

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

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Date of Decision: 18th August, 2017

+ **W.P.(C) 3937/2017**
+ **W.P.(C) 3948/2017**
+ **W.P.(C) 3950/2017**

SURESH SHARMA

..... Petitioner

Through: Mr.M.K. Bhardwaj, Advocate.

versus

NTRO THROUGH ITS CHAIRMAN & ORS

..... Respondents

Through: Mr.Arun Bhardwaj, CGSC with
Mr.Nikhil Bhardwaj, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MS. JUSTICE REKHA PALLI

VIPIN SANGHI, J (ORAL)

1. The aforesaid three writ petitions are directed against a common order dated 06.03.2017 passed by the Central Administrative Tribunal in OA No.3037/2014, 3061/2014 and 3087/2014. The common issue that arose for consideration before the Tribunal was whether a separate and distinct sanction/ approval while “initiating” disciplinary proceedings against the petitioner/applicant – who is a government servant, or the sanction/ approval of the charge memo/ charge sheet under Rule 14(3) of the CCS (CCA) Rules, 1965 (hereinafter referred to as “the Rules”) was sufficient

compliance of the Rules. The Tribunal called for the relevant record, and on that basis returned the finding that there had been due compliance of the said rules.

2. The submission of the petitioner-when the writ petitions were filed, was that the Tribunal had not examined for itself the relevant record to see whether approval had been granted by the Disciplinary Authority, namely, the Hon'ble Prime Minister of India at different stages, as contemplated under Rule 14 of the Rules. Consequently, while issuing notice, the respondents were directed to make available for perusal of the Court the relevant files wherein the approval of the Prime Minister was accorded under the Rules. The file has been produced before us, and we have perused the same.

3. What emerges from the record is that in respect of the three charge memos issued to the petitioner, namely, the charge memos dated 22.09.2011, 17.8.2012 and 07.09.2012, the draft charge memos were approved by the then Prime Minister of India on 20.09.2011, 03.08.2012 and 06.09.2012 respectively.

4. Before we proceed to consider the factual position and the submissions of learned counsel for the petitioner-on the interpretation of Rule 14 of the Rules in the light of the decision of the Supreme Court in *Union of India & Ors. vs. B.V. Gopinath*, (2014) 1 SCC 351, it is appropriate to extract Rule 14(1), (2), (3), (4) and (5) of the Rules which read as follows:-

“14. Procedure for imposing major penalties

(1) No order imposing any of the penalties specified in clauses (v) to (ix) of Rule 11 shall be made except after an inquiry held, as far as may be, in the manner provided in this rule and rule 15, or in the manner provided by the Public Servants (Inquiries) Act, 1850 (37 of 1850), where such inquiry is held under that Act.

(2) Whenever the Disciplinary Authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a Government servant, it may itself inquire into, or appoint under this rule or under the provisions of the Public Servants (Inquiries) Act, 1850, as the case may be, an authority to inquire into the truth thereof.

[“Provided that where there is a complaint of sexual harassment within the meaning of rule 3 C of the Central Civil Services (Conduct) Rules, 1964, the complaints Committee established in each ministry or Department or Office for inquiring into such complaints, shall be deemed to be the inquiring authority appointed by the Disciplinary Authority for the purpose of these rules and the Complaints Committee shall hold, if separate procedure has not been prescribed for the complaints committee for holding the inquiry into the complaints of sexual harassments, the inquiry as far as practicable in accordance with the procedure laid down in these rules”].

EXPLANATION – 1. Where the Disciplinary Authority itself holds the inquiry, any reference in sub-rule (7) to sub-rule (20) and in sub-rule (22) to the inquiring authority shall be construed as a reference to the Disciplinary Authority.

EXPLANATION – 2. Where the Disciplinary Authority appoints a retired Government servant as inquiring authority, any reference in sub-rule (7) to sub-rule (20) and in sub-rule (22) shall include such authority;

(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.

(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.

(5) (a) On receipt of the written statement of defence, the Disciplinary Authority may itself inquire into such of the articles of charge as are not admitted, or, if it considers it necessary so to do, appoint, under sub-rule (2), an inquiring authority for the purpose, and where all the articles of charge have been admitted by the Government servant in his written statement of defence, the Disciplinary Authority shall record its findings on each charge after taking such evidence as it may think fit and shall act in the manner laid down in rule 15.

(b) If no written statement of defence is submitted by the Government servant, the Disciplinary Authority may itself

inquire into the articles of charge, or may, if it considers it necessary to do so, appoint, under sub-rule (2), an inquiring authority for the purpose.

(c) Where the Disciplinary Authority itself inquires into any article of charge or appoints an inquiring authority for holding an inquiry into such charge, it may, by an order, appoint a Government servant or a legal practitioner, to be known as the "Presenting Officer" to present on its behalf the case in support of the articles of charge.

Explanation – For the purposes of this rule, the expression ‘Government servant’ includes a person who has ceased to be in Government service.” (emphasis supplied)

5. The submission of Mr. M.K. Bhardwaj, learned counsel for the petitioner is that the Disciplinary Authority should first sanction/grant his approval on file to the initiation of the disciplinary inquiry. He submits that Rule 14(2) obliges the Disciplinary Authority to form his opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a Government servant. Only after such approval is granted by the Disciplinary Authority, the question of issuance of charge memo - to be drawn up by the Disciplinary Authority, or caused to be drawn up by him under Rule 14(3), would arise. According to him, the drawing up of the charge memo by, or with the approval of the Disciplinary Authority is a stage subsequent to grant of approval/ sanction to hold the disciplinary proceedings. He submits that the file notings and proceedings produced by the respondent show that there was no initial approval granted by the then Hon'ble Prime Minister of India-who is the petitioners Disciplinary Authority, to initiate Disciplinary Proceedings. He submits that the mere approval of the draft charge memo by the Disciplinary Authority under Rule

14(3) would not tantamount to grant of approval, or the taking of a decision by the Disciplinary Authority to initiate Disciplinary Proceedings.

6. Mr. M.K. Bhardwaj has placed reliance on the decision of **B.V. Gopinath** (supra). In **B.V. Gopinath** (supra), the learned ASG had sought to explain – on behalf of the Union of India, the entire procedure that is followed in each and every case before the matter is put up before the Disciplinary Authority (in that case the Finance Minister) “for seeking approval for initiation of the disciplinary proceedings. Her submission, as recorded in the judgment reads as follows:

“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 hierarchy”.

She also referred to an Office Order No.205 of 2005. This Office Order had been issued by the Ministry of Finance, Department of Revenue, Vigilance Cell (HQ) on 27.10.2016 laying down the revised procedure for decision making in respect vigilance/ disciplinary cases of Group ‘A’ officers under the CBEC and CBDT. She submitted that Office Order No.205 of 2005 had been misread by the Tribunal and the High Court.

7. Before we proceed to take note of the decision in **B.V. Gopinath**

(supra), we consider it appropriate to quote the said Office Order No.205/2005 in its entirety. The same reads as follows:

*“F.No.50/10/2005-Ad.I
Government of India
Ministry of Finance
Department of Revenue*

New Delhi, the 19 July, 2005

Office Order No. 205/2005

The insufficient delegation of power in respect of disciplinary action cases resulting in avoidable stress on time and resources in the Department has been drawing the attention of the Department. In order to study the existing practice being followed and suggest measures to improve the situation, a Committee comprising CVO of the Department of Revenue and CVOs of both the Boards, was constituted to make appropriate recommendations regarding suitable delegation of powers in this regard.

2. The Committee after studying the procedure followed in both the Boards submitted its report recommending delegation of powers in respect of various stages in the processing of vigilance matters. The recommendations made by the Committee have been examined in consultation with Department of Personnel & Training (DOPT). Accordingly, with the approval of the Competent Authority, the following procedure for decision making in respect of vigilance/ disciplinary cases of both the Boards (CBEC & CBDT) is laid down with immediate effect and until further orders:

<i>Sl. No.</i>	<i>Stages in Vigilance/ Disciplinary cases</i>	<i>Levels of decision making</i>
<i>1.</i>	<i>Complaints- closure without requirement of</i>	<i>(i) CVO can file anonymous/ pseudonymous</i>

	<i>reference to CVC</i>	<i>complaints as per CVC instructions dated 29.6.1999</i> <i>(ii) In case of verifiable facts in such complaints, reference be made to CVC by –</i> <i>(a) for Chief Commissioners – Secretary (Revenue)</i> <i>(b) up to Commissioners – CVO</i>
2.	<i>Placing an officer under suspension</i>	<i>Finance Minister</i>
3.	<i>Review of suspension – Quarterly/Half Yearly</i>	<i>Finance Minister</i>
4.	<i>Revocation of suspension</i>	<i>Finance Minister</i>
5.	<i>Reference to CVC for 1st Stage advice</i>	<i>(i) for Chief Commissioner level officer– Secretary (Revenue)</i> <i>(ii) for Commissioner level officer – Chairman of the respective Board</i> <i>(iii) for officer below Commissioner level– Member (P) of the respective Board</i>
6.	<i>Reconsideration of CVC's 1st stage advice</i>	<i>(i) for Chief Commissioner level officer – Secretary</i>

		<i>(Revenue)</i> <i>(ii) for Commissioner level officer – Chairman of the respective Board</i> <i>(iii) for officer below Commissioner level– Member (P) of the respective Board</i>
7.	<i>Approval for referring the case to DOP&T in case of disagreement with CVC's 1st stage advice</i>	<i>Finance Minister</i>
8.	<i>Approval for issuing Charge memo/ sanction of prosecution</i>	<i>Finance Minister</i> <i>[While approaching Disciplinary Authority for approval of charge memo, approval for taking ancillary action e.g. appointing of IO/ PO may also be taken]</i>
9.	<i>Decision on Written Statement of Defence (WSD) regarding further course of action</i>	<i>If simple denial of charges, CVO will appoint IO/ PO.</i> <i>If denial accompanied by representation, Chairman to consider WSD.</i> <i>If WSD merits dropping/ modification/ amendment of charges, then file to be put up to Finance Minister.</i>
10.	<i>Appointment of IO/ PO</i>	<i>Appointment of IO/ PO</i>

		<i>delegated to CVO.</i> <i>The DOP&T instructions state that ancillary action can be initiated by the CVO after Finance Minister has approved initiation of DP.</i>
11.	<i>Reference to CVC for 2nd stage advice</i>	<u><i>For minor penalty</i></u> <i>(i) for Chief Commissioner level officer – Secretary (Revenue)</i> <i>(ii) for Commissioner level officer – Chairman of respective Board</i> <i>(iii) for officer below Commissioner level– Member (P) of the respective Board</i> <u><i>For major penalty</i></u> <i>Finance Minister</i>
12.	<i>Reconsideration of CVC's 2nd stage advice</i>	<u><i>For minor penalty</i></u> <i>(i) for Chief Commissioner level officer – Secretary (Revenue)</i> <i>(ii) for Commissioner level officer – Chairman of respective Board</i> <i>(iii) for officer below Commissioner level– Member (P) of the</i>

		<i>respective Board</i> <i><u>For major penalty</u></i> <i>Finance Minister</i>
13.	Approval for referring the case to DOP&T in case of disagreement by DA or UPSC with CVC's 2 nd stage advice	Finance Minister
14.	Show-Cause notice in case of disagreement with the IO's report	Finance Minister
15.	Tentative decision after CVC's 2 nd stage advice on imposition of penalty subject to UPSC's concurrence	Finance Minister
16.	Final decision of penalty	Finance Minister
17.	Revision/ Review/ Memorial (Rule 29/ 29A)	Finance Minister

(Preeti Pant)
Under Secretary to the Government of India

8. We may now refer to the decision in **B.V. Gopinath** (supra). The relevant extract from this decision, which is relied upon by learned counsel for the petitioner, reads as follows:-

“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 19.01.1950 (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.”

9. The Supreme Court then considered, clause by clause, the office Order No.205 dated 19th July, 2005 issued by the Ministry of Finance, Department of Revenue bearing No. F. No.50/10/2005 – Ad.I.

10. For our purpose, the observations made by the Supreme Court in **B.V. Gopinath** (supra) in relation to clauses (8) and (9) of the said Office Order are relevant, and they read as under:

“43. Clause (8) of the circular makes it abundantly clear that it relates to approval for issuing charge memo/sanction of prosecution. A plain reading of the aforesaid clause shows that it relates to a decision to be taken by the Disciplinary Authority as to whether the departmental proceedings are to be initiated or prosecution is to be sanctioned or both are to commence simultaneously. The competent authority for approval of the charge memo is clearly the Finance Minister. There is no second authority specified in the order. We do not agree with Ms. Indira Jaising, learned Additional Solicitor General that the use of the word “approval of” is not an expression distinct from “approval for” initiating major penalty proceedings.

44. Under Clause (9), the department firstly puts up the file before the Finance Minister seeking “approval for issuing charge memo/sanction of prosecution.” The department is seeking an order as to whether the officer is to be proceeded against departmentally or criminal proceedings are to be initiated or both proceedings are to be commenced simultaneously. When the decision is taken by the Finance Minister that the departmental proceedings are to be held (initiation), only then the question of approval of charge memo arises. The department would thereafter complete the necessary formalities and then place the file before the Finance Minister, for “approval of” charge memo. This

provision is in harmony with the mandate contained under Articles 311(1) and (2) that no civil servant shall be dismissed or removed by an authority subordinate to that by which he was appointed. The second limb of the same direction is that punishment on a public servant of dismissal, removal or reduction in rank can only be imposed when the charges have been proved against him in a departmental enquiry held in accordance with the rules of natural justice.

45. Rule 14 of the CCS (CCA) Rules provides for holding a departmental enquiry in accordance with the provisions contained in Article 311(2) of the Constitution of India. Clause (8) also makes it clear that when the Finance Minister is approached for approval of charge memo, approval for taking ancillary action such as appointing an inquiry officer/presiding officer should also be taken. Clause (9) in fact reinforces the provisions in clause (8) to the effect that it is the Finance Minister, who is required to approve the charge memo. Clause (9) relates to a stage after the issuance of charge-sheet and when the charge-sheeted officer has submitted the statement of defence. It provides that in case the charge-sheeted officer simply denies the charges, CVO will appoint an inquiry officer/presiding officer. In case of denial accompanied by representation, the Chairman is to consider the written statement of defence. In case the Chairman comes to a tentative conclusion that written statement of defence has pointed out certain issues which may require modification/amendment of charges then the file has to be put up to the Finance Minister. So the intention is clearly manifest that all decisions with regard to the approval of charge memo, dropping of the charge memo, modification/amendment of charges have to be taken by the Finance Minister". (emphasis supplied)

11. The Supreme Court then proceeded to consider the submission advanced by the Ld. Additional Solicitor General (ASG) that an “*in principle*” decision taken by the Finance Minister at the initial stage would

suffice to cover his approval of the charge memo. The Supreme Court rejected the said submission of the Ld. ASG as follows:

“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.

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52. *In our opinion, the submission of the learned Additional 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 the law. This plea of the respondent has been accepted by 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 P.V.Srinivasa Sastry & Ors. Vs. CAG 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: (SCC p.422, para 4)*

“4.....However, it is open to the 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: (SCC p.422, para 4)

*“4. Any such rule shall not be inconsistent with Article 311 of the Constitution because it will amount to providing an additional safeguard or protection to the holders of a civil post.”
(emphasis supplied)*

12. The submission of Mr. M.K. Bhardwaj, on the basis of the aforesaid decision, is that distinct approvals are required to be granted by the Disciplinary Authority at different stages, and the grant of the approval to the charge memo cannot be considered as deemed approval to the “initiation” of Disciplinary Proceedings under Rule 14(2). According to the petitioner, an express approval has to be granted by the Disciplinary Authority for “initiation” of the Disciplinary Proceeding, meaning thereby, the DA has to record his opinion that there are grounds for inquiring into the truth of imputations of misconduct or misbehaviour. Only thereafter, he may draw up, or cause to be drawn up, a charge memo under Sub-Rule(3).

13. On the other hand, the submission of Mr.Arun Bhardwaj, learned Central Government Standing Counsel is that the reliance placed on **B.V. Gopinath** (supra) is misplaced. He submits that in the facts of **B.V. Gopinath** (supra), the draft charge memo had not been drawn up, or caused to be drawn up by the Disciplinary Authority, which is specifically mandated by Rule 14(3). The submission of the Government in that case was that a general sanction/approval accorded by the Disciplinary Authority to initiate departmental proceedings against an employee would suffice to meet the requirements of Rule 14(3). That submission was rejected by the Supreme Court. He submits that the converse is, however, not true, inasmuch, as, there is no requirement in Rule 14 that, first, there should be an approval /sanction granted by the Disciplinary Authority to “initiate” the Disciplinary Proceedings and, thereafter, to approve the charge memo which may be drawn by him, or may be caused by him to be drawn up. He submits that the approval of the draft charge memo by the Disciplinary Authority

entails, within itself, his decision to initiate the Disciplinary Proceedings against the delinquent employee and the same is sufficient.

14. Mr. Bhardwaj submits that in *Union of India & Others Vs. K.V. Jankiraman & Others*, (1991) 4 SCC 109, the Supreme Court has held that it is only when the charge memo in a disciplinary proceedings or a charge-sheet in a criminal prosecution is issued to an employee, that it can be said that the departmental proceeding/ criminal prosecution is initiated against the employee. Departmental proceedings do not get initiated unless the charge memo/ charge sheet are issued to the delinquent employee. There is no statutory requirement that the sanction/ approval of the Disciplinary Authority should be obtained on the file, even before the drawing up of the charge memo. Mr. Bhardwaj submits that the aforesaid requirement is not borne out from a reading of the Rules, and in particular Rule 14 thereof. Mr. Bhardwaj submits that the purport of the decision of the Supreme Court in *B.V. Gopinath* (supra) is to ensure that the delinquent employee is not subjected to a *mala fide* or prejudicial departmental proceedings, without due application of mind by the Disciplinary Authority to the charge memorandum/ charge sheet. He submits that since the Disciplinary Authority has approved the draft charge memos in all the three cases initiated against the petitioner after considering the detailed note on the file, the requirement of Rule 14 is completely met.

15. Mr. Bhardwaj points out that the only issue that arose for consideration in *B.V. Gopinath* (supra) was the one taken note of in the opening paragraph of the said judgment. The Supreme Court noted the central issue arising in the appeals before it in the following words:

“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.” (emphasis supplied)

16. Thus, the Supreme Court was concerned with the statutory obligation cast on the Disciplinary Authority under Rule 14(3) of the Rules, and nothing more. He further submits that in paragraph 55 of the said judgment, the Supreme Court specifically observed that it has not opined on other collateral issues which were raised by the counsels. In paragraph 55, the Supreme Court observed as follows:

“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.”

17. Mr. Bhardwaj submits that the issue whether an approval/ sanction has to be accorded by the Disciplinary Authority even prior to the approval of the charge memo was not the issue raised, or considered in **B.V. Gopinath** (supra), and the petitioner cannot seek to rely upon **B.V. Gopinath** (supra) to advance the said submission. He submits that **B.V. Gopinath** (supra) is not even attracted in the facts of the present case since, on facts, the draft charge memos were approved by the Disciplinary Authority, namely, the Hon’ble Prime Minister of India before their issuance to the petitioner in these cases.

18. We have considered the rival submissions raised by the parties and perused the record. We have also examined Rule 14 of the Rules and the decision of the Supreme Court in **B.V. Gopinath** (supra).

19. The present petitions raise a short and purely legal issue. The sole question which needs to be decided is, whether the Disciplinary Authority is obliged to initially grant his approval/ sanction to the “initiation” of the disciplinary proceedings by recording his opinion that, there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against the government servant, and thereafter once again to the charge memo/ charge sheet under Rule 14(3), or, the sanction/ approval granted to the charge memo/ charge sheet i.e. the substance of imputation of misconduct or misbehaviour as definite and distinct articles of charge; statement of imputation of misconduct or misbehaviour in support of each article of charge - in terms of Rule 14(3) of the Rules, would be sufficient compliance of the Rules.

20. The other related issue which arises for consideration is whether under the scheme of Rule 14 of the Rules, and in view of the decision in **K.V. Jankiraman** (supra), the approval/ sanction accorded by the Disciplinary Authority to the charge memo under Rule 14(3) itself tantamounts to grant of approval/ sanction for initiation of disciplinary proceedings and, therefore, there is no need for the Disciplinary Authority to separately record his approval/ sanction for initiation of disciplinary proceedings at an earlier stage.

21. We may now proceed to consider the procedural scheme contained in

Rule 14 of the Rules. Sub-Rule (1) grants protection to the Government servant that he shall not be penalised with any of the penalties specified in Clauses (v) to (ix) of Rule 11, except after holding an inquiry under Rule 14 and Rule 15, or in the manner provided by the Public Servants Inquiries Act, 1850, where such inquiry is held under that Act. Thus, Rule 14(1) seeks to codify the protection accorded to a Government servant under Article 311(2) of the Constitution of India.

22. Sub-Rule (2) of Rule 14, in substance, merely states that “whenever” an inquiry is considered essential in the opinion of the Disciplinary Authority to be held, the same may be held either by the Disciplinary Authority himself, or by an Inquiry Officer appointed by him. The object of such an inquiry is to inquire into the truth of imputations of misconduct and misbehaviour. As would appear from our further analysis, the procedural sequence which the Disciplinary Authority is obliged to follow, to reach the stage of forming the opinion under Sub-rule (2), is prescribed in Sub-rules (3) to (5) of Rule 14.

23. Sub-Rule (3) of Rule 14 opens with the words “***where it is proposed to hold an inquiry against a Government servant***”. (emphasis supplied). Sub-rule (3) of Rule 14, therefore, deals with the manner in which the Disciplinary Authority shall proceed when there is a “*proposal*” to hold an inquiry against a government servant. The expression “proposal” is defined in the Shorter Oxford English Dictionary as “*An action of stating or propounding something*”; “*a course of action etc. proposed; a scheme, a plan, a motion; a suggestion, an idea*”. Till the time the Disciplinary Authority acts in accordance with sub rule (3) of Rule 14, there is no

disciplinary proceeding against the government servant, since it would be in the realm of a “proposal” i.e. a suggestion, and nothing more. The disciplinary proceedings would get initiated against the government servant only when the proposal therefor is put into action by issuance of a charge memo/ charge sheet under Rule 14(3).

24. In **K.V. Jankiraman** (supra), the Supreme Court, inter alia, considered the issue “*What is the date from which it can be said that disciplinary/ criminal proceedings are pending against an employee?*”. The said issue was considered in the context of the adoption of the “sealed cover” procedure by the Departmental Promotion Committee (DPC) for consideration of the case of an employee against whom departmental/ criminal proceedings are contemplated, or pending. The Supreme Court in para 16 of the decision, inter alia, observed as follows:

*“16. On the first question, viz., as to when for the purposes of the sealed cover procedure the disciplinary/criminal proceedings can be said to have commenced, **the Full Bench of the Tribunal has held that it is only when a charge-memo in a disciplinary proceedings or a charge-sheet in a criminal prosecution is issued to the employee that it can be said that the departmental proceedings/criminal prosecution is initiated against the employee.** The sealed cover procedure is to be resorted to only after the charge-memo/charge-sheet is issued. **The pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure. We are in agreement with the Tribunal on this point. The contention advanced by the learned counsel for the appellant-authorities that when there are serious allegations and it takes time to collect necessary evidence to prepare and issue charge-memo/charge-sheet, it would not be in the interest of the purity of administration to***

reward the employee with a promotion, increment etc. does not impress us. The acceptance of this contention would result in injustice to the employees in many cases. As has been the experience so far, the preliminary investigations take an inordinately long time and particularly when they are initiated at the instance of the interested persons, they are kept pending deliberately. Many times they never result in the issue of any charge-memo/charge-sheet. If the allegations are serious and the authorities are keen in investigating them, ordinarily it should not take much time to collect the relevant evidence and finalise the charges. What is further, if the charges are that serious, the authorities have the power to suspend the employee under the relevant rules, and the suspension by itself permits a resort to the sealed cover procedure. The authorities thus are not without a remedy.” (emphasis supplied)

25. Sub-Rule (4) of Rule 14 would then kick in, which obliges the Disciplinary Authority to deliver or cause to be delivered to the Government servant the charge memo, as aforesaid, and to require the Government servant to submit – within the specified time, a written statement of his defence and to state whether he desires to be heard in person.

26. The future course of action to be adopted in the matter would depend on the nature of written statement that the Government servant may give in response to the charge memo. The procedure in this regard is laid down by sub rule (5) of Rule 14. In case the articles of charge are admitted by the Government servant, the Disciplinary Authority shall record his findings on each charge after taking such evidence as it may think fit, and shall act in the manner laid down in Rule 15. Thus, where the charges are admitted by the government servant, the Disciplinary Authority shall not launch an inquiry by resort to sub rule (2) of Rule 14, since there would be no question of

“inquiring into the truth of imputation of misconduct or misbehaviour against” the Government servant, as the truth thereof would have been established by the admission made by the concerned government servant. The Disciplinary Authority shall, however, take such evidence as it may think fit and shall proceed to record his findings on each of the charges.

27. However, where the government servant concerned has not admitted any of the articles of charge, or where no written statement of defence is submitted by the government servant, under sub rules (5)(a) and (5)(b), the Disciplinary Authority may itself inquire into such of the charges which are not admitted – or in respect whereof no written statement or defence is submitted, or appoint an inquiring authority under sub rule (2).

28. Thus, it is evident that the arrangement of the Sub-Rules in Rule 14 is not reflective of the sequence in which the Sub-Rules of Rule 14 would be attracted and applied. The sequence in which the said Sub-Rules would actually play out would be that, where it is proposed to hold an inquiry against the Government servant under either Rule 14 or Rule 15:

- (a) The Disciplinary Authority shall first draw up, or cause to be drawn up, the charge memo containing the substance of the imputations of misconduct or misbehaviour contained in definite and distinct articles of charge; a statement of imputation of misconduct or misbehaviour in support of each article of charge containing: (i) a statement of all relevant facts including any admission or confession made by the Government servant; (ii) a list of documents by which, and; (iii) a list of witnesses by whom, the articles of charge are

proposed to be sustained under Rule 14(3) of the Rules;

(b) Thereafter, the same shall be served upon the government servant concerned in compliance with sub rule (4) requiring the government servant to submit within the specified time his written statement of defence and also stating whether he desires to be heard in person;

(c) Depending upon the response of the government servant, if any, received to the articles of charge, the future course of action to be adopted by the Disciplinary Authority shall be determined as prescribed under sub rule (5)(a) & (5)(b) read with sub rule (2) of Rule 14.

A perusal of para 41 of **B.V. Gopinath** (supra) would also show that the Supreme Court while discussing Rule 14 of the Rules, begins the discussion with sub rule (3) of Rule 14 and thereafter proceeds to refer to sub rule (4) of Rule 14. This fortifies our analysis of Rule 14, as above.

29. Thus, on a plain reading of Rule 14, it is evident that sub rule (2) of Rule 14 does not imply that the Disciplinary Authority should first grant his approval/ sanction on the record to “initiate” disciplinary proceedings against the government servant. In fact, under the Rules, there is no such requirement prescribed – obliging the Disciplinary Authority to first sanction/ approve the “initiation” of the disciplinary proceedings, and thereafter to again approve the charge memo/ charge sheet in terms of sub rule (3) of Rule 14. Sub rule (2) of Rule 14, in fact, would get invoked only after the procedure under sub rules (3) and (4) have been exhausted, and at

the stage when the procedure under sub rule (5) is being implemented by the Disciplinary Authority.

30. When the Disciplinary Authority, after consideration of all the relevant material, approves the charge memo, it is implicit therein that the Disciplinary Authority has also approved the “initiation” of Disciplinary Proceedings against the government servant. It is obvious that the Disciplinary Authority would grant approval to the charge memo/charge-sheet, only if he has formed the opinion that there are grounds available for initiation of Disciplinary Proceedings against the government servant. The general and initial approval – that the petitioner talks about on a plainly erroneous reading of sub rule (2) of Rule 14, even if granted, would be a non specific approval – with no clarity on the specific articles of charge that may, or may not, eventually be framed. This is not mandated by the Rules. On the other hand, the approval of the charge memo/ charge sheet under sub rule (3) of Rule 14 is in respect of definite and distinct articles of charge which are drawn up against the government servant on the basis of the imputation of misconduct or misbehaviour. The Disciplinary Authority is obliged to draw up, or cause to be drawn up, with his approval, the substance of the imputation of misconduct or misbehaviour into definite and distinct articles of charge; the statement of the imputation of misconduct or misbehaviour in support of each articles of charge which shall contain a statement of the relevant facts including any admission/ confession made by the government servant, and; a list of documents by which, and a list of witnesses by whom the articles of charge are proposed to be sustained.

31. Thus, in our view, it is not necessary for the Disciplinary Authority to

give its separate/ distinct and initial approval for “initiation” of disciplinary proceedings. Once the Disciplinary Authority grants its approval to the charge memo/ charge sheet after perusing the entire material, it would be sufficient compliance of the Rules, and the same would completely safeguard the interests of the government servant concerned.

32. Till the time a charge memo/ charge sheet is issued to the government servant under Rule 14(3) i.e. with the approval of the Disciplinary Authority, the preliminary exercise – to gather evidence or process the case, that may be undertaken by the government, by itself, does not prejudice the government servant. No government servant can raise a grievance that such a preliminary exercise should not be taken either at the behest of the Disciplinary Authority, or at the behest of any other authority without the express approval of the Disciplinary Authority. In our view, it may amount to putting the cart before the horse, to require the Disciplinary Authority to grant his sanction/ approval to a generalised and initial decision to “initiate” disciplinary proceedings against the Government servant. It is only when a proposal to hold an inquiry against a government servant is prepared on the basis of the materials and evidences that may be gathered during the preliminary inquiry (which is an exercise undertaken to gather facts and to determine whether a prima facie case for a formal departmental inquiry is made out – See *Constable Rajendra Kumar v. Govt. of NCT of Delhi & Ors*, 2009 (111) DRJ 320 (FB)), that the Disciplinary Authority would be called upon to apply his mind to the specific, definite and distinct articles of charge to accord his approval.

33. In the facts of *B.V. Gopinath* (supra), it appears that there was a

general and initial approval taken from the Disciplinary Authority to “initiate” an inquiry against the government servant. On that basis, without approval of the Disciplinary Authority, the charge memo/ charge sheet was issued containing the substance of the imputations of misconduct and misbehaviour formulated into definite and distinct articles of charge along with the documents referred to in sub rule (3) (ii) of the Rules. It is this procedure adopted by the government in **B.V. Gopinath** (supra), which was disapproved of by the Supreme Court. The initial and general approval granted for “initiation” of disciplinary proceedings, even if obtained in a given case – which is not a statutory requirement, cannot be construed as an approval to the issuance of charge memo/ charge sheet under Rule 14(3).

34. Thus, the reliance placed on the judgment of the Supreme Court in the case of **B.V. Gopinath** (supra) is completely misplaced as, in the said case, the Supreme Court was dealing with a situation where there was an initial and general approval granted by the Disciplinary Authority for initiation of Disciplinary Proceedings, but there was no approval to the charge memo/ charge sheet by the Disciplinary Authority. It was in this backdrop that the Supreme Court held that a charge memo – which is not approved by the Disciplinary Authority, was non-est in the eyes of law.

35. A perusal of the decision in **B.V. Gopinath** (supra) would show that the Supreme Court considered the submissions advanced before it in the light of Office Order No.205/2005 which has been reproduced herein above by us. The said Office Order, firstly, has to be read and understood in the context of the Rules and, in particular, Rule 14 thereof. The said Office Order was issued by the Ministry of Finance, Department of Revenue, and it

was relevant in the case of **B.V. Gopinath** (supra), since he was serving in the Ministry of Finance and his Disciplinary Authority was the Finance Minister. In the present case, that is not the position. As noticed herein above, the petitioner is serving in the NTRO and the Prime Minister of India is his Disciplinary Authority.

36. We have extracted, inter alia, para 43 and 44 of the decision in **B.V. Gopinath** (supra). In the report as published in Supreme Court Cases, in the opening line of para 44, the words as printed are “*Under clause (9), the department firstly puts up the file before the Finance Minister seeking “approval for issuing charge memo/ sanction of prosecution”*”. However, on the reading of clauses (8) and (9) of the office order, it appears to us that there is a typographical error, and it appears that the Supreme Court actually referred to clause (8) in the first line of para 44, since it relates to “*approval for issuing charge memo/ sanction of prosecution*”, which is the subject matter covered by clause (8), and not clause (9) of the said office order. The aforesaid position becomes even more clear on a reading of para 45 of the decision in **B.V. Gopinath** (supra), wherein the Supreme Court discussed the scope covered by clause (9). In that regard, the Supreme Court has observed:

“45. Clause (9) relates to a stage after the issuance of charge-sheet and when the charge-sheeted officer has submitted the statement of defence. It provides that in case the charge-sheeted officer simply denies the charges, CVO will appoint an inquiry officer/presiding officer. In case of denial accompanied by representation, the Chairman is to consider the written statement of defence. In case the Chairman comes to a tentative conclusion that written statement of defence has

pointed out certain issues which may require modification/ amendment of charges then the file has to be put up to the Finance Minister. So the intention is clearly manifest that all decisions with regard to the approval of charge memo, dropping of the charge memo, modification/amendment of charges have to be taken by the Finance Minister”.

37. We find support for our view on the interpretation of Rule 14 from the observations made by the Supreme Court, particularly in para 43 and 44 of the decision in **B.V. Gopinath** (supra). Para 43 begins with the words:

“43. Clause (8) of the circular makes it abundantly clear that it relates to approval for issuing charge memo/sanction of prosecution. A plain reading of the aforesaid clause shows that it relates to a decision to be taken by the Disciplinary Authority as to whether the departmental proceedings are to be initiated or prosecution is to be sanctioned or both are to commence simultaneously. The competent authority for approval of the charge memo is clearly the Finance Minister. There is no second authority specified in the order... ..”.

38. The petitioner seeks to rely on the observation of the Supreme Court, made in para 44, which reads as follows:

“44. When the decision is taken by the Finance Minister that the departmental proceedings are to be held (initiation), only then the question of approval of charge memo arises. The department would thereafter complete the necessary formalities and then place the file before the Finance Minister, for “approval of” charge memo... ..” (emphasis supplied)

39. Reliance is also placed by the petitioner on the observations made in para 49, which read as follows:

“49. 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... ..”

40. In our view, reliance placed by the petitioner on the above extracts from **B.V. Gopinath** (supra) has no force. The Supreme Court was not examining the issue whether – as a matter of law, the “initial” sanction/ approval of the Disciplinary Authority is required to be obtained – failing which the Disciplinary proceedings would be vitiated. The Supreme Court was dealing with a fact situation where – as a matter of fact, such general/ initial sanction/ approval for “initiation” had been obtained. The observations made by the Supreme Court, thus, have to be viewed in that light, and in the light of the submissions advanced before it – particularly by the learned ASG. The above observations were made in response to those submissions, which we have taken note of herein above.

41. It is well settled that a decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein, nor what logically follows from the various observations made in it. This was so held by the Supreme Court in **State of Orissa v. Sudhansu Sekhar Misra**, AIR 1968 SC 647, by placing reliance on the English decision in **Quinn v. Leathem**, (1900-03), All ER 1 (HL). The House of Lords in **Quinn v. Leathem** (supra) held as follows:

“Before discussing Allen v. Flood [1898 AC 1 : (1895-99) All ER Rep 52 (HL)] and what was decided therein, there are two observations of a general character which I wish to make; and one is to repeat what I have very often said before—that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the

expressions which may be found there are not intended to be expositions of the whole law, but are governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all.’ ”
(emphasis supplied)

42. The same position was reiterated by the Supreme Court in ***Ambica Quarry Works v. State of Gujarat***, (1987) 1 SCC 213, wherein the Supreme Court observed:

“18. ... The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it.”

43. In ***Bhavnagar University v. Palitana Sugar Mill (P) Ltd.***, (2003) 2 SCC 111, the Supreme Court observed:

“59. ... It is also well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision.”

44. In ***Bharat Petroleum Corporation Ltd. v. N.R. Vairamani***, (2004) 8 SCC 579, the Supreme Court held that a decision cannot be relied on, without disclosing the factual situation. The Supreme Court held:

“9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of courts are neither to be read as

*Euclid's theorems nor as provisions of a statute and that too taken out of their context. **These observations must be read in the context in which they appear to have been stated. Judgments of courts are not to be construed as statutes.** To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In *London Graving Dock Co. Ltd. v. Horton* [1951 AC 737 : (1951) 2 All ER 1 (HL)] (AC at p. 761) Lord MacDermott observed: (All ER p. 14 C-D)*

'The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J. as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge, ...'

*10. In *Home Office v. Dorset Yacht Co. Ltd.* [1970 AC 1004 : (1970) 2 WLR 1140 : (1970) 2 All ER 294 (HL)] (All ER p. 297g-h) Lord Reid said, 'Lord Atkin's speech ... is not to be treated as if it were a statutory definition. It will require qualification in new circumstances.' Megarry, J. in *Shepherd Homes Ltd. v. Sandham (No. 2)* [(1971) 1 WLR 1062 : (1971) 2 All ER 1267], observed: (All ER p. 1274d)*

'One must not, of course, construe even a reserved judgment of even Russell, L.J. as if it were an Act of Parliament;'

*And, in *Herrington v. British Railways Board* [1972 AC 877 : (1972) 2 WLR 537 : (1972) 1 All ER 749 [HL (E)]] Lord Morris said: (All ER p. 761c)*

'There is always peril in treating the words of a speech or a judgment as though they were words in a legislative enactment, and it is to be

remembered that judicial utterances are made in the setting of the facts of a particular case.'

11. *Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.*

12. *The following words of Hidayatullah, J. in the matter of applying precedents have become locus classicus: (Abdul Kayoom v. CIT [AIR 1962 SC 680], AIR p. 688, para 19)*

'19. ... Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.'

'Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path of justice clear of obstructions which could impede it.' " (emphasis supplied)

45. The aforesaid legal position has been set out by the Supreme Court in ***U.P. State Electricity Board v. Pooran Chandra Pandey & Ors.***, (2007) 11 SCC 92.

46. The decision in ***B.V. Gopinath*** (supra), thus, cannot be considered as

an authority for the proposition that the Disciplinary Authority is first obliged to accord his general approval/ sanction for initiation of disciplinary proceedings. That was not the issue that arose for consideration before the Supreme Court in **B.V. Gopinath** (supra), as noticed herein above.

47. We, therefore, find no merit in the submission of the counsel for the petitioner that distinct approvals from the Disciplinary Authority are required, firstly, to the “initiation” of the departmental proceedings in a general form and, secondly, to the issuance of the charge memo/ charge sheet. In our view, there is no such requirement of a general “initial approval/ sanction” by the Disciplinary Authority on the file. From **K.V. Jankiraman** (supra), and on a reading of Rule 14, it is clear that the disciplinary proceedings get initiated only upon issuance of the charge memo/ charge sheet, and not before that. Though this decision was rendered in the context of adoption of the sealed cover procedure, we are of the view that the same holds true even generally, as is evident from a reading of Rule 14. In the present case, as noticed herein above, in respect of all the three charge sheets, the Hon’ble Prime Minister of India granted his approval in compliance of Rule 14(3). Thus, there is sufficient compliance of the Rules by the respondent.

48. We also find merit in the submissions of the counsel for the respondents, and as noticed by the Tribunal, that the petitioner is trying to indulge in dilatory tactics to somehow delay the Disciplinary Proceedings against him. We are informed by the learned counsel for the respondents that the enquiry proceedings in respect of all the three charge memos stand completed and the matter is pending at the stage of seeking advice of UPSC

on the enquiry report. The respondents may, accordingly, proceed in the matter in accordance with law.

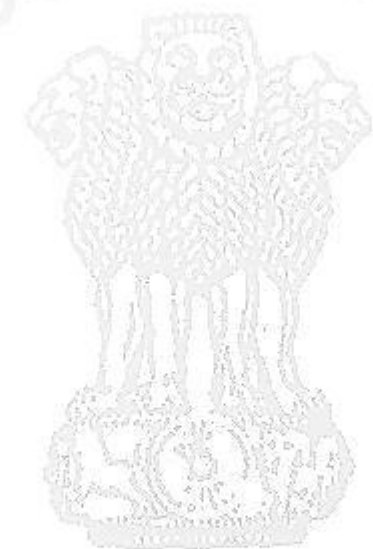
49. In the above backdrop, we find absolutely no infirmity in the order passed by the Tribunal. The present petitions are devoid of merit and dismissed with no orders as to costs.

VIPIN SANGHI, J

REKHA PALLI, J

AUGUST 18, 2017

GM/ B.S. Rohella



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