

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16178 of 2021

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Md. Irshad Ansari Son of Md. Abdus Shakoor Resident of Patrol Line
Ishapur, Aman Colony, Police Station- Phulwarisharif, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Education Department, Bihar, Patna.
2. The Director (Administration)-cum-Additional Secretary, Education Department, Bihar, Patna.
3. The Director, Primary Education-cum-Conducting Officer, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Amit Srivastava, Sr. Advocate Mr. Mukesh Kumar Thakur, Advocate
For the State	:	Mr. Madhaw Pd. Yadaw (GP-23) Ms. Meera Singh, AC to GP-23

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 15-04-2025

Heard Mr. Amit Srivastava, learned senior counsel

along with Mr. Mukesh Kumar Thakur, learned counsel

appearing on behalf of the petitioner and Mr. Madhaw Prasad

Yadaw, learned GP-23 along with Ms. Meera Singh, learned AC

to GP-23 for the State.

2. The petitioner in paragraph no. 1 of the present writ
petition has sought *inter alia* following relief(s), which is
reproduced hereinafter:

"I. For quashing of the Notification bearing Memo No. 395 dated 17.09.2020 issued under the signature of the respondent no. 2 whereby and whereunder the petitioner has been visited with the punishment of dismissal from services and it has been ordered that the petitioner shall not get anything except subsistence allowance during the



suspension period.

II. For direction upon the respondent authorities to bring on record the order passed upon review application filed by the petitioner on 12.11.2020 against the order of dismissal and thereafter quash the said order.

III. For direction upon the respondent authorities to reinstate the petitioner in services with all consequential monetary benefits.

IV. For any other relief/reliefs to which the petitioners may be entitled to."

BRIEF FACTS:

3. Brief facts of the case are that the petitioner was appointed as an officer in the cadre of Bihar Education Service, Class-II, in the year 2005 on the basis of recommendation of the Bihar Public Service Commission. The petitioner was on probation from 01.06.2006 to 20.07.2011 and after completion of probation period, he was posted as the District Programme Officer, Supaul on 27.07.2011 and thereafter, he was transferred and posted as District Programme Officer at Bhojpur on 10.12.2014. While the petitioner was posted at Bhojpur, the charges in respect of changing the list of schools, which were approved by the District Magistrate-cum-Collector for construction of Additional Class Room had misappropriated public money amounting Rs. 10,00,10,520/- to give financial benefit to the consultancy company, namely, Matriye Consultancy Services Pvt. Ltd., which was reported to the department by the State Project Director, Bihar Education



Project Council, Patna *vide* Letter No. 6025 dated 01.08.2016. The petitioner was put under suspension *vide* order contained in Memo No. 778 dated 01.08.2016. Thereafter, the Bihar Education Project Council, Patna, *vide* Letter No. 6903 dated 16.09.2016, forwarded the memo of charge contained in 'Prapatra-K' to the department for approval. The petitioner was asked to file his statement *vide* Letter No. 883 dated 28.09.2016. The petitioner categorically denied all the 8 charges levelled against him. It was opined to take disciplinary action against the petitioner *vide* Memo No. 781 dated 29.11.2017. The Director, Primary Education was nominated as conducting officer and an officer authorised by State Project Director, Bihar, Education Project Council was appointed as Presenting Officer. The petitioner had submitted his explanation before the Conducting Officer denying all the charges levelled against him. In enquiry, charges against the petitioner were found to be proved. The petitioner had submitted his written statement on 12.06.2018. The Disciplinary Authority passed order contained in Memo No. 395 dated 17.09.2020 inflicting major punishment of dismissal from services. The petitioner had preferred Review on 12.11.2020, which is pending since then. Aggrieved by the same, the petitioner has filed the present writ petition.



SUBMISSION ON BEHALF OF THE PETITIONER:

4. Learned senior counsel appearing on behalf of the petitioner submitted that there is gross violation of principle of natural justice in the conduct of departmental enquiry, which is not in accordance with the provision of Rule 17 of the Bihar CCA Rules, 2005. The charge memo is not supported with the list of documents. He further submitted that in the entire enquiry held against the petitioner, the enquiry officer has neither given the list of the schools approved in support of the allegation that the petitioner had changed the list of schools, which was approved by the District Magistrate nor in support, any document/evidence has been adduced nor any of the employee of the company was made witnesses to prove the embezzlement of public money against the petitioner calling for major penalty. Save and except, the charge of changing the approved list of schools taking into the infirmity in conduct of the enquiry as laid down particularly in Sub-Rule 14 of Rule 17 of the Bihar CCA Rules, 2005 he submitted that the enquiry officer and the disciplinary authority have totally failed to prove the oral, as well as, the documentary evidence, the article of charge framed. The Presenting Officer had not examined the witness and the petitioner too was not given any opportunity to cross-examine



the witnesses.

5. In support of the aforesaid contention and the procedure prescribed in Sub-Rule 14 of Rule 17 of the Bihar CCA Rules, 2005, learned counsel has relied on the law laid down by the Apex Court in the case of ***Roop Singh Negi Vs. Punjab National Bank and others*** reported in (2009) 2 SCC 570, which has been followed recently in ***Satyendra Singh vs. the State of Uttar Pradesh & Anr.*** reported in 2024 SCC OnLine SC 3325. Learned counsel relying on the aforesaid judgment further submitted that in paragraph no. 14 of the ***Satyendra Singh (Supra)***, the Apex Court taking note of the observation made in its judgment passed in ***Roop Singh Negi (Supra)***, has concluded that mere production of documents is not enough, contents of documentary evidence have to be proved by the examining witnesses. Based on such procedural lapses in conduct of enquiry, learned counsel questioned the action of the Disciplinary Authority, insofar as, inflicting major punishment of dismissal from the service. Learned senior counsel submitted that in paragraph no. 8 of the written statement filed in reply of the second show-cause, the petitioner has pleaded his innocence and has submitted that the petitioner is nowhere concerned with any middle man in disbursement of



the fund in question, which has been transferred into the account of the school concerned in Punjab National Bank. Learned senior counsel submitted that the transparency is there, insofar as, disbursement of fund is concerned and the petitioner cannot be held, without any evidence, to have involved in any manner in misappropriation of public money. The procedural lapses, which is evident from the disciplinary action taken against the petitioner right from the level of holding of an enquiry in not furnishing of the required documents along with the list of evidence, calls for interference of this Court.

SUBMISSION ON BEHALF OF THE RESPONDENT:

6. *Per contra*, learned counsel appearing on behalf of the State submitted that altogether eight charges were framed and all the charges were proved against the petitioner. The findings of the Disciplinary Authority, insofar as, imposition of major punishment is concerned, is on the alleged ground that misappropriation of ten crore of government exchequer, which has been fraudulently embezzled by the petitioner in the name of the allotment of fund for the construction of school building by interpolating the school list for which being a D.P.O. (SSA), the petitioner was not authorized to do so. Learned counsel further submitted that the disciplinary action was taken on the



basis of enquiry made at the level of the State Project Director, Bihar Education Project Council and on the basis of report submitted by the State Project Director, the petitioner was put under suspension and, thereafter, memo of charge was served upon the petitioner and show-cause was asked. There is no infirmity, insofar as, following the procedure laid down under Rules, 12, 13 and 14 of the Bihar CCA Rules, 2005. He further submitted that the charges are clearly based on the evidence and in the written statement filed on behalf of the petitioner in reply of the second show-cause, the petitioner has not specifically answered, as to why, after approval in respect of the schools, the petitioner has changed the list of schools, therefore, based on the materials available on record with regard to the embezzlement of the public money, the petitioner has been held guilty for defalcation of ten crore and no interference is required with the impugned order contained in Memo No. 395 dated 17.09.2020.

ANALYSIS & CONCLUSION:

7. Heard the parties.

8. Having considered the rival submission made on behalf of the parties, as well as, the fact that review application preferred by the petitioner on 12.11.2020 against the order of dismissal from service contained in Memo No. 395 dated



17.09.2020 is still pending. The question arises, as to whether, the *quasi judicial* authority can sit tight over its statutory function for any reason, which has not been denied in the counter affidavit and the supplementary counter affidavit having been filed on behalf of the respondent no. 2- the Director (Administration)-cum-Additional Secretary, Education Department, Bihar, who has the power of review, whether the writ petition is maintainable.

9. The Apex Court, time and again, has emphasised that delay in decision by the quasi judicial authorities can be challenged under Article 226 of the Constitution of India. It is to be noted that the failure to decide the matter within the statutory period could amount to procedural irregularity. The statutory remedy of Review is provided as per the provision of Sub-Rule 2 of Rule 24 of the Bihar CCA Rules, 2005. The Chief Secretary must be more concerned in observing such a situation, particularly, where financial embezzlement is in question on the basis of allegation made against a government servant.

10. In the present case, the question arises whether the petitioner has been proceeded in accordance with law and the charge of embezzlement against the petitioner of rupees ten crore has been framed on the basis of evidence?



11. Whether the dismissal of the petitioner from service on the basis of allegation contained in charge memo containing in 'Prapatra-K', which was served to the petitioner on 16.09.2016 containing eight charges and all the charges were found to be proved against the petitioner in course of enquiry. It is well settled law that the procedural, as well as, the legal infirmity in conduct of the enquiry, which is a quasi judicial enquiry can be a ground of interference. In the said background, it has to be seen whether there has been any infraction of Sub-Rule 3 of Rule 17 of the Bihar CCA Rules, 2005?

12. The petitioner alleges that the enquiry officer did not supply the list of witnesses and the evidences. Even any employee of the company was not made witness to the charge-sheet and was not examined or cross-examined in course of enquiry. Sub-Rule 14 of Rule 17 of the Bihar CCA Rules, 2005 mandates that on the date fixed for enquiry, the oral and documentary witnesses, by which the article of charges are proposes to be proved shall be produced by or on behalf of the Disciplinary Authority. The witnesses shall be examined by or on behalf of the Presenting Officer and may be cross-examined by or on behalf of the government servant.

13. In the present case, record reveals that the



Presenting Officer was present but he did not produce any evidence either oral or documentary, and in this regard, I find it apt to reproduce paragraphs no. 13 to 17 of the recent judgment passed by the Apex Court in the case of **Satyendra Singh (Supra)**, which *inter alia* are as follows:

"13. This Court in a catena of judgments has held that the recording of evidence in a disciplinary proceeding proposing charges of a major punishment is mandatory. Reference in this regard may be held to Roop Singh Negi v. Punjab National Bank and Others and Nirmala J. Jhala v. State of Gujarat and Another.

14. In the case of Roop Singh Negi¹¹, this Court held that mere production of documents is not enough, contents of documentary evidence have to be proved by examining witnesses. Relevant extract thereof reads as under: -

*"14. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, *inter alia*, was placed by the enquiry officer on the FIR which could not have been treated as evidence.*

15. We have noticed hereinbefore that the only basic evidence whereupon reliance has been placed by the enquiry officer was the purported confession made by the appellant before the police. According to the appellant, he was forced to sign on the said confession, as he was tortured in the police station. The appellant being an employee of the Bank, the said confession should have been proved. Some evidence should have been brought on record to show that he had indulged in stealing the bank draft book. Admittedly, there was no direct



evidence. Even there was no indirect evidence. The tenor of the report demonstrates that the enquiry officer had made up his mind to find him guilty as otherwise he would not have proceeded on the basis that the offence was committed in such a manner that no evidence was left.

19. The judgment and decree passed against the respondent in Narinder Mohan Arya case [(2006) 4 SCC 713 : 2006 SCC (L&S) 840] had attained finality. In the said suit, the enquiry report in the disciplinary proceeding was considered, the same was held to have been based on no evidence. The appellant therein in the aforementioned situation filed a writ petition questioning the validity of the disciplinary proceeding, the same was dismissed. This Court held that when a crucial finding like forgery was arrived at on evidence which is non est in the eye of the law, the civil court would have jurisdiction to interfere in the matter. This Court emphasised that a finding can be arrived at by the enquiry officer if there is some evidence on record. ...” (emphasis supplied)

15. Same view was reiterated in State of Uttar Pradesh v. Saroj Kumar Sinha,¹² wherein, this Court held that even in an ex-parte inquiry, it is the duty of the Inquiry Officer to examine the evidence presented by the Department to find out whether the unrebutted evidence is sufficient to hold that the charges are proved. The relevant observations made in Saroj Kumar Sinha¹³ are as follows: -

“28. An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the 12 (2010) 2 SCC 772 13.

evidence presented by the Department, even in the absence of the delinquent official to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents.

33. As noticed earlier in the present case not only the respondent has been denied access to documents sought to be relied upon against him, but he has been condemned unheard as the inquiry officer failed to fix any date for conduct of the



enquiry. In other words, not a single witness has been examined in support of the charges levelled against the respondent. The High Court, therefore, has rightly observed that the entire proceedings are vitiated having been conducted in complete violation of the principles of natural justice and total disregard of fair play. The respondent never had any opportunity at any stage of the proceedings to offer an explanation against the allegations made in the charge-sheet.” (emphasis supplied)

16. *In the case of Nirmala J. Jhala, this Court held that evidence recorded in a preliminary inquiry cannot be used for a regular inquiry as the delinquent is not associated with it and the opportunity to cross-examine persons examined in preliminary inquiry is not given. Relevant extract thereof reads as under: -*

“42. A Constitution Bench of this Court in Amalendu Ghosh v. North Eastern Railway [AIR 1960 SC 992] , held that the purpose of holding a preliminary inquiry in respect of a particular alleged misconduct is only for the purpose of finding a particular fact and prima facie, to know as to whether the alleged misconduct has been committed and on the basis of the findings recorded in preliminary inquiry, no order of punishment can be passed. It may be used only to take a view as to whether a regular disciplinary proceeding against the delinquent is required to be held.

43. Similarly in Champaklal Chimanlal Shah v. Union of India [AIR 1964 SC 1854] a Constitution Bench of this Court while taking a similar view held that preliminary inquiry should not be confused with regular inquiry. The preliminary inquiry is not governed by the provisions of Article 311(2) of the Constitution of India. Preliminary inquiry may be held ex parte, for it is merely for the satisfaction of the Government though usually for the sake of fairness, an explanation may be sought from the government servant even at such an inquiry. But at that stage, he has no right to be heard as the inquiry is merely for the satisfaction of the Government as to whether a regular inquiry must be held. The Court further held as under :

“12. ... There must therefore be no confusion between the two enquiries and it is only when the government proceeds to hold a departmental enquiry for the purpose of inflicting on the government servant one of the three major punishments indicated in Article 311 that the government servant is entitled to the protection of



that article [, nor prior to that].”

44. In *Narayan Dattatraya Ramteerthakhar v. State of Maharashtra [(1997) 1 SCC 299 : 1997 SCC (L&S) 152 : AIR 1997 SC 2148]* this Court dealt with the issue and held as under:

“... a preliminary inquiry has nothing to do with the enquiry conducted after issue of charge-sheet. The preliminary enquiry is only to find out whether disciplinary enquiry should be initiated against the delinquent. Once regular enquiry is held under the Rules, the preliminary enquiry loses its importance and, whether preliminary enquiry was held strictly in accordance with law or by observing principles of natural justice of (sic) nor, remains of no consequence.”

45. In view of the above, it is evident that the evidence recorded in preliminary inquiry cannot be used in regular inquiry as the delinquent is not associated with it, and opportunity to cross-examine the persons examined in such inquiry is not given. Using such evidence would be violative of the principles of natural justice.
(emphasis supplied)

17. Thus, even in an ex-parte inquiry, it is *sine qua non* to record the evidence of the witnesses for proving the charges. Having tested the facts of the case at hand on the touchstone of the Rules of 1999, and the law as expounded by this Court in the cases of *Roop Singh Negi* and *Nirmala J. Jhala*, we are of the firm view that the inquiry proceedings conducted against the appellant pertaining to charges punishable with major penalty, were totally vitiated and non-est in the eyes of law since no oral evidence whatsoever was recorded by the department in support of the charges.”

14. The record further reveals that the charge no. 8 enumerates in detail the allegation against the petitioner but the same is not supported by the list of approved schools by the District Magistrate-cum-Chairman of the Managing Committee as to which list was allegedly changed by the petitioner for



getting himself benefited and giving undue financial benefit to the private company. Petitioner has made out a case that the Managing Committee had instructed the Punjab National Bank, Ara to transfer the money, which is well accounted and earmarked for a particular school for construction of additional class room. Record also reveals that out of ten crore and odd, the petitioner had deposited Rs. 7,81,57,827/- into the account of senior officer and Rs. 2,18,52,693/- has still not been recovered nor has been returned by the petitioner. I find that there is no discussion in the impugned order, as to whether, the said amount is the expenditure incurred in construction of additional class rooms and is based on the basis of the evidence, such as, purchase voucher, tax paid and the details of all the supplier from which, the contractor had purchased while constructing the additional class rooms in the school. It is not the case of any party that the company is a registered company and is assessed to income tax and is required to furnish detailed audited accounts certified by the Chartered Accountant in respect of detail report of the government fund. I would have interfered with the order passed by the Disciplinary Authority for these infirmities but for the reason that the same don't contain one of the charges in the manner prescribed under Bihar



CCA Rules, 2005 and for these lapses, the enquiry so held becomes empty formality. However, considering the fact and information that the petitioner has filed review application on 12.11.2020 against the order of dismissal and the same, for reason not given in the counter affidavit and supplementary counter affidavit, puts the adjudicating officer's role in question, who was dealing with the embezzlement of government fund amounting to rupees more than ten crore has sat tight over it for nearly four years.

15. It is well settled law that writ court should be slow in interfering with the order passed by the Disciplinary Authority and assuming jurisdiction to interfere with the order. The power of judicial review is well known and is no more *res integra* as on date. The ground of interference is also no more *res integra*. Reliance made by learned senior counsel to point out procedural infirmity to having not been carried on by the Enquiry Officer and the Disciplinary Authority for having not exercising its *quasi judicial* power in accordance with the procedure prescribed under Article 311 (2) of the Constitution of India.

16. I find that in light of the law laid down by the Apex Court in the case of **Roop Singh Negi (Supra)**, the



impugned order contained in Memo No. 395 dated 17.09.2020 passed by the Disciplinary Authority can be held to be inoperative in view of the fact that the very foundation on which the action has been taken is not supported by any evidence. The Apex Court in the case of ***State of Punjab vs Davinder Pal Singh Bhullar & Ors*** reported in ***(2011) 14 SCC 770***, has held as follows:

".....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."

17. I find it apt to refer Paragraph Nos. 40, 41, 49, 50 and 52 of the judgment passed by the Apex Court in the case of ***Union of India v. B.V. Gopinath*** reported in ***(2014) 1 SCC 351*** which, *inter alia*, are 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."



18. In view of the discussion made hereinabove, I find that there is patent error on the face of the impugned order. There being no evidence, insofar as, the amount of loss recorded by the Enquiry Officer and the Disciplinary Authority and, at the same time, the petitioner has not been given liberty to explain to that extent on the basis of supporting evidence in respect of total loss amounting to ten crores or remaining according to the petitioner, or remaining Rs. 2,18,52,693/- assessed by the Disciplinary Authority, the matter is remitted back to the Disciplinary Authority to proceed in accordance with law in view of the fact that there is no development in respect of the review application dated 12.11.2020 filed by the petitioner.

19. The order passed by the Disciplinary Authority contained in Memo No. 395 dated 17.09.2020 is hereby set aside and quashed for the reason recorded hereinabove.

20. Before parting with this order, this Court is concerned with the manner in which the public money is being embezzled is exemplified in the present case in which a huge amount of public money has been misappropriated and swindled has not been seriously taken. The State authorities has also failed to exercise his jurisdiction in spite of the fact that the State Government from time to time has issued several circulars



for concluding proceedings within statutory period.

21. With aforesaid observation and direction, the writ
petition stands disposed of.

(Purnendu Singh, J)

Niraj/-

AFR/NAFR	
CAV DATE	N/A
Uploading Date	18.04.2025
Transmission Date	N/A

