SUPREME COURT OF INDIA

Union of India

Vs.

B.V.Gopinath

C.A.No.7761 of 2013

(Surinder Singh Nijjar and M.Y.Eqbal JJ.)

05.9.2013

JUDGMENT

SURINDER SINGH NIJJAR, J.

1. Leave granted in all the SLPs.

2. The central issue that arises for consideration in these appeals is: whether the charge sheet issued against the respondents is without jurisdiction, in view of the fact that the disciplinary authority, i.e., the Finance Minister, had not given approval for issuing the charge memo, even though he had given approval for initiation of major penalty proceedings against the respondents.

3. Since the issue raised in the present appeals is purely legal, it would not be necessary to make a detailed reference to the facts of individual cases. For convenience and for the purpose of reference only, we advert to the facts as pleaded in Civil Appeal No._____@ SLP (Civil) No. 6348 of 2011 (Union of India & Ors. Vs. B.V.Gopinath).

4. Mr. B.V. Gopinath joined the Indian Revenue Service in the year 1987 as Assistant Commissioner of Income Tax. It appears that 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.

On 7th/8th September, 2005, whilst working on the aforesaid post, Mr. Gopinath (respondent No.1) was served with a charge sheet under Rule 14 of Central Civil Services (Classification, Control and Appeal) Rules, 1965

(hereinafter referred to as "CCS (CCA) Rules"). The said charge sheet was issued on the allegation that in 2003 the respondent was alleged to have approached one Chartered Accountant in Chennai for securing his transfer to Mumbai by offering bribe to the P.A. to the then Minister of State (Revenue). Thus, the charge levelled against the respondent was that he failed to maintain integrity; and exhibited a conduct which is unbecoming of a government servant. The respondent submitted his reply to the allegations wherein he denied the charges levelled against him. He requested for supply of certain documents. In due course, the Inquiry Officer and the Presenting Officer were appointed.

5. During the pendency of the inquiry proceedings, the respondents filed O.A. No.800 of 2008. In these proceedings, the respondents claimed that the charge sheet dated 7th/8th September, 2005 is without jurisdiction, therefore, liable to be quashed, as the charge memo had not been approved by the Finance Minister. We may also notice here that prior to filing of the aforesaid O.A., the respondent had already approached CAT twice: firstly, seeking direction(s) to the Union of India to supply all the documents relied upon in connection with the charge-sheet issued against him. Secondly, seeking a direction to the appellant for timely completion of the departmental proceedings against him. The directions given by CAT in the aforesaid proceedings, however, have no bearing on the controversy involved herein.

6. In the present appeal, we are concerned with the legality or otherwise of the order passed by CAT on 5th February, 2009 in O.A. No. 800 of 2008. By the aforesaid order, CAT quashed the charge sheet dated 7th/8th September, 2005 issued against the respondent on the ground that there was nothing on record to show that the Finance Minister approved the charge sheet. The aforesaid order of CAT was challenged, by way of Writ Petition (Civil) No. 10452 of 2009, before the Delhi High Court. By order dated 28th July 2009, which has been impugned before this court, the Delhi High Court dismissed the said writ petition.

Appellants' Submissions:

7. Ms. Indira Jaising, learned Additional Solicitor General of India appearing for the appellants, submitted that the High Court as well as the CAT have committed a grave jurisdictional error in quashing the charge sheet, which was issued by the competent authority, in accordance with the procedure prescribed.

8. She 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, the 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.

9. She pointed out that upon receipt of a complaint the same is examined by the Chief Vigilance Officer in the office of the Director General, Income Tax (Vigilance). A decision is taken upon examination of the complaint as to whether there is a vigilance angle involved. In case, it is found that a complaint involves a vigilance angle, a preliminary investigation is conducted. During the preliminary investigation, the version of the officer concerned is also taken. Thereafter, the decision is taken by the Chief Vigilance Officer (hereinafter referred to as "CVO") with the approval of Central Board of Direct Taxes as to whether disciplinary proceedings are to be initiated. In case, the CVO decides to initiate disciplinary proceedings, the matter is then referred to the Chief Vigilance Commission for first stage advice. The Chief Vigilance Commission examines the first stage advice. In case the Chief Vigilance Commission concurs with the decision taken by the Chief Vigilance Officer, a detailed note is prepared for initiation of disciplinary proceedings which is put up to the Finance Minister. She emphasised that alongwith note for initiation of disciplinary proceedings, all relevant supporting material is also placed before the Finance Minister. It is upon consideration of the entire material alongwith the explanatory note that the Finance Minister takes a decision to initiate departmental proceedings. In view of the aforesaid elaborate procedure, the CAT as well as the High Court had erroneously concluded that such procedure would not amount to approval of the charge memo.

10. Ms. Jaising further submitted that Office Order No. 205 of 2005 has been misread by the Courts below. She points out that to appreciate the true purport of the said office order, a careful consideration needs to be given to the safeguards available to a delinquent officer under the Constitution of India and the CCS (CCA) Rules. Learned ASG then submitted that Article 311 provides for two safeguards for the delinquent officer: (i) the officer cannot be dismissed or

removed by the authority subordinate to the appointing authority of the officer concerned [Article 311(1)]; and (ii) the dismissal or removal can only be effected after an enquiry in which the official has been informed of the charges against him and is given a reasonable opportunity to be heard in respect of those charges [Article 311(2)]. She submits that in the present case, none of the two safeguards have been violated. She has elaborated that the disciplinary proceedings were initiated against the respondent in terms of Rule 14 of CCS (CCA) Rules, which prescribed the procedure for imposing major penalty. Relying on Rule 14(3), she again drew our attention to the expression that the disciplinary authority shall draw up or cause to be drawn up the substance of imputation of misconduct or misbehaviour into definite and distinct articles of charge. She submitted that the entire procedure under Rule 14(3) has been followed. Under Rule 14(4) again disciplinary authority is required to either deliver or cause to be delivered to the Government servant a copy of the articles of charge. This was also admittedly followed in the present proceeding. She reiterated that a plain reading of Rule 14(3) would show that it permits the disciplinary authority to cause the charge memo to be drawn up by a subordinate authority.

11. The ASG then submitted that the office order No.205 of 2005 was passed in view of the stress on time and resources being felt in the Department of Finance due to insufficient delegation of powers in respect of disciplinary action cases. Accordingly, after considering the recommendations of a Committee formed for this purpose, the office order was passed prescribing the competent decision making authority for various steps in disciplinary action cases in CBEC and CBDT. The office order prescribed the competent authority for granting approval at different stages. It does not prescribe the stages which require approval. She further submitted that the High Court has misinterpreted clause (8) of the aforesaid order. She points out that the expression “approval for issuing charge memo” cannot be read as distinct from “approval for initiating major penalty proceedings”. According to the learned ASG, the office order dated 19th July, 2005 does not impose any requirement that the charge memo must be approved by the disciplinary authority. Clause (8) of the office order, according to Ms. Indira Jaising, only provides that the Finance Minister is the competent authority for granting approval “for issuing charge memo”, and not for “approving the charge memo”. She submits that the procedure for drawing up the charge memo commences when approval is sought for initiation of the disciplinary proceedings. The actual drawing up of the charge memo is a part of and incidental to the approval to initiate disciplinary proceedings and is a ministerial act. The approval to initiate disciplinary proceedings is the approval to set the law in motion and carries with it, by necessary implication, all things to effectuate the same.

Therefore, the grant of approval for initiation of disciplinary proceedings amounts to grant of approval for issuance of charge memo.

12. The learned ASG further submitted that the office order does not create any enforceable rights in favour of the respondent, since the said order is intended for internal functioning of the department concerned. The order, she submits, must be given a purposive interpretation to discern its true import. It was submitted by the learned ASG, it would be sufficient compliance with the said order if it is shown that there was approval by the disciplinary authority to initiate disciplinary proceedings and approval is granted to the material on the basis of which the charge memo has been drawn. In this context, reliance was placed upon Seaford Court Estates Ltd Vs. Asher,[1] Municipal Corporation of Greater Bombay and Others Vs. Indian Oil Corporation Ltd.,[2] State of Karnataka Vs. Appa Balu Ingale & Ors.,[3] Forest Range Officer & Ors. Vs. P. Mohammad Ali & Ors.,[4] State of Madhya Pradesh Vs. M.V. Narasimhan[5].

13. Learned ASG further submitted that the High Court has wrongly drawn a distinction between approval for initiation of the disciplinary proceedings and approval for issuance of charge memo by treating them as two distinct steps. She reiterated that approval for initiation of departmental proceeding would include approval of the charge memo by disciplinary authority.

14. The next submission of the learned ASG is that the charge sheet is normally not to be quashed unless prejudice is shown to be caused to the delinquent officer. And since the respondent has not alleged any prejudice caused to him by virtue of the charge sheet not having been approved by the disciplinary authority, the charge sheet ought not to have been interfered with. Reliance was placed on State of Uttar Pradesh Vs. Brahm Dutt Sharma & Anr.,[6] Executive Engineer, Bihar State Housing Board Vs. Ramesh Kumar Singh & Ors.,[7] Ulagappa & Ors. Vs. Div. Commr., Mysore & Ors.[8] Special Director & Anr. Vs. Mohd. Ghulam Ghouse & Anr.[9] and Union of India & Anr. Vs. Kunisetty Satyanarayan[10] and The Secretary, Min. of Defence and Ors. Vs. Prabhash Chandra Mirdha [11]

15. In support of her submission that it is not necessary that charge sheet should be framed by the authority competent to impose penalty or that enquiry should be conducted by such authority alone, reliance was placed on Inspector General of Police & Anr. Vs. Thavasiappan.[12]

16. Further, it was submitted that it is in the interest of good administration to interpret said the office order in the manner as contended by the learned ASG since there are more than 500 enquiries that have been initiated in the aforesaid manner.

17. Lastly, it was submitted that the appellants, out of abundant caution, have now amended the procedure and seek the approval of the Finance Minister for charge memo.

Respondents' Submissions:

18. Mr. P.S. Patwalia, learned senior counsel, submitted that provisions of CCS (CCA) Rules 1965 are applicable to the respondent, an officer of Indian Revenue Service. And that since the charge sheet that was issued to him contemplated a major penalty, Rule 14 of CCS (CCA) Rules is attracted. Reliance was placed upon Registrar of Cooperative Society Vs. F.X. Fernando, (supra) to contend that the CCS (CCA) Rules require a strict compliance. It was further submitted that it is an admitted fact that the Disciplinary Authority has not approved the charge sheet.

19. After citing Rule 14 of the CCS (CCA) Rules, the learned senior counsel has elaborated the various stages when decisions required to be taken to comply with the said provision:

> a. Whether or not there is justification for initiation of an enquiry against a Government Servant? This would also include undertaking the decision that whether Disciplinary Authority would itself hold the enquiry or appoint some other authority to do the same.
>
> b. The second stage is drawing up of chargesheet; and that has to be done by the Disciplinary Authority. c. Then the Disciplinary Authority has to apply its mind on the charges framed under Rule 14(3) and has to grant its approval.

20. It was further submitted that there may be some situations where even despite the fact that approval has been accorded to initiate the enquiry, charge sheet may not be issued or approved. To illustrate, it was pointed out that there may be circumstances where the Disciplinary Authority, after approving the initiation of proceedings but before giving approval to the charge sheet, comes to a conclusion that a lesser charge or no charge is made out against the concerned officer. In such circumstances, the Disciplinary Authority proceeds accordingly and may drop the proceedings. Thus, it is for this reason that Rule 14 provides that the Disciplinary

Authority has to apply its mind separately at two different stages: (i) initiation of proceedings and (ii) approval of charge sheet.

21. In this context, similar submissions were also reiterated by Mr. Shekhar Kumar, learned counsel for respondent in SLP (Civil) No. 25839 of 2011. Referring to Rule 14 (3), learned counsel submitted that charge-memo ought to have been sanctioned by the Disciplinary Authority, especially since there was no sub-delegation of such power in favour of any other officer.

22. The next submission of Mr. Patwalia is that the Office Order No. 205/2005, Clause/ Item No. 8, mandates that the approval of the charge sheet has to be granted by the Finance Minister. This interpretation is fortified by clause 9 of the 2005 office order. Clause 9 requires that if there has to be any dropping/modification/amendment of the charges, after receiving the Written Submission of Defence, then the file has to be put up to the Finance Minister. Learned Senior Counsel states that if dropping/modification/amendment of charges is required to be undertaken by the Finance Minister then it would necessarily mean that the initial approval of the charge sheet has to be sanctioned by the said minister only. It was further submitted that acceptance of the stand of the appellant that approval granted to initiation of proceedings includes approval to the charge-memo would lead to the position where the charge memo would get approval even before it has come into existence.

23. Mr. Patwalia further submitted that the issue in the present case has already been decided by this Court in Steel Authority of India, Successor of Bokaro Steel Ltd. Vs. Presiding Officer, Labour Court at Bokaro Steel City, Dhanbad & Anr.[13] It was also submitted that since the law laid down in the aforesaid case is in the favour of the present Respondents, the present appeals are liable to be dismissed.

24. Mr. Patwalia has also submitted that the appellants, in the application for condonation of delay in filing of the present appeals, contended that the ASG recommended that this is not a fit case for filing the SLP. Thus, the Civil Appeals are liable to be dismissed on this ground as well. The learned senior counsel also submitted that the Appellants have already accepted the judgment of CAT and the High Court since the Finance Minister is now approving the charge-sheets. Further, it was submitted that after receiving information upon a RTI query, it was disclosed that the Finance Minister approved the fresh charge sheet in the case of the Respondent in SLP No. 6348/2001. Thus, filing of the present appeals is nothing but an ‘academic exercise.’

25. Mr. Patwalia countered the submission of the learned ASG that it will not be in the interest of good administration to drop the inquiries which are already going on if the charge-sheets issued in such inquiries are required to be approved by the Finance Minister. In this context, it was submitted that such a contention has already been rejected by this court in Coal India Ltd. & Ors. Vs. Saroj Kumar Mishra.[14] Our attention was also drawn to the following excerpt from the said case:

> "the floodgate argument also does not appeal to us.The same appears to be an argument of desperation. Only because, there is a possibility of floodgate litigation, a valuable right of a citizen cannot be permitted to be taken away. This court is bound to determine the respective rights of the parties."

Thus, it was submitted that the Civil Appeals are required to be dismissed.

26. Similar submissions were also reiterated by Mr. Brijender Chahar, learned senior advocate. Besides, learned senior counsel submitted that the fact that respondent in SLP (Civil) No. 26939 of 2011 belongs to Indian Revenue Service would concomitantly mean that the President of India is the appointing authority and thereby, Disciplinary Authority in his case. However, the said power of the President has been delegated under Article 77 (3) of the Constitution and by the order of the President dated 14th January, 1961 under the Government of India (Allocation of Business) Rules, to the Finance Minister. Thus, the Finance Minister acts as the Disciplinary authority for the purposes of Article 311 of the Constitution and Rule 14 of CCS (CCA) Rules. Therefore, the Finance Minister, himself, has to apply his mind and give approval inter alia to the charge sheet. It was further submitted that matters pertaining to any such disciplinary action cannot be further delegated or sub-delegated to any other authority as the President has delegated this authority only to the Finance Minister.

27. Relying on Rule 14 of CCS (CCA) Rules, learned senior counsel submitted that the rule contemplates a detailed procedure, consisting of four stages, which has to be completed before any punishment can be imposed on a public servant. These steps are:

i) Initiation of Disciplinary proceedings for major penalties;

ii) drawing up of charges of misconduct;

iii) appointment of Inquiry Officer & Presenting Officer and to supervise fair conducting of inquiry by the Inquiry Officer;

iv) imposition of penalty, if any.

All the above procedures have been elaborated in provisions of Rule 14 of Central Civil Services (Classification, Control & Appeal) Rules, 1965, which require an independent & unbiased application of mind and approval, directly by the Finance Minister and not by any other subordinate Authority.

28. Learned senior counsel also submitted that the drawing up charges of misconduct and issuance/service of charge memo is a crucial function for conducting an inquiry, which require the independent & unbiased application of mind and approval, directly and solely by the Finance Minister and not by any other subordinate Authority.

29. According to the learned senior counsel, the most important issue to be decided by this Court is that whether the stage of initiating Disciplinary Proceedings is the same as issuing a charge sheet/charge memo? A plain reading of Rule 14(2) and Rule 14(3) of the Central Civil Services (Classification, Control & appeal) Rules, 1965 makes it amply clear and the only interpretation possible is that the stage of initiating the disciplinary proceedings U/Rule 14(2) is distinct and separate from issuing a charge memo U/Rule 14(3) and it is not a continuing act because it is not necessary that every disciplinary proceeding initiated would definitely result in issuing a charge memo because after initiating disciplinary proceedings it may be found from the material on record that, the memo of charge need not be served because the charges may not be made out or a lesser charge could be made out. Mind has to be applied to the evidence and material on record pursuant to initiation of disciplinary proceedings to again come to a fresh decision as to whether now, a charge memo deserves to be issued. Thus, the material before the Disciplinary authority is different at both the stages of Rule 14(2) and Rule 14(3) of the Central Civil Services (Classification, Control & Appeal) Rules, 1965.

30. Learned senior counsel submitted that the appellant has not denied and in fact accepted that the Charge Memo dated 1st April, 2008 was not approved by the Finance Minister and as such, there was no application of mind by the Finance Minister. Therefore, CAT has rightly quashed the said charge memo.

31. It was further submitted that under the relevant rules, only ancillary actions relating to the issue of charge sheet may be undertaken by a subordinate authority,

but the framing of charge sheet requires independent/unbiased application of mind and therefore, Finance Minister has to give approval to the charge memo.

32. Learned senior counsel reiterated that once the disciplinary powers have been delegated by the President of India under Article 77 (3) of the Constitution to the Finance Minister, then such delegated authority cannot be re-delegated/sub-delegated by the Disciplinary Authority, unless statute/ constitution provides for the same. In this context, reliance was placed on Sahni Silk Mills (P) Ltd.& Anr. Vs. E.S.I. Corporation[15] and Director General, ESI & Anr. Vs. T.Abdul Razak.[16]

33. Learned senior Counsel further submitted that the provisions of Rule 14 (2) of CCS (CCA) Rules are separate provisions. In case, the approval of the Finance Minister is taken only for provision of Rule 14 (2) and no approval is taken for acting under Rule 14(3), then the provision of Rule 14(3) would be rendered redundant and obsolete. Such a position, he submits, would mean as if no charges were ever framed by the Disciplinary Authority.

34. It was further submitted that the charges were framed only on the basis of the recommendations of CBI, which is not the recommending authority as per the CCS (CCA) Rules.

35. Mr. Shekhar Kumar, learned counsel, submitted that the contention of the learned ASG that no prejudice would be caused to the Respondent is premised on an incorrect notion. Learned counsel further submitted that since the intention of the Government is manifest in the office order No. 205 of 2005, the said order has to be complied with strictly, irrespective of the fact whether prejudice is shown to be caused to the Government Servant or not.

36. It was also submitted that the charge memo drawn by an officer other than the specified authority was wholly without jurisdiction and hence, vitiated the whole disciplinary enquiry. Reliance was placed on Government of Andhra Pradesh Vs. M.A. Majeed & Anr.[17] It was also submitted that where a statutory authority is required do something in a particular manner, the same must be done in that manner only. The State and other authorities, while acting under the statute, are the creatures of the statue and they must act with in the four corners of the statute. Learned counsel relied on Bhavnagar University Vs. Palitana Sugar Mill (P) Ltd. & Ors.[18]

37. Lastly, it was submitted that a charge sheet can be subjected to judicial review on the ground that it has been issued by an incompetent authority. Ld. Counsel relied on Samaraditya Pal, Law Relating to Public Service: A treatise on the law applicable to Government and Public Undertaking, third Edition (2011) Pgs. 761,767.

38. We have considered the elaborate submissions made by the learned counsel for the parties.

39. 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 re- stated, by this Court in numerous judgments, since the Constitution came into effect on 19th January, 1950. 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 CCS (CCA) Rules, 1965.

40. Disciplinary proceedings against the respondent herein were initiated in terms of Rule 14 of the aforesaid Rules. Rule 14(3) clearly lays down that where it is proposed to hold an inquiry against a government servant under Rule 14 or Rule 15, the disciplinary authority shall draw up or cause to be drawn up the charge sheet. Rule 14(4) again mandates that the disciplinary authority shall deliver or cause to be delivered to the government servant, a copy of the articles of charge, the statement of the imputations of misconduct or misbehaviour and the supporting documents including a list of witnesses by which each article of charge is proposed to be proved. We are unable to interpret this provision as suggested by the Additional Solicitor General, that once the disciplinary authority approves the initiation of the disciplinary proceedings, the charge sheet can be drawn up by an authority other than the disciplinary authority. This would destroy the underlying protection guaranteed under Article 311(1) of the Constitution of India. Such procedure would also do violence to the protective provisions contained under Article 311(2) which ensures that no public servant is dismissed, removed or suspended without following a fair procedure in which he/she has been given a reasonable opportunity to meet the allegations contained in the charge sheet. Such a charge sheet can only be issued upon approval by the appointing authority i.e. Finance Minister.

41. In fact, issuance of the office order No.205 dated 19th July, 2005 makes it evident that the respondents were aware of the legal position. The office order clearly sets out the levels of the decision making authorities depending on the gravity of the consequences that would have to be faced by a delinquent public servant in case the decision is taken to proceed against the public servant. Clause (1) deals with closure of complaints which are anonymous/pseudonymous; if the decision is taken to close the complaint it can be taken by the CVO. But in case of verifiable facts, the complaints have to be referred to the next level of hierarchy CVB (Central Vigilance Bureau). For placing an officer under suspension, the decision has to be taken by the Finance Minister himself. Even review of suspension at quarterly/half yearly interval rests with the Finance Minister. This is so, as suspension during contemplation/pendency of enquiry, though may not be penal in nature per se, still has very serious adverse consequences on the professional as well as the personal life of the officer suspended. The office order recognizing the gravity of the consequences ensures that the decision in relation to suspension/review of suspension shall be taken by the highest authority in the department i.e. the Finance Minister. In matters related to reference to CVC for first stage advice, the competent authority is the Secretary (Revenue). Similarly, for reconsideration of CVC's first stage advice, again the competent authority is the Secretary (Revenue), but in case of disagreement with CVC's first stage advice on approval for referring the case to Department of Personal and Training, the competent authority is the Finance Minister.

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

43. Accepting the submission of Ms. Indira Jaising would run counter to the well known maxim delegatus non protest delegare (or delegari). The principle is summed up in "Judicial Review of Administrative Action" De Smith, Woolf and Jowell (Fifth Edition) as follows:-

> "The rule against delegation
>
> A discretionary power must, in general, be exercised only by the authority to which it has been committed. It is a well-known principle of law that when a power has been confided to a person in circumstances indicating that trust is being placed in his individual judgment and discretion, he must exercise that power personally unless he has been expressly empowered to delegate it to another."

The same principle has been described in "Administrative Law" H.W.R. Wade & C.F. Forsyth (Ninth Edition), Chapter 10, as follows:-

"Inalienable discretionary power

An element which is essential to the lawful exercise of power is that it should be exercised by the authority upon whom it is conferred, and by no one else. The principle is strictly applied, even where it causes administrative inconvenience, except in cases where it may reasonably be inferred that the power was intended to be delegable. Normally the courts are rigorous in requiring the power to be exercised by the precise person or body stated in the statute, and in condemning as ultra vires action taken by agents, sub-committees or delegates, however expressly authorized by the authority endowed with the power."

44. This principle has been given recognition in Sahni Silk Mills (P) Ltd. (supra), wherein it was held as under:

"6. By now it is almost settled that the legislature can permit any statutory authority to delegate its power to any other authority, of course, after the policy has been indicated in the statute itself within the framework of which such delegatee (sic) is to exercise the power. The real problem or the controversy arises when there is a sub- delegation. It is said that when Parliament has specifically appointed authority to discharge a function, it cannot be readily presumed that it had intended that its delegate should be free to empower another person or body to act in its place."

45. Much was sought to be made by Ms. Indira Jaising on clause (10) of the order which provides that once the Finance Minister has approved the initiation of departmental proceedings, the ancillary action can be initiated by the CVO. According to the learned Addl. Solicitor General, the decision taken by the Finance Minister would also include the decision for approval of charge memo. She pointed out the procedure followed for initiation of penalty proceedings/disciplinary proceedings. She submitted that the decision to initiate disciplinary proceedings is based on a Satisfaction Memo prepared by the CVO. This satisfaction memo is submitted to the Member (P&V), Central Board of Direct Taxes, New Delhi who after being satisfied that the memo is in order, forwards it to the Chairman, CBDT who in turn, upon his own satisfaction forwards it to Secretary (Revenue) and finally to the Finance Minister. Based on the satisfaction memo, the Finance Minister, who is the disciplinary authority in this case, takes the decision to initiate

disciplinary proceedings. While taking the said decision, the Finance Minister has before him, the details of the alleged misconduct with the relevant materials regarding the imputation of allegations based on which the charge memo was issued. Therefore, approval by the Finance Minister for initiation of the departmental proceedings would also cover the approval of the charge memo. We are unable to accept the submission of the learned Addl. 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 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. In our opinion, the Central Administrative Tribunal as well as the High Court has correctly interpreted the provisions of the 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 Rule 3(1)(i) and (3) (1) (iii) of the Central Civil Services (Conduct) Rules against the officers mentioned in the note which included the appellant 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.

46. Ms. Indira Jaising also submitted that the purpose behind Article 311, Rule 14 and also the Office Order of 2005 is to ensure that only an authority that is not subordinate to the appointing authority takes disciplinary action and that rules of natural justice are complied with. According to the learned Addl. Solicitor General, the respondent is not claiming that rules of natural justice have been violated as the charge memo was not approved by the disciplinary authority. Therefore, according to the Addl. Solicitor General, the CAT as well as the High Court erred in quashing the charge sheet as no prejudice has been caused to the respondent. In our opinion, the submission of the learned Addl. Solicitor General is not factually correct. The primary submission of the respondent was that the charge sheet not having been issued by the disciplinary authority is without authority of law and, therefore, non

est in the eye of law. This plea of the respondent has been accepted by the CAT as also by the High Court. The action has been taken against the respondent in Rule 14(3) of the CCS(CCA) Rules which enjoins the disciplinary authority to draw up or cause to be drawn up the substance of imputation of misconduct or misbehaviour into definite and distinct articles of charges. The term "cause to be drawn up" does not mean that the definite and distinct articles of charges once drawn up do not have to be approved by the disciplinary authority. The term "cause to be drawn up" merely refers to a delegation by the disciplinary authority to a subordinate authority to perform the task of drawing up substance of proposed "definite and distinct articles of charge sheet". These proposed articles of charge would only be finalized upon approval by the disciplinary authority. Undoubtedly, this Court in the case of P.V.Srinivasa Sastry & Ors. Vs. Comptroller and Auditor General & Ors.[19] 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 "However, it is open to 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 "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."

47. Further, it appears that during the pendency of these proceedings, the appellants have, after 2009, amended the procedure which provides that the charge memo shall be issued only after the approval is granted by the Finance Minister.

48. Therefore, it appears that the appeals in these matters were filed and pursued for an authoritative resolution of the legal issues raised herein.

49. Although number of collateral issues had been raised by the learned counsel for the appellants as well the respondents, we deem it appropriate not to opine on the same in view of the conclusion that the charge sheet/charge memo having not been approved by the disciplinary authority was non est in the eye of law.

50. For the reasons stated above, we see no merit in the appeals filed by the Union of India. We may also notice here that CAT had granted liberty to the appellants to take appropriate action in accordance with law. We see no reasons to disturb the liberty so granted. The appeals are, therefore, dismissed.

[1] [1949] 2 KB 481
[2] 1991 Supp. (2) SCC 18

[3] 1995 Supp (4) SCC 469
[4] 1993 Supp (3) SCC 627
[5] (1975) 2 SCC 377
[6] AIR 1987 SC 943
[7] (1996) 1 SCC 327
[8] AIR 2000 SC 3603 (2)
[9] AIR 2004 SC 1467
[10] AIR 2007 SC 906
[11] 2012 (11) SCC 565
[12] 1996 (2) SCC 145
[13] 1980 (3) SCC 734
[14] 2007 (9) SCC 625
[15] 1994 (5) SCC 346
[16] (1996) 4 SCC 708
[17] (2006) 1 ALD 823: (2006) 1 ALT 661 [18] (2003) 2 SCC 111
[19] 1993 (1) SCC 419