

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11085 of 2012

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Mazda Khatoon, Wife of Md. Rafi Alam Resident of Ram Sagar, Mohalla-
Nadraganj, P.S.- Civil Lines, Gaya, District- Gaya

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Secretary, Department of Social Welfare, Government of Bihar, Patna
3. The Joint Secretary, Department of Social Welfare, Government of Bihar, Patna
4. The Deputy Secretary, Department of Social Welfare, Government of Bihar, Patna
5. The Divisional Commissioner, Magadh Commissionery, Gaya
6. The District Magistrate, Aurangabad
7. The Director, Integrated Child Development Scheme, Patna
8. The Deputy Director, Welfare, Magadh Commissionery, Gaya
9. The Sub-Divisional Officer, Aurangabad, District- Aurangabad

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Umesh Prasad Singh, Sr. Advocate. Mr. Vaibhava Veer Shankar, Advocate. Mr. Kumar Gaurav, Advocate.
For the State	:	Mr. Niraj Kumar, AC to GA-10.

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 30-07-2024

Heard Mr. Umesh Prasad Singh, learned senior counsel along with Mr. Vaibhava Veer Shankar and Mr. Kumar Gaurav, learned counsel appearing on behalf of the petitioner and Mr. Niraj Kumar, learned AC to GA-10 for the State.

2. In continuation of the order dated 18.07.2024, learned counsel appearing on behalf of the State refers to the noting part of the record, especially to answer the query of this



Court, as to whether the charge memo under consideration was approved by the State Government. He submits that by filing supplementary affidavit, he has brought on record the noting dated 02.01.2008 in which the charge memo was approved by the Minister, Social Welfare Department and thereafter the same got approval of the State Government on 16.01.2008.

3. This Court, at this stage, made a query to verify the records available with him. Learned counsel informs that there is only approval of the Minister and no Cabinet decision was taken in respect of the charge against the petitioner nor it was one of Agenda of Cabinet meeting recorded in file. Learned State counsel in spite of the admitted factual position submits that charge Memo No. 171 dated 16.01.2008 was approved by the State Government.

BRIEF FACTS

4. The petitioner was appointed on the post of Child Development Project Officer and while she was posted at Aurangabad, in respect of alleged illegality and irregularity, tampering with the government records and not following the Rules, the complaints received from 74 complainants were examined by the S.D.O., Aurangabad. Prima facie, the allegation was found true. A chargesheet in Form 'ka' was



prepared, signed by the Collector and SDO and communicated by the Deputy Secretary under Rule 55 for initiation of departmental proceeding and after holding of inquiry a proposal for dismissal of the petitioner from the service was suggested by the inquiry officer and after approval of the Government, vide Notification No. 1385 dated 25.03.2010, the petitioner was dismissed from service by the Government. The petitioner, thereafter, had preferred Appeal which remained pending and being aggrieved, the petitioner had preferred C.W.J.C. No. 12080 of 2010, which was disposed of vide order dated 25.11.2011, with an observation to dispose of the Appeal expeditiously. Thereafter, the Appeal was converted in Review under Section 25 and the Review order was passed affirming the penalty order as contained in Memo No. 1731 dated 28.03.2012. Aggrieved with the punishment order as contained in Memo No. 1385 dated 25.03.2010 and Revisional Order as contained in Memo No. 1731 dated 28.03.2012, the petitioner has preferred the present writ petition.

SUBMISSION ON BEHALF OF THE PETITIONER

5. Mr. Umesh Prasad Singh, learned senior counsel appearing on behalf of the petitioner submitted that the show cause notice issued by the Deputy Secretary, Welfare Department, Government of Bihar on 14.01.2009 (Annexure-9)



cannot be considered to be approved and issued under the authority of governor as required by the mandate of Rule 16 and Article 166 of the Constitution of India and Rules of Executive Business. In this regard, the petitioner had filed her objection dated 03.06.2008 (Annexure-6). In spite of her objection, the Enquiry Officer proceeded to hold inquiry without jurisdiction. The petitioner was forced to participate in the void departmental inquiry. Learned counsel referring to the order sheet dated 29.04.2008 of the inquiry proceeding submitted that the written statement of the petitioner denying the charges was not considered and a final inquiry report was submitted before the Disciplinary Authority who had issued second show cause without considering the irregularity in conduct of the departmental inquiry. The Enquiry Officer was made aware that the charge memo is required to be approved by the government, despite of the charge being not approved by the Government, the Disciplinary Authority passed order of dismissal against the petitioner as contained in Memo No. 1385 dated 25.03.2010. The main contention on behalf of the petitioner is that the charge sheet issued to the petitioner as communicated vide Memo No. 171 dated 16.01.2008 was not approved by the Government, being not signed by the Principal Secretary, Social



Welfare Department (Signature left blank, discussed in the order dated 18.07.2024). Learned counsel further clarified that there was no occasion for the Deputy Secretary to refer Rule 55 when the charge memo was issued in form 'ka' under the provision of Bihar Civil Services (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as "Bihar CCA Rules, 2005) which had already come into effect and as such very initiation of the proceeding being illegal, arbitrary and without the authority of law, the entire proceeding is required to be set aside and quashed. Learned counsel in support of his argument has relied upon the law laid down by the Apex Court in the case of **Union of India and Others Vs. B. V. Gopinath, reported in (2014) 1 SCC 351**, which was reconsidered in the case of **Sunny Abraham Vs. Union of India & Others, reported in (2021) 20 SCC 12**.

6. Learned counsel in alternative submitted that even otherwise the penalty order of dismissal requires interference of this Court considering the fact that the petitioner was not supplied day to day order sheet of inquiry proceeding and was forced to obtain the copy of the order sheet under Right to Information Act and from the order sheet it would appear that the charge was drawn by the Sub Divisional Officer and the



presenting officer had no knowledge about it. Thereafter there was change of presenting officer by calling Sub-Divisional Officer who vide order dated 13.03.2008 had sought show cause from the petitioner to file her reply on or before 26.03.2008. Petitioner filed her show cause on 03.04.2008, on which date the presenting officer was absent calling for fixing of next date on 17.04.2008. The petitioner applied for time and subsequently the date was fixed on 29.04.2008, but nobody had appeared due to change of presenting officer calling for adjournment of the proceeding by fixing date on 20.05.2008. The petitioner had requested for supply of certain documents and filed her supplementary show cause, thereafter, the matter got delayed for one reason or another. In these background, learned counsel submitted that the inquiry was not held in the manner prescribed. No document was proved by any witness or any witness was allowed to be examined. Even out of total 74 complainants, only 4 persons were examined by the Sub Divisional Officer in an *ex-parte* inquiry held by him. The petitioner was not given any opportunity to cross-examine them and the petitioner was not allowed to submit her written statement.

7. Learned counsel emphatically submitted that the



petitioner has been made victim of *malafide* action of Jayant Kumar, Sub Divisional Officer who had managed to collect the complaint from 74 complainants and had prepared the content of charge while holding the post of Sub-Divisional Officer and he was the one who was again appointed as presenting officer which shows the *malafide* on the part of the Disciplinary Authority. Learned counsel submitted that the allegation of committing illegality and irregularity in selection of Aanganbari Sevika was never questioned immediately after the selection and subjective action on the part of the Sub Divisional Officer do not call for consideration for initiation of departmental proceeding against the petitioner, in absence of any departmental evidence on record to approve the alleged charges against the petitioner. In these background, learned counsel submitted that the present being a case of no evidence has relied on the law laid down by the Apex Court in the case of **H. C. Goyal Vs. Union of India, reported in AIR 1964 SC 364.** Learned counsel accordingly submitted that the Principal Secretary, Social Welfare Department should not have exercised appellate jurisdiction considering the fact that against the order of the Government, there is provision of Revision under Rule 24(2) of the Bihar CCA Rules, 2005. On this ground, he also



submitted that the order contained in Memo No. 1385 dated 25.03.2010 passed by the Disciplinary Authority and the appellate order contained in Memo No. 1731 dated 28.03.2012 are fit to be set aside and quashed.

SUBMISSION ON BEHALF OF RESPONDENTS

8. *Per contra*, Mr. Niraj Kumar, learned counsel appearing on behalf of the State submitted that vide Letter No. 4163 dated 22.10.2007 issued by the District Magistrate, Aurangabad, the charges against the petitioner were received in form 'ka' in respect of illegality and irregularity committed in selection of Anganwadi Sevika, tampering with the government documents and not following the government Rules which called disciplinary action against the petitioner and pursuant to which vide Resolution No. 171 dated 16.01.2008, a departmental proceeding was initiated against the petitioner. State counsel has pointed out that the inquiry officer after holding proper inquiry and giving ample opportunity of hearing to the petitioner to file her written statement has found all the charges proved against the petitioner recommending for dismissal of the petitioner from service as per the provision of Bihar CCA Rules, 2005 as amended in 2007. The petitioner against the order of dismissal had filed C.W.J.C. No. 12080 of 2010. This Court vide order dated 25.11.2011 disposed of the



writ petition with direction to “dispose of the Appeal filed by the petitioner”, which the petitioner had already filed on 06.04.2010. Since the petitioner had filed Appeal, it was clarified that as per the provision of Bihar CCA Rules, 2005, remedy of Appeal is not provided against the order of Government. Accordingly, the Appeal was treated as Review under Rule 24(2) of Bihar CCA Rules, 2005. The Review Petition was placed before the Cabinet and the Cabinet in its meeting dated 27.03.2012 vide Agenda No. 9 rejected the Review Petition and order was issued and communicated vide notification contained in Memo No. 1731 dated 28.03.2012 giving reasons for rejection of the review petition of the petitioner. Learned counsel further submitted that the petitioner has not been able to make out a case for interference by this Court considering the fact that proper opportunity of hearing was given to the petitioner and after submission of the departmental inquiry report, a show cause was issued to the petitioner.

9. Learned counsel further submitted that in compliance of the order dated 18.07.2024, by way of supplementary counter affidavit, the answering respondent has been able to bring on record the Resolution No. 171 dated



16.01.2008 and submitted that after the approval of the Disciplinary Authority cum Hon'ble Minister, Social Welfare Department, the departmental proceeding was initiated against the petitioner in which the Deputy Director, Magadh Division, Gaya was made Conducting Officer and the S.D.O., Gaya was made Presenting Officer. The conducting officer after having found that the Resolution No. 171 dated 16.01.2008 is not signed by the Principal Secretary returned the charge memo.

10. Learned counsel proceeded to clarify that after verifying the records, it was found found that the charge memo was approved by the Hon'ble Minister, Social Welfare Department, but due to clerical mistake, the resolution was sent to the conducting officer without obtaining the signature of the Principal Secretary on charge memo. Thereafter, the file was put up before the Principal Secretary for his signature on the approved charge memo who signed on 18.02.2008 and the same was sent to the conducting officer vide Memo No. 490 dated 19.02.2008. Learned counsel further submitted that so far as the claim of the petitioner that, Jayant Kumar, SDO, Aurangabad who was not in good terms with the petitioner was made presenting officer, is not acceptable, because in absence of any evidence to that effect or request made by the petitioner in



support of his allegation, the departmental inquiry cannot be questioned. Learned counsel, on these background, submitted that there is no procedural infirmity in conducting departmental inquiry and after due approval of the government as contained in Memo No. 171 dated 16.01.2008, the departmental proceeding was initiated against the petitioner after the charge memo was approved by the disciplinary authority cum Hon'ble Minister, Social Welfare Department on 02.01.2008, which was subsequently signed by the Principal Secretary on the approved charge memo on 18.02.2008 and the same was sent to the conducting officer vide Memo No. 490 dated 19.02.2008. Based on the above fact, learned counsel submitted that the entire proceeding is vitiated in the eye of law.

ANALYSIS

11. In the facts and circumstances of the case, the main issue involved in the present writ petition is as to whether in absence of grant of approval / sanction of the charges by the Government and having not issued under the authority of Governor, issuance of charge memo in Prapatra 'ka' is in accordance with the provision of Rules 16 and 17 and whether the procedure for dismissal of the petitioner from service has been followed?



12. The State Government has framed Bihar CCA Rules, 2005 as per the mandate of Article 309 and Rule 16 provides that the disciplinary action can only be taken by the appointing authority. In the present case, vide order dated 18.07.2024, I have already dealt with the charge memo dated 06.10.2007 that the same never got the approval of the State Government and now even considering the fact that the same got approval of the Minister of the Department, I don't find that the requirement of Article 311 of the Constitution and Rule 16 of Bihar CCA Rules, 2005 has been followed in the case of the petitioner.

13. In this regard, I find it apt to refer Paragraph Nos. 40, 41, 49, 50 and 52 to the decision in **B. V. Gopinath (supra)**, which are, *inter alia*, reproduced hereinafter:

“40. Article 311(1) of the Constitution of India ensures that no person who is a member of a civil service of the Union or an all-India service can be dismissed or removed by an authority subordinate to that by which he was appointed. The overwhelming importance and value of Article 311(1) for the civil administration as well as the public servant has been considered, stated and restated by this Court in numerous judgments since the Constitution came into effect on 19-1-1950 (sic). Article 311(2) ensures that no civil servant is dismissed or reduced in rank except after an inquiry held in accordance with the rules of natural justice. To effectuate the guarantee contained in Article 311(1) and to ensure compliance with the mandatory requirements of Article 311(2), the Government of India has promulgated the CCS (CCA) Rules, 1965.

41. Disciplinary proceedings against the respondent herein were initiated in terms of Rule 14 of the aforesaid Rules. Rule 14(3) clearly lays down that where it is proposed to hold an inquiry against a government servant under Rule 14 or Rule 15, the disciplinary



authority shall draw up or cause to be drawn up the charge-sheet. Rule 14(4) again mandates that the disciplinary authority shall deliver or cause to be delivered to the government servant, a copy of the articles of charge, the statement of the imputations of misconduct or misbehaviour and the supporting documents including a list of witnesses by which each article of charge is proposed to be proved. We are unable to interpret this provision as suggested by the Additional Solicitor General, that once the disciplinary authority approves the initiation of the disciplinary proceedings, the charge-sheet can be drawn up by an authority other than the disciplinary authority. This would destroy the underlying protection guaranteed under Article 311(1) of the Constitution of India. Such procedure would also do violence to the protective provisions contained under Article 311(2) which ensures that no public servant is dismissed, removed or suspended without following a fair procedure in which he/she has been given a reasonable opportunity to meet the allegations contained in the charge-sheet. Such a charge-sheet can only be issued upon approval by the appointing authority i.e. Finance Minister.

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.

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.

*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* [(1993) 1 SCC 419 : 1993 SCC (L&S) 206 : (1993) 23 ATC 645] 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.”

14. The Apex Court in the case of **State of Tamilnadu Vs. Pramod Kumar, IPS & Anr.** reported in **2018 (17) SCC 677**, relying on the judgment passed in **B. V. Gopinath (supra)** has made following observations in Paragraph Nos. 14 to 19, which are, *inter alia*, reproduced hereinafter.

“14. Mr Giri contended that the first respondent is involved in a serious crime which is pending trial. He stated that the initial suspension was under Rule 3(2) of the All India Services (Discipline and Appeal) Rules, 1969 for being detained in custody for a period of more than 48 hours. He submitted that periodical reviews were being conducted to consider the continuance of the suspension of Respondent 1. He placed before us the proceedings of the Review Committees and the orders passed pursuant to the recommendations, extending the period of suspension. Reinstatement of the first respondent would not be in public interest and would also have an adverse effect on the ongoing trial, according to Mr Giri.

15. Mr Giri further contended that the High Court committed an error in quashing the charge memo on the ground that it was not approved by the disciplinary authority. He submitted that a plain reading of Rule 8 of the All India Services (Discipline and Appeal) Rules, 1969 would indicate that initiation of disciplinary proceedings and issuance of a charge memo are at the same stage. In other words, the stage of initiation is not different from the stage of issuance of the charge memo. Mr Giri submitted that Union of India v. B.V. Gopinath [Union of India v. B.V. Gopinath, (2014) 1 SCC 351 : (2014) 1 SCC (L&S) 161] was not correctly decided. According to him, approval of the disciplinary authority at the initial stage and the stage of initiation of the disciplinary proceedings is sufficient and there is no need for an approval of the charge memo by the disciplinary authority as held in the above judgment. He



also placed before us the Tamil Nadu Government Business Rules, 1978 in support of his submissions.

16. On behalf of Respondent 1, Mr P. Chidambaram submitted that there is no need for the continuation of suspension of Respondent 1, especially, when no material was brought to the notice of the Court about any attempt made by him to tamper with the evidence. He submitted that mere apprehension of Respondent 1 influencing the witnesses, in case he is reinstated, is not a sufficient ground to deprive him the relief of reinstatement. He also submitted that the criminal case against him is dormant at present in view of the order passed by the Special Court closing the criminal case subject to further directions of the High Court in Writ Petition No. 21801 of 2012 after hearing the first respondent. He pointed out that the High Court has given liberty to the appellant to appoint the first respondent in a non-sensitive post. Mr Chidambaram relied upon the judgment of this Court in *B.V. Gopinath [Union of India v. B.V. Gopinath, (2014) 1 SCC 351 : (2014) 1 SCC (L&S) 161]* and submitted that the issue pertaining to the approval of the disciplinary authority at the stage of issuance of a charge memo is no more *res integra*. He submitted that Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 and Rule 8 of the All India Services (Discipline and Appeal) Rules, 1969 are in *pari materia*.

17. There are two issues which arise for consideration in this case. One pertains to the validity of the charge memo and the other relates to the continuance of Respondent 1 under suspension. As the two issues are distinct and not connected to each other, we proceed to deal with them separately.

Validity of the charge memo

18. Rule 8 of the All India Services (Discipline and Appeal) Rules, 1969 prescribes a procedure for imposing major penalties. A major penalty specified in Rule 6 cannot be imposed except after holding an enquiry in the manner prescribed in Rule 8. Where it is proposed to hold an enquiry against a member of the service under Rule 8, the disciplinary authority shall “draw up or caused to be drawn up” the substance of the imputation of misconduct or misbehaviour into definite and distinct article of charge. The Rule further provides for an opportunity to be given to the delinquent to submit his explanation, the appointment of an inquiring authority and the procedure to be followed for imposition of a penalty with which we are not concerned in this case. The disciplinary authority as defined in Rule 2(b) is the authority competent to impose on a member of the service any of the penalties specified in Rule 6. Rule 7 provides that the authority to institute proceedings and to impose penalty on a member of All India Service is the State Government, if he is serving in connection with the affairs



of the State. There is no doubt that the Government of Tamil Nadu is the disciplinary authority. The authority to act on behalf of the State Government as per the Business Rules is the Minister for Home Department. There is no dispute that the Hon'ble Chief Minister was holding the said department during the relevant period (2011-2016).

19. Matters pertaining to disciplinary action against IPS, IAS and IFS Officers had to be dealt with by the Chief Minister as per Standing Order No. 2 dated 9-1-1992 issued by the Chief Minister of Tamil Nadu under Rule 35(4) of the Business Rules which reads as follows:

“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 T.N. CS (CC & A) Rules, alone should be circulated to the Chief Minister.

In the case of District Revenue Officers, the files should be circulated to the Chief Minister only at the stage of imposition of penalty after obtaining the explanation of the officers.

In the case of Joint Secretary, Deputy Secretary where action is contemplated under Rule 17(b) of the T.N. CS (CC & A) Rules such cases should be circulated by the Chief Secretary to the Chief Minister.

In respect of all other officers files should be circulated to the Chief Minister as per the Business Rules.”

15. To consider as to whether the charge memo contained in Memo No. 171 dated 16.01.2008 (Annexure-3) is in principle decision taken by the government in view of the subsequent approval of the Minister of the Department and issued under the authority of the Governor by the Principal Secretary, I find to reproduce Rules 16 and 17(3) in this regard of Bihar CCA Rules, 2005



“16. Authority to institute proceedings.-

(1) The Government or appointing authority or any authority to which the appointing authority is subordinate or any other authority empowered by general or special order of the Government may- (Emphasis supplied)

(a) institute disciplinary proceedings against any Government Servant;

(b) direct a disciplinary authority to institute disciplinary proceedings against any Government Servant on whom that disciplinary authority is competent to impose any of the penalties specified in Rule 14 under these Rules.

(2) A disciplinary authority, competent under these Rules to impose any of the penalties specified in clauses (i) to (v) of Rule 14, may institute disciplinary proceedings against any government servant for the imposition of any of the penalties specified in clauses [(vi) to (xi)] of Rule 14 notwithstanding that such disciplinary authority is not competent under these Rules to impose any of the penalties under clauses [(vi) to (xi)] of Rule 14.

17. Procedure for imposing major penalties.-

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

(i) the substance of the imputations of misconduct or misbehaviour as a definite and distinct article 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 such document by which, and a list of such 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, such statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article of charge 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.”

16. It has been admitted by the respondent in supplementary counter affidavit filed pursuant to the order dated 18.07.2024 passed by this Court. It has been stated that the Minister, Social Welfare Department had sent the file to the



Conducting Officer who without obtaining the signature of the Principal Secretary on the charge memo and subsequent to that the file was put up before the Principal Secretary for obtaining his signature on the charge memo. The Principal Secretary had signed on the charge memo on 18.02.2008 and thereafter the same was sent to the conducting officer vide Memo No. 490 dated 19.02.2008. In this regard, I have already taken note of the fact in the order dated 18.07.2024 that the file was not sent to the Cabinet for the approval of the Government in violation of Rule 16 of the Bihar CCA Rules, 2005 and Article 166 of the Constitution of India. In spite of adjournments, the respondents have not been able to produce the noting from the file that the matter moved to the Government and approval of the charge was one of the Agenda before the Cabinet. The Enquiry Officer after holding of inquiry had recommended for dismissal of the petitioner from service can only be said to be an empty formality by putting a horse before a cart. The petitioner on the basis of the void inquiry was dismissed from service as communicated vide Memo No. 1385 dated 25.03.2010 contained in Annexure-2 to the writ petition allegedly issued under the order of the Governor after approval of the Government cannot be sustained in absence of the charge



having approved by the State. Law, in this regard, is well settled in the case of **B. V. Gopinath (supra)** and **Sunny Abraham (Supra)**. Even considering the fact that Revisional Authority has proceeded in compliance of the order dated 25.11.2011 passed in C.W.J.C. No. 12080 of 2010, I don't find the same calls for any consideration in absence of any approval of the charge memo by the State Government.

17. The Hon'ble Supreme Court, in the case of **State of Punjab Vs. Davinder Pal Singh Bhullar & Ors. (Arising out of SLP (Crl.) nos. 6503-6509 of 2011, Sumedh Singh Saini Vs. Davinder Pal Singh Bhullar & Ors.** has held that".....*sublato fundamento cadit opus*" meaning thereby that foundation being removed, structure/work falls, comes into play and applies on all scores in the present case.....";

Since the foundation of initiation of the departmental proceeding and its conduct have been shown to be entirely illegal, the foundation has to be necessarily removed, as a result of which the structure/work of punishment given to this writ petitioner stood, is bound to fall.

18. I find it proper, in this regard, to reproduce the order dated 25.11.2011 passed in C.W.J.C. No. 12080 of 2010, wherein the co-ordinate Bench of this Court had directed to



dispose the statutory Appeal (incorrectly mentioned in place of Review) of the petitioner, *inter alia in following terms:*

“Heard learned Counsel for the petitioner and the State.

The petitioner was subjected to a departmental proceeding on a memo of charges dated 6.10.2007. An enquiry report came to be submitted on 22.12.2008 of guilt. Second show cause notice was issued on 14.1.2009 leading to an order of punishment dated 25.3.2010 removing her from service.

Counsel for the State from the counter affidavit raises a preliminary objection that the petitioner has already preferred a statutory appeal.

That is acknowledged by the petitioner at para 32 of the writ application.

If there is a statutory alternate remedy of appeal preferred earlier in time and in which all issues of fact and law can be better examined initially there is no occasion for the court to go into the merits at this stage usurping the Appellate Jurisdiction.

Let the appeal be disposed off expeditiously by a reasoned and speaking order preferably within a maximum period of three months from the date of receipt and/or presentation of a copy of this order before the appellate authority, if not already disposed.

The writ application stands disposed.”

19. In view of the facts and circumstances and law laid down by the Apex Court, I don't find proper to pass order on the merits of the allegation in spite of the fact that the petitioner has given information in Para-31 of the writ petition *“that the petitioner has reliably learnt that the file regarding the Departmental proceeding has been processed on three counts that the petitioner was caught red handed in a criminal case and the present departmental proceeding and question raised by Mrs. Renu Devi, Hon'ble Member of State Legislature in the Assembly have been formed the basis of the order of discharge from service and the petitioner has reliably learnt that on these*



three counts the file was sent to Bihar Public Service Commission for concurrence on the proposed punishment of discharge from service". The State has not supported the said fact or controverted in their counter affidavit or supplementary counter affidavit filed before this Court.

20. Considering the fact that the charge memo was never put up for approval before the Government is in complete violation of Rules 16 and 17 of Bihar CCA Rules, 2005, as amended up to date and Article 166 of the Constitution of India and the penalty order though has been issued under the authority cannot be sustained in the eye of law. Accordingly, I set aside the punishment order as contained in Memo No. 1385 dated 25.03.2010 and Revisional Order as contained in Memo No. 1731 dated 28.03.2012 in light of the law laid down in the case of **Bachhittar Singh Vs. State of Punjab & Anr. reported in AIR 1963 SC 395 and B. V. Gopinath (supra).**

21. In light of the recorded evidence, if the State Government still finds that the petitioner should be subjected to disciplinary action, in that case the petitioner is directed to be re-instated and thereafter the petitioner is required to be put under suspension and can take any action in accordance with law.



22. If the petitioner finds it proper, she can represent before the appropriate authority for considering her case.

23. The writ petition stands disposed of.

24. There shall be no order as to costs.

(Purnendu Singh, J)

mantreshwar/-

AFR/NAFR	
CAV DATE	N.A.
Uploading Date	09.08.2024
Transmission Date	N.A.

