

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: May 29, 2023

+ W.P.(C) 11485/2021, CM APPLs. 35420/2021 & 46480/2022

SH. S RAMU

..... Petitioner

Through: Mr. Navniti Prasad Singh, Sr. Adv.
with Mr. Abhishek Singh,
Mr. Shreshth Arya, Mr. Madhav
Bhatia and Mr. Aditya Pandey, Advs.

versus

UNION OF INDIA THROUGH THE SECRETARY MINISTRY OF
FINANCE & ANR.

..... Respondents

Through: Mr. Ravi Prakash, CGSC with
Mr. Farman Ali & Ms. Astu
Khandelwal, Advs. for UOI

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

J U D G M E N T

V. KAMESWAR RAO, J

1. The challenge in this writ petition is to an order dated July 6, 2021, passed by the Central Administrative Tribunal, Principal Bench, New Delhi ('Tribunal', for short) in Original Application being O.A No.624/2015 ('OA', in short), whereby the Tribunal has dismissed the OA by imposing a cost of ₹50,000/- on the petitioner herein.

2. The facts as noted from the petition are that the petitioner was

employed as an Income Tax Officer (ITO) and Assistant Director of Income Tax (Investigation) between 1989 and 2003. On December 1, 2006, he was issued a charge memo alleging that, he accumulated wealth disproportionate to his known source of income; to the extent of 285%. Other charges were also framed. The said charge sheet was challenged in O.A No. 3732/2010, by raising a plea that the initiation of proceedings as well as the charge memo was not approved as required under law. Accordingly, the OA was allowed on August 26, 2011, following the judgment of this Court in the case of ***Union of India v. B.V. Gopinath, W.P. (C) No. 10452/2009***. It was left open to the respondents to issue a fresh charge memo, in accordance with law.

3. Accordingly, a charge memo dated August 28, 2014, was issued referring to the earlier developments and by stating that the Competent Authority has accorded its approval at various stages.

4. It was the case of the petitioner that, even though the earlier charge memo was set aside, there still remained several lapses. According to the petitioner, if the record is called for, it can be verified whether the approval was accorded by the concerned authority at appropriate stage. Another contention of the petitioner before the Tribunal was that, as per the approval, there was non-application of mind by the Disciplinary Authority. Reliance was placed on the judgment of the Supreme Court in ***Union of India v. B.V. Gopinath, (2014) 1 SCC 351***, (hereinafter referred to as ***B.V. Gopinath²***).

5. The case of the respondents was that the charges against the petitioner are of very serious nature. Though disciplinary proceedings were initiated against the petitioner way back in the year 2006, there

was no progress whatsoever.

6. The Tribunal while rejecting the O.A stated that the Competent Authority has given the sanction as required under the law, and the contentions advanced by the petitioner are not correct. The Tribunal has in paragraphs 8 to 11, stated as under:

“8. It is indeed unfortunate, if not startling that though the Tribunal did not grant any stay of proceedings, there is no progress in the matter at all. The applicant merrily retired in 2016. Unless he had got big clout in the department, such state of affairs would not have been possible. It must not be forgotten that if a conductor in the State Road Transport Corporation is found to have failed to issue tickets worth Rs. 2 or 5 after collecting fare, he would be dismissed from service and the question of his being reinstated does not arise. Here is a case, where the applicant is said to have accumulated the wealth worth several crores. The department was very cooperative to him and enabled him to retire, notwithstanding the fact that it is a serious case wherein hundreds of documents and hundreds of witnesses are cited. Though a set of officers, at one point of time took the matter seriously and did the needful, the subsequent incumbents seems to have become friendly to the applicant and permitted him to go scot free.

9. The plea of the applicant that there was non application of mind by the disciplinary authority is totally untenable. The respondents have categorically stated that every aspect of the matter was dealt with by the DA, before he accorded approval.

10. The charges are very serious in nature and they need to be probed. Now the matter needs to be dealt with under Rule -9 of the CCS (Pension) Rules, 1972. If we take into account the volume of documents and witnesses that are cited, it may take considerable time.

11. We, therefore, dismiss the OA by imposing a cost of Rs.50,000/- on the applicant. The amount shall be deposited with the Registry of the Tribunal within four weeks, which in

turn shall be forwarded to the Prime Minister's Relief Fund. The Respondents shall also examine the feasibility of identifying the officers and authorities, who were responsible for not taking up the proceedings against the applicant though there was no stay in the OA."

7. Mr. Navniti Prasad Singh, learned Senior Counsel appearing for the petitioner submitted that the Supreme Court in **B.V. Gopinath²** has clearly held that, Rule 14(3) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 ('Rules of 1965', in short) contemplates approval by the Disciplinary Authority at two stages; firstly at the stage of approval for initiating major penalty proceedings, i.e., approval for issuing charge sheet; and secondly at the stage of approval of the charge sheet. In the present case, the charge sheet was issued without approval of the Disciplinary Authority, as is clear from the pleadings made by the respondents herein, in the counter affidavit before the Tribunal. The charge sheet / memorandum was issued on August 28, 2014, whereas the counter affidavit states that the approval for initiation of major penalty proceedings was granted by the Disciplinary Authority on December 1, 2005.

8. He submitted that the non-application of mind by the Disciplinary Authority at both the stages of approval is clear from the minutes of the meeting held on December 11, 2003, when the then Finance Minister decided to issue fresh charge sheet to all the officials in a time bound manner, resulting in an issuance of charge memo mechanically. He stated, the issuance of such a charge sheet is contrary to the judgment of the Supreme Court in **B.V. Gopinath²** and **Chairman-cum-Managing Director, Coal India Limited and Ors. v.**

Ananta Saha and Ors., (2011) 5 SCC 142. He stated, on this ground alone, the charge sheet needs to be quashed. He has drawn our attention to various paragraphs of the judgments in support of his submission.

9. On the other hand, Mr. Ravi Prakash, learned CGSC appearing for the Union of India had filed the note sheets of the month of November 2005, which resulted in issuance of the first charge sheet dated December 1, 2006 and also the second charge sheet dated August 28, 2014, before this Court. He submitted that the second charge sheet was issued on the basis of approval of the Competent Authority at two stages; i.e., (i) approval at the time of initiation of disciplinary proceedings and (ii) approval of the charges.

10. According to him, it is clear from the note sheets that the Competent Authority has approved the initiation of major penalty proceedings against the petitioner on December 1, 2005. He also stated that the approval of the draft memorandum under Rule 14 of the Rules of 1965 was in compliance with the judgments of the Supreme Court in *B.V. Gopinath²* and *Chairman-cum-Managing Director Coal India Limited and Ors. (supra)*. In other words, the decision to initiate major penalty proceedings and the charge memo consisting of the charges, by the Competent Authority, is in compliance with the law laid down in the said judgment and as such, the Tribunal was justified in dismissing the O.A. He has sought the dismissal of the writ petition.

11. Having heard the learned counsel for the parties, the short issue which arises for consideration is, whether in terms of the judgment of the Supreme Court in the case of *B.V. Gopinath²* and *Chairman-cum-*

Managing Director, Coal India Limited and Ors. (supra), the Competent Authority has taken a decision for initiation of major penalty proceedings against the petitioner and whether the Competent Authority has approved the charge memo to be issued under Rule 14 of the Rules of 1965.

12. Before adverting to the said issue, it is important to state that, when the first charge sheet was issued to the petitioner, there was a decision of the Competent Authority of the year 2005 approving the initiation of major penalty proceedings against the petitioner.

13. The note sheets of 2014 also show that approval was granted by the Finance Minister, on the following three aspects, by referring to the approval in 2005 for initiating major penalty proceedings:

- “(i) the issue of a fresh charge-sheet to Shri S. Ramu in accordance with the approval for initiation of major penalty proceedings granted by Hon’ble FM on 1.12.2005 [page 21/N of the linked file No.DGIT(V)SZ/CBI/06/03].*
- (ii) Draft memorandum under Rule 14 of the CCS (CCA) Rules, 1965 (at pages 412-551/c).*
- (iii) Appointment of Inquiry Officer/Presenting Officer if required in the course of Departmental proceedings to be initiated against Shri S. Ramu.”*

14. The aforesaid would reveal that the Competent Authority has directed the issuance of charge sheet in terms of the approval given for initiating major penalty proceedings on December 1, 2005. The Competent Authority has also approved the Charge Memo under Rule 14 of the Rules of 1965, and had also accorded the appointment of Inquiry Officer / Presenting Officer, if required, in the course of departmental proceedings to be initiated against the petitioner.

15. The plea of Mr. Singh, learned Senior Counsel is that, there is no application of mind on the part of the Competent Authority (in the year 2003) as it was a general direction for issuance of charge sheets to many officers. We are unable to agree with the said submission for the reason that, there was a subsequent decision in 2005 of the Competent Authority for initiating proceedings with respect to the petitioner itself. In any case, the charge sheet which was challenged before the Tribunal is dated August 28, 2014, which has been issued after being approved by the Competent Authority on August 17, 2014, which clearly reveals the application of mind on the part of the Authority.

16. Having said that, insofar as the reliance placed by Mr. Singh on the judgment of the Supreme Court in the case of **B.V. Gopinath²** is concerned, the mandate of the same has been complied with. In **B.V. Gopinath²**, the facts were that, B.V. Gopinath joined the Indian Revenue Service in the year 1987, as Assistant Commissioner of Income Tax. He earned promotion as Deputy Commissioner of Income Tax in 1998, Joint Commissioner of Income Tax in 1999 and Additional Commissioner of Income Tax in 2000. While working on the aforesaid post, on September 7, 2005 / September 8, 2005, a charge sheet was served to him under Rule 14 of the Rules of 1965. The said charge-sheet was issued on the allegation that, in 2003, B.V. Gopinath was alleged to have approached one Chartered Accountant in Chennai for securing his transfer to Mumbai by offering a bribe to the P.A. to the then Minister of State (Revenue). Thus, the charge leveled against the respondent was that, he failed to maintain integrity and exhibited a conduct which is unbecoming of a government servant. During the

pendency of the inquiry proceedings, B.V. Gopinath filed OA No.800 of 2008. One of the submissions was that the charge-sheet was without jurisdiction, therefore, liable to be quashed as the charge memo had not been approved by the Competent Authority, i.e. the Finance Minister.

17. The Tribunal quashed the charge sheet dated September 7, 2005 / September 8, 2005, issued to B.V. Gopinath on the ground that, there was nothing on record to show that the Finance Minister had approved the charge-sheet. The order of the Tribunal was challenged before this Court. This Court vide order dated July 28, 2009 dismissed the writ petition. In the appeal, the Supreme Court in paragraphs 41, 44, 45 and 52 of its judgment held as under:

“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.

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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.

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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.

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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 finalised upon approval by the disciplinary authority. Undoubtedly, this Court in P.V. Srinivasa Sastry v. 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)

18. From the above, it is clear that the Supreme Court has upheld the orders of the Tribunal and this Court on the ground that the Disciplinary Authority has to approve the initiation of disciplinary proceedings against the officer, approve the charge memo and appoint Inquiry Officer / Presenting Officer. In the present case, as noted from the above, the mandate of the Supreme Court in ***B.V. Gopinath***² has been duly complied with by the respondents.

19. Insofar as the reliance placed by Mr. Singh on the judgment in of the Supreme Court in the case of ***Chairman-cum-Managing Director Coal India Limited and Ors.*** (*supra*) is concerned, the same was in the fact situation, wherein the respondent was Medical Officer in Coal India Ltd. When he was posted at Central Hospital, Asansol, the allegation was that, he abused and made an attempt to physically assault his senior officer. Disciplinary proceedings were initiated against him by issuing a charge sheet dated July 26, 1991. The Inquiry

Officer held the charge as proved against the respondent. The respondent was dismissed from service on June 17, 1993. The order of dismissal was challenged by filing a Writ Petition being CR No.11177 (W) of 1993, which was allowed by the High Court vide its order dated February 22, 2001, on the ground that the order of dismissal has been passed in contravention of the statutory rules. The appeal filed by Coal India Limited was also rejected. In view of the order of the Division Bench, the employee was reinstated.

20. Thereafter, fresh disciplinary proceedings were initiated which resulted in the dismissal of the respondent from service vide order dated February 24, 2004. The order was challenged by the respondent in Writ Petition No.22658 (W) of 2005. The said writ petition was allowed on August 16, 2007 on the ground that the Disciplinary Authority did not ensure compliance of the order of the High Court dated August 8, 2001 which stood confirmed by the Division Bench and also on the ground that the fresh inquiry was not initiated by the Competent Authority, as it was initiated by the Officer on Special Duty and had been merely seen by the CMD, ECL who was also not the Competent Authority. The proceedings can only be initiated by the CMD, CIL, thus, the entire proceedings stood vitiated. Hence, the order of dismissal was quashed.

21. In appeal, the Supreme Court has in paragraphs 30 and 31, held as under:

“30. The aforesaid order reveals that the OSD had prepared the note which has merely been signed by the CMD, ECL. The proposal has been signed by the CMD, ECL in a routine manner and there is nothing on record to

show that he had put his signature after applying his mind. Therefore, it cannot be held in strict legal sense that the proceedings had been properly revived even from the stage subsequent to the issuance of the charge-sheet. The law requires that the disciplinary authority should pass some positive order taking into consideration the material on record.

31. This Court has repeatedly held that an order of dismissal from service passed against a delinquent employee after holding him guilty of misconduct may be an administrative order, nevertheless proceedings held against such a public servant under the statutory rules to determine whether he is guilty of the charges framed against him are in the nature of quasi-judicial proceedings. The authority has to give some reason, which may be very brief, for initiation of the enquiry and conclusion thereof. It has to pass a speaking order and cannot be an ipse dixit either of the enquiry officer or the authority. (Vide Bachhittar Singh v. State of Punjab [AIR 1963 SC 395] , Union of India v. H.C. Goel [AIR 1964 SC 364] , Anil Kumar v. Presiding Officer [(1985) 3 SCC 378 : 1985 SCC (L&S) 815: AIR 1985 SC 1121] and Union of India v. Prakash Kumar Tandon [(2009) 2 SCC 541: (2009) 1 SCC (L&S) 394].) Thus, the above referred order could not be sufficient to initiate any disciplinary proceedings.”

22. Suffice to state, in the case in hand, a perusal of the note sheets placed before this Court by Mr. Ravi Prakash, as reproduced above clearly reveals that the decision to initiate major penalty proceedings was on the basis of the approval granted by the Finance Minister on December 1, 2005. The decision of the Finance Minister on December 1, 2005, reads as under:

“Approved. Please process further. Is Sh. S. Ramu under suspension? If not, on issue of charge sheet for major penalty he should be placed under suspension. Please

discuss if you wish.”

23. The decisions of the Finance Minister on December 1, 2005 and also on August 17, 2014 approving the issuance of memorandum under Rule 14 of the Rules of 1965 were with a clear application of mind. So, in that sense Mr. Ravi Prakash is right to state that the approvals were in conformity with the judgment of the Supreme Court.

24. He has also relied upon the judgment of the Supreme Court in ***Union of India & Anr. v. Kunisetty Satyanarayana, (2006) 12 SCC 28***, and stated that, it is a settled position of law that the quashing of a charge-sheet is warranted only in very rare and exceptional cases where, it is found to be wholly without jurisdiction or wholly illegal, whereas in the present case the memorandum dated August 28, 2014 was issued by the Competent Authority and there is no illegality in that respect.

25. Mr. Singh had also relied upon the judgment of the Supreme Court in the case of ***Sunny Abraham v. Union of India and Anr., CA No.7764/2021***, more specifically paragraphs 7 and 12 thereof, which read as under:

“7. The Delhi High Court in the appellant's case primarily examined the issue as to whether having regard to the aforesaid Rules, a chargesheet or charge memorandum could be given ex-post facto approval or not. The main distinguishing feature between the case of the appellant and that decided in B.V. Gopinath (supra) is that in the facts of the latter judgment, the subject charge memorandum did not have the ex-post facto approval. Stand of the respondents is that there is no bar on giving ex-post facto approval by the Disciplinary Authority to a charge memorandum and so far as the present case is concerned, such approval cures the

defect exposed in Gopinath's case. On behalf of the appellant, the expression "non est" attributed to a charge memorandum lacking approval of the Disciplinary Authority has been emphasized to repel the argument of the respondent authorities.

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12. The next question we shall address is as to whether there would be any difference in the position of law in this case vis-à-vis the case of B.V. Gopinath (supra). In the latter authority, the charge memorandum without approval of the Disciplinary Authority was held to be non est in a concluded proceeding. The High Court has referred to the variants of the expression non est used in two legal phrases in the judgment under appeal. In the context of our jurisprudence, the term non est conveys the meaning of something treated to be not in existence because of some legal lacuna in the process of creation of the subject-instrument. It goes beyond a remediable irregularity. That is how the Coordinate Bench has construed the impact of not having approval of the Disciplinary Authority in issuing the charge memorandum. In the event a legal instrument is deemed to be not in existence, because of certain fundamental defect in its issuance, subsequent approval cannot revive its existence and ratify acts done in pursuance of such instrument, treating the same to be valid. The fact that initiation of proceeding received approval of the Disciplinary Authority could not lighten the obligation on the part of the employer (in this case the Union of India) in complying with the requirement of sub-clause (3) of Rule 14 of CCS (CCA), 1965. We have quoted the two relevant sub-clauses earlier in this judgment. Sub-clauses (2) and (3) of Rule 14 contemplates independent approval of the Disciplinary Authority at both stages - for initiation of enquiry and also for drawing up or to cause to be drawn up the charge memorandum. In the event the requirement of sub-clause (2) is complied with, not having the approval at the time of issue of charge memorandum under sub-clause (3) would render the charge memorandum fundamentally defective, not capable of being validated retrospectively.

What is non-existent in the eye of the law cannot be revived retrospectively. Life cannot be breathed into the stillborn charge memorandum. In our opinion, the approval for initiating disciplinary proceeding and approval to a charge memorandum are two divisible acts, each one requiring independent application of mind on the part of the Disciplinary Authority. If there is any default in the process of application of mind independently at the time of issue of charge memorandum by the Disciplinary Authority, the same would not get cured by the fact that such approval was there at the initial stage. This was the argument on behalf of the authorities in the case of B.V. Gopinath (supra), as would be evident from paragraph 8 of the report which we reproduce below:—

“8. Ms. Jaising has elaborately explained the entire procedure that is followed in each and every case before the matter is put up before the Finance Minister for seeking approval for initiation of the disciplinary proceedings. According to the learned Additional Solicitor General, the procedure followed ensures that entire material is placed before the Finance Minister before a decision is taken to initiate the departmental proceedings. She submits that approval for initiation of the departmental proceedings would also amount to approval of the charge memo. According to the learned Additional Solicitor General, CAT as well as the High Court had committed a grave error in quashing the departmental proceedings against the respondents, as the procedure for taking approval of the disciplinary authority to initiate penalty proceeding is comprehensive and involved decision making at every level of the hierarchy.”

26. Suffice to state that the said judgment is clearly distinguishable on the facts, inasmuch as in the said case, the charge sheet was given *ex-post facto* approval, which according to the Supreme Court, was defective as approval cannot revive / rectify the acts done in pursuance

of such instrument, treating the same to be valid. It is not the case here.
27. In view of our discussion above, we do not see any merit in the petition, the same is dismissed.

CM APPLs. 35420/2021 & 46480/2022

In view of the above conclusion, the applications are dismissed as infructuous.

V. KAMESWAR RAO, J.

ANOOP KUMAR MENDIRATTA, J.

MAY 29, 2023/aky



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