort
St. George Secretariat Chennai-9 Tamil
Nadu Chennai-600 009.
- 2 Union of India
Rep. by the Secretary to Government
Ministry of Home Affairs North Block New
Delhi-110 001.
- 3 The Registrar
Central Administrative Tribunal Chennai
Bench Chennai-600 104. ... respondents

Writ Petition filed under Art.226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records of the 3rd respondent in its order dated 09.08.2016 in O.A.No.165 of 2016 quash the same only in so far as it does not grant the relief in entirety as prayed for by the petitioner in OA No.165 of 2016 and consequently allow the said OA as prayed for.

W.P.No.38696 of 2016 :

- 1 State of Tamil Nadu
Rep. by Secretary to Government (Home) Fort
St. George Secretariat Chennai-6 Tamil
Nadu Chennai-600 004. ... petitioner
- versus
- 1 Thiru.Promod Kumar IPS
S/o.S.P.Singh Residing at A-3/11 SAF Games
Village Koyambedu Chennai.
- 2 Union of India
Rep. by the Secretary to Government
Ministry of Home Affairs North Block New
Delhi-110 001.
- 3 The Registrar
Central Administrative Tribunal Madras
Bench Chennai. ... respondents

Writ Petition filed under Art.226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records of the order dated 09.08.2016 made in MA 310/00368/2016 in & OA 310/00165/2016 on the file of the Honourable Central Administrative Tribunal Madras Bench and quash the same.

Mr.Vijay Narayan, Senior Counsel for the petitioner in W.P.No.39989 of 2016 and 1st respondent in W.P.No.38696 of 2016

Mr.Venkataramani, Additional Advocate General, for the petitioner in W.P.No.38696 of 2016 and 1st respondent in W.P.No.39989 of 2016.

COMMON ORDER

The Writ Petition in W.P.No.38696 of 2016 is at the instance of the State of Tamil Nadu and the challenge is to the order dated 9 August 2016 in O.A.No.165 of 2016, revoking the suspension of Thiru.Pramod Kumar, I.P.S., the then Inspector General of Police, Coimbatore, who is accused of extortion, demand and receipt of bribe to help the directors of a Finance Company, to avoid payment of money deposited by the innocent depositors and save the accused from criminal prosecution.

2. The Writ Petition in W.P.No.39989 of 2016 is at the instance of the suspended employee and the challenge is restricted to the portion of the order dated 9 August 2016 in O.A.No.165 of 2016, declining to grant the relief of declaration that all the actions taken by the State on the basis of the illegal investigation conducted by Central Bureau of Investigation (hereinafter referred to as “CBI”) is null and void.

3. Since there are two Writ Petitions challenging the very same order, the applicant before the Central Administrative Tribunal, (hereinafter referred to as “the Tribunal”) who is the petitioner in W.P.No.39989 of 2016 is referred to as the petitioner and the State of Tamil Nadu, the petitioner in

W.P.No.38696 of 2016 as the State, for convenience.

The facts:-

4. The petitioner is a member of Indian Police Service, allotted to the State of Tamil Nadu. While he was functioning as Inspector General of Police, West Zone, based at Coimbatore, a complaint was registered in Crime No.26 of 2009 by the Central Crime Branch (CCB) Tirupur, against the Directors of Paazee Forex Trading India Ltd., under the provisions of Prize Chits and Monies Circulation Scheme (Banning) Act 1978 and Section 420 of Indian Penal Code.

5. Subsequently, Tirupur North Police registered a case in Cr.No.3068 of 2009 for Woman Missing pursuant to a complaint that Mrs.Komalavalli Arumugham, Director of Paazee Forex Trading India Ltd. was found missing.

6. Since police failed to take any action against the directors of Paazee Forex Trading India Ltd. in spite of cancellation of the anticipatory bail, one of the depositors and the association of depositors of Paazee Forex Trading India Ltd. moved this Court in CrI.O.P.Nos.2691 and 5358 of 2011 with a prayer for transfer of investigation from the State police to CBI.

The petitioner was not an accused at that point of time.

7. The High Court passed an order dated 19 April 2011 transferring the investigation of both the crimes from the State police to CBI. Thereafter, CBI took up the matter and during the course of investigation, the petitioner was arrested. Since the petitioner was in remand for more than 48 hours, he was suspended from service by order dated 10 May 2012. The suspension was reviewed and extended periodically.

8. The petitioner filed a Writ Petition before this Court in W.P.No.21801 of 2012 for issuance of a writ, forbearing the CBI from proceeding with the investigation in view of Section 6A of Delhi Special Police Establishment Act, and to restrain the State from proceeding with the disciplinary proceedings. The Writ Petition was dismissed by order dated 5 December 2012. The order of the Writ Court was upheld by a Division Bench by judgment dated 29 April 2013 in W.A.No.12 of 2013.

9. The petitioner challenged the order dated 5 December 2012 in W.P.No.21801 of 2012 and the related judgment in W.A.No.12 of 2013 before the Hon'ble Supreme Court in SLP (Civil) No.17999 of 2013 which

was later converted as Civil Appeal in C.A.No.3062 of 2015. The petitioner also challenged the order dated 19 April 2011 in Crl.O.P.No.2691 and 5356 of 2011, transferring investigation of cheating and woman missing case to the CBI.

10. The Hon'ble Supreme Court allowed Civil Appeal No.3062 of 2015 and remanded W.P.No.21801 of 2012 for fresh consideration. The Hon'ble Supreme Court impleaded the petitioner as a party in Crl.O.P.No.2691 and 5356 of 2011. The Hon'ble Supreme Court observed that since the petitioner was not a party to the original petition in Crl.O.P.No.2691 and 5396 of 2011, the order dated 19 April 2011 directing transfer of investigation to CBI would not stand in his way, when the High Court disposes of the matter afresh.

11. In view of the order in Civil Appeal No.3062 of 2015, the Special Leave Petition challenging the order dated 19 April 2012, in Crl.O.P.No.2691 and 5356 of 2016 was disposed of with an observation that nothing survives for consideration.

12. The order passed by the Hon'ble Supreme Court in Civil Appeal No.3062 of 2015 was produced in Crl.R.C.No.838 of 2014 before this Court by another person with a view to obtain orders for return of documents

seized from him by the CBI during the course of investigation. While allowing the revision petition, a learned Judge of this Court observed that in view of the order passed by the Hon'ble Supreme Court, CBI is not having power to conduct investigation.

13. The order dated 13 August 2015 in CrI.R.C.No.838 of 2014 was produced by the petitioner herein before the Special Court for CBI cases, Coimbatore, in C.C.No.2 of 2013. The learned Special Judge taking note of the observation made by the learned Judge in CrI.R.C.No.838 of 2014, closed the calendar case on 19 October 2015, with an observation that the closure order is subject to the orders to be passed afresh by the High Court in W.P.No.21801 of 2012 and CrI.O.P.Nos.2691 and 5356 of 2011.

14. In the meantime, State initiated disciplinary proceedings against the petitioner by issuing charge memo.

15. The petitioner by placing reliance on the order passed by the Hon'ble Supreme Court, the order in CrI.R.C.No.838 of 2014 of the High Court and the closure order passed by the Special Court in C.C.No.2 of 2013, moved the Tribunal in O.A.No.165 of 2016 to quash all the pending proceedings taken on the basis of the illegal investigation conducted by CBI,

revoke the suspension and grant him all the service benefits including promotion.

16. Before the Tribunal, the State filed a reply stating that there was no declaration that the investigation conducted by CBI is illegal. The state contended that the Hon'ble Supreme Court set aside only the order dated 5 December 2012 in W.P.No.21801 of 2012 and the order directing transfer of investigation was not declared invalid.

17. The contention taken by the petitioner that there was a violation of Rule 8(4) of All India Service (Discipline and Appeal) Rule, 1969 was countered by the State by contending that before taking disciplinary action, the file was approved by the Chief Minister who was holding the portfolio of Home and the said approval would cover even the issuance of charge memo. In short, it was the contention of the State that in view of the approval taken from the Chief Minister for initiation of disciplinary proceedings, there was no need to obtain approval during the other stages of disciplinary proceedings like issuance of charge memo.

The order under challenge:-

18. The Tribunal allowed the original application by revoking the

suspension with an observation that criminal proceedings are not pending against the petitioner and the investigation is dormant. The Tribunal granted liberty to the petitioner to submit a representation to the State Government for withdrawal or cancellation of the charge sheet and the State was directed to decide the matter within eight weeks.

19. Feeling aggrieved by the order revoking suspension, the State is before us by filing W.P.No.38969 of 2016. Since there was no declaration of nullity of the proceedings initiated by the Government, the petitioner has filed Writ Petition in W.P.No.39989 of 2016.

20. Submissions made on behalf of the petitioner by the learned Senior counsel :-

(a) The petitioner was arrested by CBI after registering a case pursuant to the order dated 19 April 2011 in CrI.O.P.Nos.2691 and 5356 of 2011. The Hon'ble Supreme Court at the instance of the petitioner, set aside the order dated 19 April 2011 and remanded the matter for fresh consideration. Subsequently, a learned Judge of this Court in the order dated 13 August 2005 in CrI.R.C.No.838 of 2015, observed that in view of the order passed by the Hon'ble

Supreme Court in Civil Appeal No.3062 of 2015, CBI is not empowered to investigate the matter. The Trial Court thereafter closed the criminal case in C.C.No.2 of 2013. In view of these subsequent events, the petitioner is entitled to a declaration that all the administrative actions taken by the State on the basis of the illegal investigation conducted by CBI is null and void and void ab initio.

(b) The petitioner was arrested and suspended from service pursuant to the order dated 19 April 2011, transferring the investigation. Since the order was subsequently set aside by the Hon'ble Supreme Court, the petitioner is entitled to restitution;

(c) There is no criminal proceeding pending as on date, to place the petitioner under continuous suspension, within the meaning of Rule 3(3) of the All India Service (Discipline and Appeal) Rules, 1969;

(d) The charge memo in the subject case was not issued by the Disciplinary Authority. The charge memo is legally invalid, in view of the judgment of the Hon'ble Supreme Court in ***Union of India and others vs. B.V.Gopinath, 2014(1) SCC 351.***

(e) The petitioner was suspended on 10 May 2012. Orders passed by the Government extending suspension does not contain

any reason much less valid reason to justify the prolonged suspension. The Tribunal was therefore correct in revoking the suspension.

(f) The Supreme Court in ***Ajay Kumar Choudhary vs. Union of India and another, 2015(7) SCC 291***, deprecated the practice of protracted suspension and repeated renewal thereof. The reviewing authority while extending the suspension by orders dated 6 January 2016 and 6 July 2016 and the Appellate Authority while dismissing the appeal by order dated 7 March 2016, failed to consider the law laid down by the Supreme Court in ***Ajay Kumar Chodhary*** and as such, the Tribunal correctly held that prolonged suspension is bad and on facts, the petitioner is entitled to an order revoking suspension”.

Submission on behalf of the State:-

21. The learned Additional Advocate General appearing on behalf of the State made the following submissions:-

(a) The petitioner proceeded on the basis that the Hon'ble Supreme Court set aside the order dated 19 April 2011 in CrI.O.P.Nos.2691 and 5356 of 2011. The Supreme Court was pleased to set aside only the order dated 5 December 2012 in

W.P.No.21801 of 2012. There was no order setting aside the transfer of investigation.

(b) The petitioner was impleaded in Crl.O.P.Nos.2691 and 5356 of 2011 only for the purpose of prosecuting the Writ Petition in W.P.No.21801 of 2012 and to contend that notwithstanding the order passed by the High Court dated 19 April 2011, the High Court could dispose of Writ Petition in W.P.No.21801 of 2012 afresh.

(c) The clarification given by the Supreme Court in the order dated 17 March 2015 in C.A.No.3062 of 2015 that since the petitioner was not heard when the order dated 19 April 2011 was passed by the High Court, while disposing of Crl.O.P.Nos.2691 and 5356 of 2011, the said order will not stand in the way of the petitioner, when the High Court disposes of the matter afresh, would make it clear that the order dated 19 April 2011, transferring criminal case, was kept intact. This fact is also evident from the order disposing of the Special Leave Petition challenging the order dated 19 April 2011 in Crl.O.P.Nos.2691 and 5356 of 2011. The petitioner therefore proceeded on a wrong footing.

(d) The only matter to be heard by the High Court now is the Writ Petition in W.P.No.21801 of 2012. The contention of the petitioner that Crl.O.P.Nos.2691 and 5356 of 2011 would be heard by High Court afresh pursuant to the order passed by the Hon'ble Supreme Court has no basis.

(e) The observation made in the order dated 13 August 2015 in Crl.R.C.No.848 of 2014 has no factual basis. Since the order dated 5 December 2012 in W.P.No.21801 of 2012 alone was set aside by the Hon'ble Supreme Court, observation that the order dated 19 April 2011 in Crl.O.P.Nos.2691 and 5356 of 2011 was set aside by the Supreme Court and that the CBI has no right to continue the investigation, are nothing but obiter dicta.

(f) The Special Court without understanding the nature and purport of the order passed by the Supreme Court closed the criminal case in C.C.No.2 of 2013. Such illegal closure would not amount to closure of legal proceedings initiated against the petitioner.

(g) The Government would have completed the enquiry long

back but for the delaying tactics adopted by the petitioner. Charge memo was issued on 29 October 2013. Thereafter, the petitioner initiated proceedings before the Principal Bench of the Central Administrative Tribunal in O.A.No.3656 of 2013. The petitioner also filed Writ Petitions and writ appeals before the High Court, and Civil Appeal before the Hon'ble Supreme Court. Those proceedings contributed for the delay in disposal of the disciplinary proceedings and as such, the petitioner is not correct in his contention that it is a case of prolonged suspension.

(h) The Hon'ble Chief Minister in her capacity as the Home Minister approved the file for initiation of disciplinary proceedings against the petitioner. The Principal Secretary was therefore justified in issuing the charge memo to the petitioner pursuant to the approval given by the Disciplinary Authority.

(i) Approval granted by the Chief Minister in her capacity as the Disciplinary Authority for initiation of departmental proceeding would also amount to approval of the charge memo.

(j) The decision of the Supreme Court in **Gopinath** was in relation to the office order dated 19 July 2005 issued by the Indian Revenue Service. Disciplinary proceedings in the subject case was initiated under Rule 8 of the All India Disciplinary Rules, 1969. Therefore, the judgment in **Gopinath** has no application to the case on hand.

(k) Rule 8(4) enjoins the Disciplinary Authority to draw up a statement of the imputations of misconduct or misbehaviour into definite and distinct articles of charge. Since the term used is “caused to be drawn up”, there is no need for approval of the charge memo by the Disciplinary Authority, inasmuch as the only requirement is to cause the charges drawn. The petitioner is therefore not correct in his contention that the charge memo is non est in law on account of the failure to obtain prior approval from the Disciplinary Authority.

Discussion:-

22. The petitioner filed the original application in O.A.No.165 of 2016 with the following prayer :-

“To declare all administrative actions taken by the

respondent on the basis of illegal investigation conducted by CBI in RC 13/E/ 2011 including G.O.Ms.No.341 Home SC Department dated 10.5.2012 issued by 1st respondent, G.O.Ms.No.12 dated 6.1.2016 issued by 1st respondent, and Letter No.HSC-5/223-5/2013 dated 29.10.2013 issued by 1st respondent, as null and void ab initio and consequently direct the respondents to reinstate the applicant forthwith into service and further regulate the period of suspension as duty period for all purposes and further drop the departmental proceeding arising out of CBI's investigation report and consider and promote the applicant to the rank of Additional Director General of Police on par with his bath mates w.e.f. 25/2/14 from the date his junior in 1989 batch of IPS was promoted with all consequential benefits including monetary benefits flowing therefrom.”

23. The memorandum of grounds in O.A.No.165 of 2016 and the additional grounds raised in M.P.No.368 of 2016 shows that the petitioner placed reliance on the order passed by the Hon'ble Supreme Court in Civil Appeal No.3062 of 2015, the order dated 13 August 2015 in Crl.R.C.No.838 of 2014 and the order dated 19 October 2015 in C.C.No.2 of 2013, closing the criminal case for seeking the declaration of nullity of disciplinary proceedings.

24. The arguments advanced by the learned Senior counsel for the petitioner and his plea for restitution were also based on those three orders. The Tribunal also proceeded under the premise that the criminal proceedings is not pending now. The State on the other hand contended before the Tribunal and before this Court that the Hon'ble Supreme Court was pleased to set aside only the order dated 5 January 2012 in W.P.No.21801 of 2012 and there was no direction to hear the petitions in Crl.O.P.No.2691 and 5356 of 2011 afresh.

25. In the normal course, while exercising judicial review of the order passed by the Tribunal, it would not be necessary for this Court to consider the connected criminal proceedings. However, in the present case, such a course is necessary in view of the contention taken by the petitioner that on account of setting aside the transfer order by the Hon'ble Supreme Court and disposal of criminal case, all the proceedings against him are liable to be declared void and the contention by the State that the transfer order remain intact and criminal case against the petitioner is still pending. It is therefore necessary to consider the various orders referred to by the petitioner to decide the Writ Petitions.

Order in Civil Appeal No.3062 of 2015.

26. The order passed by the Hon'ble Supreme Court dated 17 March 2015 in Civil Appeal is extracted below :-

“Leave granted.

Learned counsel appearing for the appellant placed reliance inter alia on State of Punjab vs. Davinder Singh Bhullar (2011) 14 SCC 770, and invited our attention to the following observations recorded therein:-

Thus, in view of the above, it is evident that a constitutional court can direct the CBI to investigate into the case provided the court after examining the allegations in the complaint reaches a conclusion that the complainant could make out prima facie, a case against the accused. However, the person against whom the investigation is sought, is to be impleaded as a party and must be given a reasonable opportunity of being heard. CBI cannot be directed to have a roving inquiry as to whether a person was involved in the alleged unlawful activities. The court can direct CBI investigation only in exceptional circumstances where the court is of the view that the accusation is against a person who by virtue of his post could influence the investigation and it may prejudice the cause of the complainant, and it is necessary so to do in order to do complete justice and make the investigation credible.”

In view of the above, without getting into the

intricacies of the merits of the issues canvassed, we consider it just and appropriate to remand the matter back to the High Court, requiring the High Court to adjudicate upon Writ Petition No.21801 of 2012 afresh, by impleading the appellant(s) in Criminal Original Petition Nos.2691 and 5356 of 2011, and by affording an opportunity to the appellant before this Court. In disposing of the aforesaid Writ Petition, the jurisdiction exercised by the High Court, would be under Article 226 of the Constitution of India.

In the above view of the matter, the order dated 5.12.2012 passed by the High Court while disposing of the above Writ Petition is hereby set aside. Parties are directed to appear before the High Court on 13.4.2015. We hope and trust that the High Court shall dispose of the controversy at the earliest. Since, the appellant herein was not heard when the order dated 19.4.2011 was passed by the High Court while disposing of the Criminal Original Petition Nos.2691 and 5356 of 2011, we consider it just and appropriate to further clarify, that the above order dated 19.4.2011, will not stand in the way of the appellant herein, when the High Court disposes of the matter afresh.

The instant appeal is disposed of in the above terms. Pending applications, if any, are also disposed of.

S.L.P.(R) No.____/2014 (Crl.M.P.Nos.15475-15476 of 2014)

Permission to file the special leave petition is granted.

Delay condoned.

In view of the order passed by this Court, in the Civil Appeal arising from Special Leave petition (C) No.17999 of 2013, nothing survives in these petitions and the same are accordingly disposed of.

Order dated 13 August 2015 in Crl.R.C.No.838 of 2014 :-

27. The relevant portion of the order dated 13 August 2015 in Crl.R.C.No.838 of 2014 reads thus:-

“7. In fact, on the side of the revision petitioner, the order passed by the Hon'ble Supreme Court in Civil Appeal No.3062 of 2015 has been submitted for perusal of the Court, wherein it has been stated to the effect that without hearing the concerned accused, transfer of investigation cannot be done and further the order passed in Crl.O.P.No.2691 and 5356 of 2011 by this Court is set aside and the matter has been remanded to the file of this Court. Therefore, it is quite clear that now the CBI is not having power of investigation”.

Order dated 19 October 2015 in C.C.No.2 of 2013 :-

28. The order dated 19 October 2015 in C.C.No.2 of 2013 closing the calendar case reads thus :-

“A2, A3, A4 present. 317 for A1, A5 allowed. Memos filed by A1 and A3 pursuant to the orders passed by the Hon'ble Supreme Court of India in Civil Appeal No.3062 of 2015 are verified. Heard both sides and records are perused. The Hon'ble Madras High Court as per order in Crl.O.P.No.2691 and 5356 of 2011

entrusted the investigation of this case from CB CID, Vellore to CBI. But the said orders of the Hon'ble Madras High Court has been set aside by the Hon'ble Apex Court in Civil Appeal No.3062 of 2015 is the contention of A1, A3 in the memos filed by them and the learned accused counsel contended that now CBI is not having power to investigate this case as also held by the Hon'ble Madras High Court in Crl.R.C.No.838 of 2014 and the proceedings against the accused has to be dropped in C.C.No.2 of 2013. Per contra, learned Assistant Public Prosecutor for CBI contended that the Hon'ble Apex Court only had remanded the W.P.No.21801 of 2012 for afresh disposal by impleading A1 in Crl.O.P.No.2691 and 5356 of 2011 and when the matter is sub judice before the Hon'ble Madras High Court, the proceedings agianst the accused in CC 2/13 cannot be dropped.

The above said contentions are carefully considered by this Court. As per the orders passed by the Hon'ble Supreme Court of India in Civil Appeal No.3061 of 2015 on 17.3.2015, the W.P.No.21801 of 2012 has been remanded to the Hon'ble Madras High Court for fresh disposal by also impleading the A1 in Crl.O.P.Nos.2691 and 5356/11 by setting aside the orders passed in W.P.No.21801 of 2012 and the Hon'ble Madras High Court also in Crl.R.C.No.838 of 2014. In view of the above orders passed by the Hon'ble

Supreme Court of India, has held that now CBI has no powers of investigation and to this Court based in the above two orders of Hon'ble Apex Court and Hon'ble Madras High Court determined that since the portion of the case reversed back, at present this Court which is an exclusive Court to try CBI cases alone cannot proceed with the case in C.C.2/13 and the proceeding in the case in CC 2/13 depends upon the orders to be passed by the Hon'ble Madras High Court afresh in W.P.No.21801 of 2012 and CrI.O.P.No.2691 and 5356/11 and so the proper course is to close the case for the present. Since if any orders is passed by this Court at present against the accused it would amount to contempt of Court.

In the result, in view of the orders passed by the Hon'ble Supreme Court of India in Civil appeal No.3062/15 and by the Madras High Court in CrI.R.c.No.838/14 subject to the orders to be passed by the Hon'ble Madras High Court in W.P.No.21801/12 and CrI.O.P.No.2691 and 5356/11 for the present this case in CC 2/13 is closed.

29. The core issue is whether the order in the Civil Appeal to hear the Writ Petition afresh would amount to setting aside the order dated 19 April 2011 in CrI.O.P.Nos.2691 and 5356 of 2011 so as to enable the petitioner to obtain a declaration that investigation so far conducted by CBI is illegal and the final report filed in C.C.No.2 of 2013 before the Special Court is bad

in law.

30. Resolution of the dispute with regard to the alleged illegal investigation:-

The petitioner approached the Tribunal with a contention that on account of the order dated 17 March 2015, in Civil Appeal No.3062 of 2015, CBI lost its authority to investigate the case. In short, it was the case of the petitioner that the order dated 19 April 2011 has become null and void and as a consequence, all the acts taken in pursuance to and consequent to the order in Crl.O.P.No.2691 and 5356 of 2011 would become void ab initio.

31. The order passed by the Hon'ble Supreme Court dated 17 March 2015 is very clear that it was only the order dated 5 December 2012 in W.P.No.21801 of 2012 which was set aside in Civil Appeal No.3062 of 2015. The direction to implead the petitioner in Crl.O.P.Nos.2691 and 5356 of 2011 was taken by the petitioner as an order setting aside the order dated 19 April 2011. In the later part of the order, Hon'ble Supreme Court made it very clear that the High Court has to hear the Writ Petition afresh. There was no direction to hear Crl.O.P.Nos.2691 and 5356 of 2011 afresh.

32. We extract the relevant portion of the order in the civil appeal

once again for clarity and better appreciation.

“In the above view of the matter, the order dated 5.12.2012 passed by the High Court while disposing of the above Writ Petition is hereby set aside. Parties are directed to appear before the High Court on 13.4.2015. We hope and trust that the High Court shall dispose of the controversy at the earliest. Since, the appellant herein was not heard when the order dated 19.4.2011 was passed by the High Court while disposing of the Criminal Original Petition Nos.2691 and 5356 of 2011, we consider it just and appropriate to further clarify, that the above order dated 19.4.2011, will not stand in the way of the appellant herein, when the High Court disposes of the matter afresh”.

33. The Hon'ble Supreme Court indicated that since the petitioner was not a party in CrI.O.P.Nos.2691 and 5356 of 2015, the order dated 19 April 2011 would not stand in his way from prosecuting the Writ Petition in W.P.No.21801 of 2012. It is pertinent to mention here that there was no separate order in the Special Leave Petitions filed by the petitioner against the order dated 19 April 2011 in CrI.O.P.Nos.2601 and 5356 of 2015. Those petitions were disposed of with an observation that nothing survives. The petitioner is therefore not correct in his contention that order dated 19 April 2011 is null and void and all acts done pursuant to the said illegal order

is void ab initio.

34. Observation in Crl.R.C.No.838 of 2014:-

The learned Judge in Crl.R.C.No.838 of 2014 on a perusal of the order in Civil Appeal No.3062 of 2015 observed that the order passed in Crl.O.P.Nos.2691 and 5356 of 2011 was set aside by the Supreme Court and as such, it is quite clear that now the CBI has no power of investigation. With utmost respect to the learned Judge and with all humility, we disagree with the views expressed in Crl.R.C.No.838 of 2014.

35. We make it very clear that there was no finding recorded by the Hon'ble Supreme Court that the order dated 19 April 2011 in Crl.O.P.Nos.2691 and 5356 of 2011 is set aside and the matter is remanded for fresh consideration. The only matter remanded to this Court is the Writ Petition in W.P.No.21801 of 2012. The High Court is expected to decide the said Writ Petition afresh. In view of the liberty given by the Hon'ble Supreme Court, it is open to the petitioner to raise all the points in W.P.No.21801 of 2012, and the order dated 19 April 2011 would not stand in his way from taking up such contentions. This is the purport of the order in the civil appeal.

36. Closure order in C.C.No.2 of 2013:-

The Special Court for CBI Cases, Coimbatore abruptly closed the calendar case by accepting the memo filed by the petitioner and another accused. The learned Special Judge observed that if any order is passed against the accused, it would amount to contempt of Court. The learned Special Judge could have adjourned the proceedings *sine die* without passing any adverse order against the accused, as even according to the Trial Court, the High Court would be hearing W.P.No.21801 of 2012 and Crl.O.P.Nos.2691 and 5356 of 2011 afresh. Even if there is an order, ultimately to transfer the cases back to the State Police, the proper course would be to transmit the records to the jurisdictional Court. In any case, the order passed by the Special Judge on a misinterpretation of the order passed by the Hon'ble Supreme Court would not amount to closure or disposal of the criminal proceedings initiated by the State police by registering the case in Crime No.3068 of 2009 on the file of the Tirupur North Police Station, which was re-registered as R.C.No.12/E/2011 by CBI.

37. The Special Court at Coimbatore, pursuant to the final report filed by the CBI, took cognizance of the case registered against the Directors of Paazee Forex Trading India Ltd. in C.C.No.9 of 2011. The CBI filed a witness list containing the names of as many as 1432 witnesses and a

document list containing 1234 documents. The CBI appears to have filed a supplementary charge sheet along with a witness list containing the names of 263 witnesses and 2330 documents. The Trial Court has so far examined 1432 witnesses and marked 800 documents.

38. In the case registered by CBI against the petitioner and others there are 29 witnesses. The Trial Court received the report on file and registered the case in C.C.No.2 of 2013. Even before examining the witnesses, the petitioner filed a memo, resulting in the closure of the calendar case.

39. Plea of restitution:-

The learned Senior counsel for the petitioner by placing reliance on the judgment in ***South Eastern Coal Fields vs. State of Madhya Pradesh, 2003(8) SCC 648***, contended that in view of the order passed by the Hon'ble Supreme Court directing the High Court to hear the matter afresh, the investigation conducted by CBI is illegal and the petitioner should be given the benefit of restitution, by giving him monetary benefits and promotion.

40. Since we have already held that the investigation conducted by CBI is not illegal and the charge sheet in C.C.No.2 of 2013 was validly

made, and that there was no order setting aside the transfer order dated 19 April 2011 in Crl.O.P.Nos.2691 and 5356 of 2011, there is no question of restitution. We therefore reject the plea based on the principle of restitution.

41. Legality of charge memo:-

(a) The petitioner has taken up a contention that charge memo was not issued by the Disciplinary Authority and as such, the same is liable to be quashed. The petitioner placed reliance on Rule 8(4) and 8(5) of the All India Service (Discipline and Appeal) Rules, 1969, (hereinafter referred to as the Rules) and the judgment of the Hon'ble Supreme Court in ***Union of India vs. B.V.Gopinath (2014(4) SCC 351)*** to substantiate his contention that charge memo issued by the Home Secretary without the approval of the Home Minister is legally unsustainable.

(b) Rule position :-

Part IV of the Rules deals with the procedure for imposing major penalties. Sub Rule (4) & (5) of Rule 8, which are relevant for deciding the issue in the subject case is extracted below :-

“8(4) Where it is proposed to hold an inquiry against a member of the Service under this rule and or rule 10, the disciplinary authority shall draw up or caused to be drawn up—

(i) *the substance of the imputations of misconduct or misbehavior into definite and distinct articles of charge;*

(ii) *a statement of the imputations of misconduct or misbehavior in support of each article of charge, which shall contain—*

(a) a statement of all relevant facts including any admission or confession made by the member of the Service;

(b) a list of documents by which, and a list of witness by whom the articles of charge are proposed to be sustained.

8(5) The disciplinary authority shall deliver or cause to be delivered to the member of the Service a copy of the articles of charge, the statement of the imputations of misconduct or misbehavior and a list of documents and witnesses by which each article of charge is proposed to be sustained and shall require the member of the Service to submit, within such time as may be specified, a written statement of his defence and to state whether he desires to be heard in person.”

(c) Pari materia provision:-

Rule 14 of the C.C.C. (C.C.A.) is a pari materia provision indicating the procedure for initiation of disciplinary proceedings for imposing major penalty and issuance of charge memo.

14(3) Where it is proposed to hold an inquiry against a Government servant under this rule and rule 15, the disciplinary authority shall draw up or cause to be drawn up-

(i) the substance of the imputations of misconduct or misbehaviour into definite and distinct articles of charge;

(ii) a statement of the imputations of misconduct or misbehaviour in support of each article of charge, which shall contain-

(a) a statement of all relevant facts including any admission or confession made by the Government servant;

(b) a list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained.

14 (4) 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 a list of documents and witnesses by which each article of charges is proposed to be sustained and shall require the Government servant to submit, within such time as may be specified, a written statement of his defence and to state whether he desires to be heard in person.

42. The judgment in Union of India and others vs. B.V.Gopinath, 2014(1) SCC 351.

(a) The Hon'ble Supreme Court in **Gopinath** case considered the nature and scope of Rule 14 of the CCS (CCA) Rules prescribing the procedure for initiation of disciplinary proceedings.

(b) Before the Hon'ble Supreme Court, Union of India contended that it would suffice in case the Disciplinary Authority granted approval for initiation of disciplinary proceedings. According to the Union of India, approval for initiation of disciplinary proceedings would include approval of the charge memo by the Disciplinary Authority.

(c) The Hon'ble Supreme Court in **Gopinath** found that the charge memo was not approved by the Finance Minister, who was designated as the Disciplinary Authority. However, there was approval given by the Finance Minister for initiation of disciplinary proceedings against the officer of Indian Revenue Service.

(d) The Hon'ble Supreme Court while negating the contention taken by the State that initial approval for commencing the disciplinary

proceedings would include the approval of charge memo by the Disciplinary Authority and no separate approval is necessary, made the legal position clear that all the decisions, with regard to the approval of charge memo, dropping the charge memo, modification or amendment of charges etc. have to be taken only by the Disciplinary Authority.

The Supreme Court said :-

40. 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.

41. In fact, issuance of the office order No.205 dated 19th July, 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 recognizing 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 Personal and Training, the competent authority is the 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."

43. The position in Tamil Nadu :-

The petitioner is a member of Indian Police Service. He was appointed by the Central Government and allotted to the Tamil Nadu Cadre. The Disciplinary Authority is the Home Minister. The portfolio of Home has been retained by the Hon'ble Chief Minister. Therefore, the Chief Minister is the Disciplinary Authority in respect of members of All India Service of Tamil Nadu cadre.

44. Business Rules:-

(a) In exercise of the powers conferred by clauses (2) and (3) of Article 166 of the Constitution of India, the Governor of Tamil Nadu made the Tamil Nadu Government Business Rules, to regulate the business of the Government, including allocation and disposal of business of Chief Minister and individual ministers.

(b) Rule 9 provides that the Minister-in-charge of the Department shall be primarily responsible for the business of the said Department.

(c) Rule 35(1)(9)(ix) provides that proposal for the dismissal, removal or compulsory retirement of any Gazetted Officer shall be submitted to the Chief Minister.

45. The Relevant Standing Order:-

The annexure to the Standing Order No.2 dated 9 January 1992 issued by the Chief Minister of Tamil Nadu under Rule 35(4) of the Tamil Nadu Government Business Rules, 1978, contain the details of cases to be referred to the Chief Minister for approval. Sl.No.18, extracted below, deals

with disciplinary action.

18. Disciplinary Action:-

Files relating to disciplinary action against IAS/IPS/IFS officers in the senior-grade and above at the stage of issue of charge memo/ show cause notice to the above officers alone should be circulated to the Chief Minister.

In the case of Secretaries to Government where action is contemplated under rule 17(a) or 17(b) of the Tamil Nadu Civil Services (CC&A) Rules such files should be circulated to the Chief Minister. In the case of Heads of Department files where action is contemplated under rule 17(b) of the TNCS (CC&A) Rules, alone should be circulated to the Chief Minister.

46. Supreme Court on Business Rules:-

The mandatory nature of Business Rules was indicated by the Hon'ble Supreme Court in ***M/s.M.R.F. Ltd. vs. Manohar Parrikar and others, (2014(4) Scale 577)*** in the following words:-

“61. ... Under [Article 154](#) of the Constitution of India, the Governor is vested with the Executive Power of the State and he shall exercise them either directly or through Officers subordinate to him in accordance with the provisions of the Constitution. The Governor is advised by the Council of Ministers with the Chief Minister at its head in exercise of his

functions except those specifically stated in discharge of his functions as the head of the State. The Council of Minister is collectively responsible to the Legislative Assembly of the State. The Rules of business framed under [Article 166\(3\)](#) of the Constitution are for convenient transaction of the business of the Government and for allocation of the business among the Ministers. [Article 166\(2\)](#) of the Constitution requires the decision of the State Government to be authenticated as per the Rules framed thereunder. Any decision taken by the State Government therefore, reflects the collective responsibility of the Council of Ministers and their participation in such decision making process. The Chief Minister as the Head of the Council of Ministers is answerable not only to the Legislature but also to the Governor of the State. The Governor of the State as the Head of the State acts with the aid and advice of the Council of Ministers headed by the Chief Minister. The Rules framed under [Article 166 \(3\)](#) of the Constitution are in aid to fulfill the Constitutional Mandate embodied in Chapter II of Part VI of the Constitution. Therefore, the decision of the State Government must meet the requirement of these Rules also.

62) The decisions of the State Government have to be in conformity with the mandate of [Article 154](#)an [166](#) of the Constitution as also the Rules framed thereunder as otherwise such decision would not have the form of a Government decision and will

be a nullity. The Rules of Business framed under Article 166(3) of the Constitution are for convenient transaction of the business of the Government and the said business has to be transacted in a just and fit manner in keeping with the said Business Rules and as per the requirement of Article 154 of the Constitution. Therefore, if the Council of Ministers or Chief Minister has not been a party to a decision taken by an Individual Minister, that decision cannot be the decision of the State Government and it would be non-est and void ab initio.”

47. Whether charge memo was approved by the Chief Minister:-

Since the petitioner has taken up a contention that the charge sheet is non est in law, as it was issued without the approval of the Chief Minister, we have summoned the original file and on perusal, it was found that the approval of Hon'ble Chief Minister was taken on 5 April 2003 for initiation of regular departmental action against the petitioner for major penalty under relevant provisions of the Discipline and Appeal Rules. There is nothing on record to show that file was thereafter produced before the Chief Minister either for her perusal or for approval of charge memorandum.

48. The approval of Chief Minister was taken on 5 April 2013 only for initiation of disciplinary proceedings. The charge memo was issued on 29 October 2013. It was issued by the Principal Secretary (Home) without the

approval of the Chief Minister. Nothing is found in the file that the Chief Minister was briefed about the charge memo to be issued to the petitioner. Therefore, it is clear that there was no approval of the charge memo by the Disciplinary Authority.

Role of Disciplinary Authority :-

49. The Central Government in exercise of the powers conferred under sub Section (1) of Section 3 of the All India Services Act, after consultation with the Governments of the States, made the All India Services (Discipline and Appeal) Rules, 1969.

50. Rule 2(b) defines the Disciplinary Authority as the authority competent to impose on a member of the services any of the penalties specified in Rule 6.

51. Rule 8 empowered the Disciplinary Authority to initiate disciplinary proceedings against the members of All India Services. The Disciplinary Authority was expected to approve the charge memo before issuing it to the delinquent officer.

52. There is a specific reason for conferring this power only on the

Disciplinary Authority. The civil service, comprising the officers of All India Services, is the backbone of our administrative system. Before initiating proceedings against an officer of All India Service, the Disciplinary Authority must form an opinion that there are grounds for inquiry into the truth of the imputation of misconduct or misbehaviour. The charges should not be frivolous or flimsy. Before approving the charge memo, the Disciplinary Authority was expected to consider the background facts relating to the initiation of proceedings. In short, the charge memo must have a relevance to the imputation of misconduct.

53. Absence of power of delegation:-

The Rule in question does not contain a provision permitting delegation. It is so because power to initiate disciplinary proceedings is given to the discretion of the Disciplinary Authority to act personally and in good faith. There is an element of individual judgment and exercise of discretion in such matters.

54. The Principal Secretary in the present case issued the charge memo in violation of Section 8(4) of the Rules, the provisions of the business rules, and clause 18 of the Standing Order No.2 dated 9 January 1992, mandating that the file at the stage of issue of charge memo/ show

cause notice should be circulated to the Chief Minister. Admittedly, there was no show cause notice issued to the petitioner with the knowledge or approval of the Chief Minister, before issuing the charge memo. The charge memo was the first proceedings served on the petitioner. Even according to the State, approval of Chief Minister was obtained only for initiation of disciplinary proceedings and not thereafter. The judgment in **Gopinath** would therefore apply to the case on hand with full force.

55. The contention taken by the learned Additional Advocate General that the Supreme Court decided the issue in **Gopinath** only with reference to the office order issued by the Department has no basis. The Supreme Court interpreted Rule 14 of the CCS (CCA) Rules and it was only to strengthen the finding, the Supreme Court observed that the respondents were aware of the legal position and the same is evident from the office order. Merely because the procedure contemplated under the office order was taken not of by the Supreme Court, it cannot be said that the judgment was in relation to the said order and it has nothing to do with Rule 14 of CCS Rules.

56. The learned Additional Advocate General made an attempt to distinguish the judgment in **Gopinath**, by taking a contention that the

phrase used is “caused to be drawn up” which means that there is no need for the approval of the Disciplinary Authority. The answer to the said contention is found in paragraph 52 of the judgment in **Gopinath**. The Supreme Court very clearly held that the term “caused 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 charges would be finalized only upon approval by the Disciplinary Authority. In view of the finding given by the Supreme Court, we reject the argument of the learned Additional Advocate General with regard to the applicability of the judgment in **Gopinath**.

57. The Principal Secretary and other senior officers dealing with a sensitive matter of this nature ought to have taken the issue seriously. The Officers must follow the rules, in its letter and spirit. The Rules are made for compliance both by the authorities and delinquents. It was not made for non-compliance. In case the statute says that a particular Act shall be done in a particular manner, it shall be done only in that manner.

58. We hold that the Principal Secretary to the Government is not empowered to act as the Disciplinary Authority in view of the express

provisions of the All India Service Rules.

59. Since the charge memo was not put up for approval by the Chief Minister, we are of the view that the charge memo is without authority and non est in the eye of law.

Prolonged suspension:-

60. The Tribunal revoked the suspension terming it as one of prolonged suspension.

61. The petitioner was suspended from service by order dated 10 May 2012. He is therefore out of service for the last four years and eight months.

62. The petitioner earlier moved the Principal Bench of the Tribunal at Delhi in O.A.No.3656 of 2013. The Tribunal while dismissing the original application, made the following observation:-

“However, we do take cognizance of the fact that the applicant, at one time, was a meritorious officer established by the fact that he has been awarded the Presidents Police Medal for meritorious service in the year 2007. Considering the fact that suspension is a wasteful exercise in the sense that the Government is

paying the salary without taking any work, we give the latitude to the applicant to file a review application for revocation of suspension. The respondent No.2 shall set up a review committee to consider the same and pass the appropriate orders thereon within two months of the receipt of the order.”

63. Even thereafter, suspension order was extended periodically. Even the appeal preferred before the Central Government was dismissed by order dated 6 March 2016.

64. There is no dispute that Rule 3(3) permits the Government to place the officer under suspension pending disposal of criminal proceedings. In the subject case, we have already indicated that the proceedings initiated pursuant to the order dated 19 April 2011 by CBI is legally correct and that the transfer order is still in force. The CBI investigation was done pursuant to the order dated 19 April 2011 and therefore, it cannot be said that it was an illegal investigation and that the CBI is not entitled to prosecute the matter.

65. Even then, there is a moot question as to whether the petitioner should be placed under suspension indefinitely.

66. It is true that the petitioner also contributed for the delay in the matter. It was the petitioner who moved the Trial Court with a memo that in view of the order dated 17 March 2015 in Civil Appeal No.3062 of 2015, CBI has no power of investigation and the proceeding in C.C.No.2 of 2013 has to be dropped. The order passed by the Special Court closing the criminal case was challenged by CBI before this Court in CrI.O.P.No.1661 of 2016.

67. It is not in dispute that the Government is empowered to place the officers under suspension till the disposal of criminal proceedings. The Government is given the discretionary power to take a decision in the matter.

68. While exercising discretion to place a member of All India Service under suspension until the termination of the criminal proceedings, the Government have to consider a host of factors. The possibility to commit similar offence, possible attempt to influence the witnesses, interference in the pending proceedings etc. are all relevant factors to arrive at a decision initially to place the employee under suspension or to continue the suspension thereafter.

69. In fact, rule 3(8) (c) of the Rules and the related schedule I provides that the review committee while examining a case shall consider the possibility of the officer under suspension tampering with the evidences, his influencing the process of enquiry or investigation and deprivation of his services during suspension.

70. In any case, the question regarding deprivation of services was not considered either by the Review Committee or by the Disciplinary Authority at any point of time.

71. "The Hindu", on 10 January 2017, reported that the Directorate of Vigilance and Anti Corruption, a premium agency of the State, entrusted with the task of tackling corruption in public administration, has remained vacant without a head since 2013. There are three posts of Inspector General of Police and out of that, two have remained vacant for close to five years. Similar is the case with the regular police establishment, both law and order and crime detection. While considering the question of deprivation of the services of a delinquent officer, during suspension, the vacancy position is also a relevant consideration. The services of officers like the petitioner could be utilized by appointing them in non sensitive posts, so that other officers could be relieved and posted to fill up the

vacancy in sensitive posts, requiring man power. This aspect was never considered by the Review Committee in the case of the petitioner, notwithstanding the rule mandating such consideration while reviewing the case for extension of suspension.

72. The Supreme Court in ***Ajay Kumar Choudhary vs. Union of India and another, 2015(7) SCC 291***, deprecated the practice of protracted suspension and repeated renewal and indicated that a reasoned order must be passed for the extension of suspension.

The Supreme Court said :-

“11. Suspension, specially preceding the formulation of charges, is essentially transitory or temporary in nature, and must perforce be of short duration. If it is for an indeterminate period or if its renewal is not based on sound reasoning contemporaneously available on the record, this would render it punitive in nature. Departmental/ disciplinary proceedings invariably commence with delay, are plagued with procrastination prior and post the drawing up of the Memorandum of Charges, and eventually culminate after even longer delay.

12. Protracted periods of suspension, repeated renewal thereof, have regrettably become the norm and not the exception that they ought to be.

The suspended person suffering the ignominy of insinuations, the scorn of society and the derision of his Department, has to endure this excruciation even before he is formally charged with some misdemeanour, indiscretion or offence. His torment is his knowledge that if and when charged, it will inexorably take an inordinate time for the inquisition or inquiry to come to its culmination, that is to determine his innocence or iniquity. Much too often this has now become an accompaniment to retirement. Indubitably the sophist will nimbly counter that our Constitution does not explicitly guarantee either the right to a speedy trial even to the incarcerated, or assume the presumption of innocence to the accused. But we must remember that both these factors are legal ground norms, are inextricable tenets of common law jurisprudence, antedating even the Magna Carta of 1215, which assures that - "We will sell to no man, we will not deny or defer to any man either justice or right." In similar vein the Sixth Amendment to the Constitution of the United States of America guarantees that in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial."

73. The petitioner was arrested by the CBI on 2 May 2012. He was released on bail by the High Court on 28 June 2012. The High Court while granting bail, granted liberty to the CBI to apply for cancellation of bail in case it was found that the petitioner attempted to tamper with the evidence

or influence the witnesses.

74. The fact that CBI has not approached the Court for cancellation of bail shows that there was no attempt at all made by the petitioner to tamper with the evidence. As observed by the Principal Bench of the Tribunal, Government is paying 75% of the salary to the petitioner without extracting any kind of work from him. It is not clear as to when the pending criminal proceedings would attain finality. These aspects were not taken note of by the Government, while passing orders periodically extending the period of suspension. In any case, the Review Committee has no case that the petitioner would tamper with the evidence or interfere in the process of enquiry or investigation.

75. In view of our finding that the charge memo is non est in law, and the absence of allegation of interference by the petitioner in the criminal as well as departmental proceedings, we confirm the order passed by the Tribunal, revoking the suspension.

76. Summary of our conclusion :-

(i) The Criminal proceedings initiated by the CBI against the petitioner is still pending and the contra observations recorded in the order dated 13

August 2015 in Crl.R.C.No.838 of 2014 and the order dated 9 August 2015 in O.A.No.165 of 2016 are factually incorrect.

(ii) The Hon'ble Supreme Court set aside only the order dated 5 December 2012 in W.P.No.21801 of 2012 and the direction was to hear the Writ Petition afresh with liberty to the petitioner to canvass all points notwithstanding the order dated 19 April 2011 in Crl.O.P.Nos.2691 and 5356 of 2011.

(iii) The contention of the petitioner that the Hon'ble Supreme Court set aside the order dated 19 April 2011 and that the criminal original petitions have to be heard afresh is incorrect. The matter to be heard by the High Court now is only the Writ Petition in W.P.No.21801 of 2012.

(iv) The charge memorandum dated 29 October 2013 not having been approved by the Disciplinary Authority, is without the authority of law and therefore, non est in law.

(v) The Tribunal was justified in revoking the suspension.

Disposal :-

77. In view of the reasons aforesaid, we quash the disciplinary proceedings initiated by the State against the petitioner on the sole ground of the charge memorandum not having been approved by the Disciplinary Authority. We confirm the order passed by the Tribunal revoking the suspension, initially made by order dated 10 May 2012 and periodically extended thereafter. It is open to the State to post the petitioner in any of the non sensitive posts.

78. The Writ Petitions filed by the State and the suspended employee are allowed to the extent indicated above. Consequently, W.M.P.Nos.33148 of 2016 and 34047 of 2016 are closed. There is no order as to costs.

(K.K.SASIDHARAN, J.) (V.PARTHIBAN, J.)

12 January 2017

Index: Yes/no
tar

To

- 1 The Secretary to Government (Home)
Fort St. George Secretariat Chennai-9 Tamil
Nadu Chennai-600 009.
- 2 The Secretary to Government
Ministry of Home Affairs North Block
New Delhi-110 001.

- 3 The Registrar
Central Administrative Tribunal Chennai
Bench Chennai-600 104.

K.K.SASIDHARAN, J.

and

V.PARTHIBAN, J.

(tar)

P.D. Order in

W.P. Nos.39989 and 38696 of 2016

12.01.2017

