CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH
HYDERABAD

OA/020/00014/2020

Date of CAV: 01.02.2021

Date of Pronouncement:19.02.2021

Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member

M. Prasad, IRSME,
S/o M.Anjaneylu, aged 61 years,
Retd. Senior Divisional Safety Officer (Group 'A'),
O/o. The Divisional Railway Manager,
Nanded Division, South Central Railway, Nanded,
R/o H.No.21-10/5-57 A, Teachers Colony, 3rd lane,
Muthyalampadu, Vijayawada – 520 011. ...Applicant

(By Advocate : Mr.K.R.K.V.Prasad)

Vs.

1.Union of India represented by
The Secretary (Establishment),
Railway Board, Ministry of Railways,
Rail Bhavan, New Delhi.

2.The General Manager,
South Central Railway,
Rail Nilayam, Secunderabad.

3.The General Manager (Personnel),
South Central Railway,
Rail Nilayam, Secunderabad.

4.Shri Pramod Kumar, Inquiry Officer and
Retd. General Manager, Railway Coach Factory,
Kapurtala, Punjab State,
R/o S-901, Amarapali Silicon City,
Sector-76, Noida, U.P. 201 301. ....Respondents

(By Advocate : Mr. S. M. Patnaik, SC for Railways)

ORDER
(As per Hon'ble Mr.B.V.Sudhakar, Administrative Member)

Through Video Conferencing:

2. The OA is filed by the applicant challenging the action of initiating major penalty proceedings by the 2nd respondent against him without the approval of the President and also the action of the 2nd and 4th respondents in proceeding with the disciplinary case pending criminal trial with the allegations and evidence being the same in both the departmental and criminal proceedings.

3. Brief facts of the case are that the applicant while working as Sr. Divisional Mechanical Engineer was involved in a trap case of the CBI on 3.5.2018, resulting in filing the Criminal Case vide CC No.16/2019, under PC Act, 1988 for alleged demand and acceptance of illegal gratification of Rs.20,000. Applicant claims that the Charge memo was issued on 11.12.2018 by the respondents with the same charges as have been set out in the criminal case. Applicant earlier filed OA 333/2019 before this Tribunal regarding supply of documents and the said OA was dismissed on 12.04.2019 by considering the subsequent correspondence of the respondents and an endorsement to the effect that the applicant perused the documents. The applicant was shown Xerox copies and not the original documents. The Inquiry officer has observed that the copies attested by the DSP, CBI would do and even in the CBI office only the photo copies were shown. Therefore, applicant represented on 15.11.2019 to defer the disciplinary inquiry, which was rejected on 29.11.2019. Applicant attended the inquiry without knowing that the charge sheet has been filed in the CBI Court on 2.12.2019. Summons were issued to attend the trial court on

30.12.2019. Aggrieved over the rejection of the request to defer the disciplinary inquiry and charge sheet was issued without the approval of the Hon'ble President, the present OA is filed.

4. The contentions of the applicant are that the charge sheet has been issued by the General Manager (GM) instead of the Hon'ble President, who gave prosecution sanction for the criminal case. The Hon'ble President, as Appointing Authority, is the disciplinary Authority and not the GM. Respondents have justified their action of issuing the charge sheet by referring to the RS (D&A) Rules. In this context, Rule 13 of CCS (CCA) Rules 1965, which is *pari materia* to Rule 8 (2) of RS (D&A) rules was interpreted by the Hon'ble Supreme Court stating that disciplinary action has to be initiated by the Appointing Authority. The Hon'ble Minister has initiated the major penalty proceedings but did not approve the charge sheet and hence, the charge sheet is null and void. There is administrative bias since the higher authority has issued the sanction for criminal prosecution, which is a signal for a lower authority to proceed similarly. GM has no powers under Rule 10 of RS (D&A) Rules 1968 and hence drawing of the charge sheet by the GM is incorrect. Charges being the same in the disciplinary and the criminal cases, revelation of the defence in the disciplinary case would be prejudicial to the applicant for defending himself in the criminal case. Principles of Natural Justice have not been followed and Articles 14 & 21 of the Constitution have been violated. The ratio laid by the Hon'ble Supreme Court is that no rule shall be inconsistent with Article 311 (1) of the Constitution. As per G.O.I. (Allocation of Business Rules), Hon'ble Railway Minister has to act as disciplinary

authority and he has given approval for initiation of the charge sheet without the application of the mind. Applicant has cited the judgment of the Hon'ble Supreme Court in U.O.I v B.V.Gopinath in support of his contentions.

5. Respondents in the reply statement state that the applicant has earlier filed OA 333/2019 in regard to non supply of documents, which was dismissed and hence principles of Res Judicata would apply. The instant OA which has been filed challenging the charge memo dated 11.12.2018 after the applicant participated in the inquiry, should not been entertained. Applicant did not challenge the charge memo while filing OA 333/2019. Applicant was trapped by CBI for demanding and accepting illegal gratification from a contractor to extend a contract related to cleaning services and therefore, major penalty proceedings were initiated for grave misconduct under Rule 9 of RS (D&A) Rules vide charge memo dated 11.12.2018. Sanction for prosecution was given under POC (Amendment) Act 2018. As per RBE 128/07 (Ann.R-1) both disciplinary and criminal cases can go on simultaneously as the approach and the objective of the two are different. Serial Circular No.82/1995 (Ann.R-2) supports the same view and hence, action to issue the charge memo and conducting the inquiry is as per rules. It is well settled that the disciplinary inquiry has to be completed in 6 months time and if not, within a maximum of one year. CVC has fixed time lines vide letter dated 3.3.1999 to complete the disciplinary proceedings. Hon'ble Apex Court has held that in case the criminal trial court proceedings could not be completed within one year, disciplinary proceedings can be resumed by the I.O. As per RS (D&A) Rules, GM is

competent to initiate disciplinary proceedings and has just initiated the inquiry. Applicant has replied to the charge memo hence rule 9 of RS (D&A) rules has not been violated. The Relied upon documents (RUD) have been authenticated by the DSP, CBI before filing them in the CBI court. Demanding original documents despite furnishing authenticated documents is only a delay tactic. Respondents contend that the original documents were inspected by the applicant on 10.4.2019 and has duly endorsed to that effect, but the applicant contends that RUDs 1, 2, 3, 5, 8 are Xerox copies and he requested for originals vide letter dt. 16.04.2019, page 25 of the reply**.** Respondents cited the provisions of the Evidence Act, 1872 in support of their contentions and the procedures to be followed in an inquiry to substantiate their stand. The relevant disciplinary rules have not been challenged by the applicant. Sanction of prosecution and initiation of disciplinary case have no co-relation. B.V.Gopinath case is not applicable and on the contrary, the decision of the Hon'ble Principal Bench in OA 3307/2011 applies to the case of the applicant. The disciplinary inquiry is being unduly delayed by the applicant.

6. Applicant filed MA 475/2020 seeking stay of further proceedings in respect of the charge memo dt.11.12.2018, to which a reply has been filed by the respondents opposing the prayer.

7. Heard both the counsel and perused the pleadings on record.

I. The dispute is about the issue of the charge sheet by the GM and conducting simultaneous disciplinary proceedings when the criminal proceedings are being adjudicated in the criminal court.

The article of charge is as under:

"*Shri M. Prasdad, Sr. Divisional Safety Officer, Nanded Division, South Central Railway, while working as Sr. Divisional Mechanical Engineer, Guntur Division, had demanded and accepted an amount of Rs.20,000/- on 3.5.2018 as bribe from Shri Mekala Hanumantha Rao, S/o. late Chinna Hanumantha Rao, R/o. Madduru Road, Amaravathi PO and Mandal, Guntur District for signing the agreement pertaining to the extension of the contract of cleaning of East Booking Office side areas, West Booking Office side areas and circulating areas in Railway premises at Guntur Station for a further period of 90 days from 1.5.2018 to 29.07.2018.The details in this regard are given in the enclosed statement of imputations of misconduct. (Annexure II).*

By the aforesaid act, the said Shri M. Prasad, the then Sr. DME/GNT (now working as Sr. DSO/NED), had failed to maintain absolute integrity and acted in a manner of unbecoming of a Railway Servant in violation of Rule No.3(1) (i) & 3(1) (iii) of the Railway Services (Conduct) Rules, 1966."

The relief sought by the applicant is as under:

"…to call for the records pertaining to memorandum No. SCR/P-HQ/426(a)/CON/M-7/107, dated 11.12.2018 along with the letter No. SCR/P-HQ/426(a)/CON/M-7/107, dated 29.11.2019 vis-à-vis Rule 8(2) r/w. Rule 2(1)(c)(ii) of Railway Servants (D & A) Rules, 1968 to the extent of its application to the case of the applicant; and

(ii) declare that the action of initiating major penalty proceedings by the 2nd respondent against the applicant who was appointed by the President to a Group 'A' post without the approval of the President as illegal and is in violation of the law and thereby Rule 8(2) r/w Rule 2(1)(c)(ii) of Railway Servants (D&A) Rules, 1968 has no application to the case of the applicant;

(iii) with a further declaration that the action of the 2nd and 4th respondents in simultaneous proceeding with the disciplinary case in pursuance of Memorandum dated 11.12.2018 pending criminal trial on the file of the Special Judge for CBI Cases, Visakhapatnam in CC No. 16 of 2019 when the allegations and the evidence relied upon in both the proceedings is very same forcing the applicant to reveal his defence in the disciplinary case ahead of the criminal trial is also illegal, and accordingly set aside the said Charge Memorandum with all further proceedings by granting all consequential benefits…"

As evidenced from the facts, applicant was trapped by the CBI on 3.5.2018 for alleged demand and acceptance of illegal gratification of Rs.20,000 from a contractor for extension of cleaning contract leading to the criminal case vide CC No.16/2019 filed in the criminal court and issue of charge memo dated 11.12.2018 by the respondents. The claim of the applicant is that the facts, circumstances, witnesses etc. are one and the

same in both the cases. However, on verification we found the following difference:

	No. of Documents	No. of witnesses
Departmental proceedings	29	11
Criminal case	21	15

Therefore, there is an essential difference between the two and it cannot be claimed that they are one and the same.

II. Applicant has initially filed OA 333/2019 pleading for supply of documents, which was dismissed with the following observations on 12.4.2019, as under:

> *"5. From a perusal of the same, it is evident that all the documents, relied upon, were supplied to the applicant and the only objection, which the applicant wanted to convey was that they were not signed by the competent authority. One hardly makes an objection of this nature. It is the fancy of the applicant that RUDs must be signed by a particular authority. If he wants to refuse to receive them, it is always his prerogative. He cannot teach the respondents the manner in which the documents have to be supplied. At any rate, he did not make any request in the representation for supply of any documents. He has just returned the documents and the representation is mostly by way of information.*
>
> *6. On their part, the respondents informed the applicant through a communication dated 17.01.2019 that documents have been furnished to him in accordance with the rules and stated that he can submit his explanation.*
>
> *7. We do not find any basis or occasion to grant the relief vis-a-vis the representation dated 28.12.2018.*
>
> *8. Across the Bar, it is stated that the applicant made a representation to permit him to peruse certain records, which are available in the office of DSP, CBI, Visakhapatnam. On this, a letter dated 25.03.2019 was addressed by the respondents requiring the applicant to meet Shri Ch.V.Narendra Deve, DSP/CBI/Visakhapatnam. The learned counsel for the Respondents has made available an endorsement dated 10.04.2019, wherein the applicant stated that he has perused the records in the presence of DSP/CBI, Visakhapatnam.*
>
> *9. Therefore, we do not find any basis to grant relief to the applicant.*
>
> *10. The OA is accordingly dismissed. There shall be no order as to costs"*

The issue of supply of documents has already been decided in OA 333/2019 and in particular, there is an observation that the applicant has made an endorsement on 10.4.2019 indicating that he has perused the records in the presence of the DSP/CBI. After the OA was dismissed on 12.4.2019 applicant has submitted a representation to the GM, on 16.4.2019 informing that he was shown the Xerox copies and not the original documents. Respondents assert that the copies shown were authenticated by DSP/CBI. In regard to making available the listed documents, it would be beneficial to adduce the relevant provisions of the Evidence act, *1872 as under:*

> ***"65. Cases in which secondary evidence relating to documents may be given***.— *Secondary evidence may be given of the existence, condition or contents of a document in the following cases: —*
>
> *xxxx*
>
> *(e) when the original is a public document within the meaning of section 74;*
>
> *(f) when the original is a document of which a certified copy is permitted by this Act, or by any other law in force in 1 [India] to be given in evidence;*
>
> ***74. Public documents***. —
>
> *The following documents are public documents: —*
>
> *(1) documents forming the acts or records of the acts —*
>
> *xxx*
>
> *(iii) of public officers, legislative, judicial and executive, 3 [of any part of India or of the Commonwealth], or of a foreign country; (2) public records kept 4 [in any State] of private documents.*
>
> ***77. Proof of documents by production of certified copies***. —
>
> *Such certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies.*
>
> ***79. Presumption as to genuineness of certified copies***. — *The Court shall presume 8 [to be genuine] every document purporting to be a certificate, certified copy or other document, which is by Law declared*

to be admissible as evidence of any particular fact and which purports to be duly certified by any officer 9 [of the Central Government or of a State Government, or by any officer 10[in the State of Jammu and Kashmir] who is duly authorized thereto by the Central Government]:

Provided that such document is substantially in the form and purports to be executed in the manner directed by law in that behalf. The Court shall also presume that any officer by whom any such document purports to be signed or certified, held, when he signed it, the official character which he claims in such paper.

80. Presumption as to documents produced as record of evidence. *— Whenever any document is produced before any Court, purporting to be a record or memorandum of the evidence, or of any part of the evidence, given by a witness in a judicial proceeding or before any officer authorized by law to take such evidence or to be a statement or confession by any prisoner or accused person, taken in accordance with law, and purporting to be signed by any Judge or Magistrate, or by any such officer as aforesaid, the Court shall presume— that the document is genuine; that any statements as to the circumstances under which it was taken, purporting to be made by the person signing it, are true, and that such evidence, statement or confession was duly taken."*

The provisions of the Evidence Act cited supra make it clear that certified copies are presumed to be genuine. The copies have been attested by the DSP, CBI in the present case. The applicant has endorsed on 10.4.2019 that he has seen the records in the presence of the DSP/CBI which is sufficient evidence under the said Act. In OA 333/2019 the issue was dealt and the plea of the applicant in regard to supply of the documents in the manner applicant wanted to be furnished has not been entertained. Further, applicant has contented at para 4.3 of the OA as under:

"4.3 It is submitted that when the applicant was waiting to inspect the original documents for submitting his defence statement, the 2nd respondent without waiting the defense statement of the charged officer viz., the applicant – appointed the 4th respondent as Inquiry Officer to inquiry into the charges in violation of sub-rule 9(a)(i) of Rule 9 of Railway Servants (Discipline & Appeal) Rules, 1968. The applicant was forced to appear for a preliminary hearing held by the 4th respondent. During the preliminary inquiry held on 13.11.2019, the applicant specifically informed the 4th respondent Inquiry Officer that he is not in position to defend his case unless the original documents are made available for inspection by him. The 4th respondent gave ruling that the RUDs attested by DSP, CBI is a sufficient compliance to consider them as originals. In spite of the

Applicant's specific submission to the 4th respondent that even in CBI office when the documents were made available for inspection, he had found photo copies only as endorsed by him on 10.04.2019, which was enclosed to the letter dated 16.04.2019 addressed to the 2nd respondent – the 4th respondent Inquiry Officer when reiterated that he would proceed with the regular hearing considering the available photo copies as original, with a ruling that during the cross-examination, the DSP, CBI will be requested to bring the original. It is pertinent to mention that in view of the fact that in respect of the very same allegation, the CBI has filed a Charge Sheet vide CC No. 16/2019 in the Court of Special Judge for CBI Cases, Visakhapatnam, relying upon the very same documents, it is not possible to bring even if originals are available as they are already filed in the Court."

Applicant is thus aware of the fact that the original documents are with the Criminal Court. Therefore, considering the provisions of the Evidence Act cited, dismissal of OA 333/2019 and the contention of the applicant in para 4.3, the plea of the applicant that he has to be shown the original documents does not have substance in it.

III. The other contention of the applicant is that the GM is not the competent authority to issue the charge sheet. To analyse this averment, a close look at the RS (D&A) Rules is required and hence we reproduce the relevant ones here under:

*"**2. Definitions** –*

(1) In these rules, unless the context otherwise requires –

*(a) '**appointing authority**' in relation to a Railway servant means –*

(i) the authority empowered to make appointments to the Service of which the Railway servant is, for the time being, a member or to the grade of the Service in which the Railway servant is, for the time being, included, or

(ii) the authority empowered to make appointments to the post which the Railway servant, for the time being holds, or

(iii) the authority which appointed the Railway servant to such Service, grade or post, as the case may be, or

(iv) where the Railway servant having been a permanent member of any other Service or having substantively held any other permanent post, has been in continuous employment under the Ministry of Railways, the authority which

appointed him to that Service or to any grade in that Service or to that post; whichever authority is the highest authority.

XXX

*(c) '**disciplinary authority**' means - (i) in relation to the imposition of a penalty on a Railway servant, the authority competent, under these rules, to impose on him that penalty;*

(ii) in relation to Rule 9 and clauses (a) and (b) of sub-rule (1) of Rule 11 in the case of any gazetted Railway servant, an authority competent to impose any of the penalties specified in Rule 6;

(iii) in relation to Rule 9 in the case of any non-gazetted Railway servant, an authority competent to impose any of the major penalties specified in Rule 6;

(iv) in relation to clauses (a) and (b) of sub-rule (1) of Rule 11, in the case of a non-gazetted Railway servant, an authority competent to impose any of the penalties specified in Rule 6.

8. Authority to Institute Proceedings –

(1) XXX

(2) A disciplinary authority competent under these rules to impose any of the penalties specified in clauses (i) to (iv) of Rule 6 may, subject to the provisions of clause (c) of sub-rule (1) of Rule 2 institute disciplinary proceedings against any Railway servant for the imposition of any of the penalties specified in clauses (v) to (ix) of Rule 6, notwithstanding that such disciplinary authority is not competent, under these rules, to impose any of the latter penalties.

***10. Action on the inquiry report** :- (1) xxxx*

(3) Where the disciplinary authority is of the opinion that the penalty warranted is such as is not within its competence, he shall forward the records of the inquiry to the appropriate disciplinary authority who shall act in the manner as provided in these rules."

A reading of the rules, in particular Rules 2 (1) c (ii) read with 8(2), with reference to the case on hand would make it clear that the GM is competent to issue the charge sheet. The case is still at the stage of inquiry and therefore the question of any discussion of imposition of any penalty at this stage by invoking Rule 10 (3) would be hypothetical. Nevertheless, it provides the room to forward to the appropriate disciplinary authority for imposing penalties, other than those that can be imposed by the GM. Schedule III of RS (D&A) Rules, 1968 empowers the GM to impose penalties prescribed at clauses (i) to (iv) of Rule 6 as extracted here under.

> *"**6. Penalties**: The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a Railway servant, namely:-*
>
> ***Minor Penalties** - (i) Censure;*
>
> *(ii) Withholding of his promotion for a specified period;*
>
> *(iii) Recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government or Railway Administration by negligence or breach of orders;*
>
> *(iii-a) Withholding of the Privilege Passes or Privilege Ticket Orders or both;*
>
> *(iii-b) Reduction to a lower stage in the time scale of pay by one stage for a period not exceeding three years, without cumulative effect and not adversely affecting his pension;*
>
> *(iv) Withholding of increments of pay for a specified period with further directions as to whether on the expiry of such period this will or will not have the effect of postponing the future increments of his pay;*

Therefore it is for the GM to take a view on receipt of the Inquiry report and the defence of the applicant, as to whether the case requires imposition of penalties other than what he is empowered and thereafter refer the issue to the competent authority under Rule 10 (3) for imposing the appropriate penalty. Thus the respondents have gone by the rule book in issuing the charge sheet. Their action is supported by the Hon'ble Apex Court decisions that rules have to be upheld and any contravention of rules should not be entertained as under:

> *The Hon'ble Supreme Court observation in **T.Kannan and ors vs S.K. Nayyar (1991) 1 SCC 544** held that "Action in respect of matters covered by rules should be regulated by rules". Again in **Seighal's case (1992) (1) supp 1 SCC 304** the Hon'ble Supreme Court has stated that "Wanton or deliberate deviation in implementation of rules should be curbed and snubbed." In another judgment reported in (2007) 7 SCJ 353 the Hon'ble Apex court held " the court cannot de hors rules"*

The applicant has claimed that since the Hon'ble President is the Appointing Authority and hence the GM, cannot issue the charge sheet. The

contention of the applicant would hold good if there is no such provision in the rules to permit GM to issue the charge sheet. However, the rules adumbrated above, do authorize the GM to issue a charge sheet to a Gazetted officer. Only in regard to the degree and intensity of the penalty there are some restrictions which have to be followed. Other than that it cannot be said that the GM is incompetent to issue the charge sheet. Therefore, the averment of the applicant that as per Rule 10 of RS (DA) rules, the GM has no power to issue the charge is incorrect.

IV. While being on the rules, applicant contended that Hon'ble Supreme Court has interpreted rule 13 of CCS (CCA) Rules which is *pari materia* to Rule 8(2) of RS (D&A) Rules, by observing that the power to issue disciplinary proceedings lies with the Appointing Authority. However, the Hon'ble Supreme Court in U.O.I v. B.V.Gopinath, on which the applicant relied upon, has left it open to G.O.I/State Govt. to come up with a rule to authorise the Appointing Authority to initiate disciplinary proceedings, as under:

> *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."*

Further, in the same judgment appended by the applicant, it has been observed as under:

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."*

By telescoping the legal principles laid down as at above, to the case of the applicant, we observe that the General Manager has been empowered under RS (D&A) Rules to perform the role of a disciplinary authority. It was respondents decision and it appears to be taken in the context of not burdening the President with cases deserving minor penalties. If a view prevails that a case warrants major penalty then surely the case will be decided by the Appointing Authority in consonance with Article 311 (1) of the Constitution. Therefore, the challenge mounted by the applicant that the GM is incompetent to issue the charge sheet would not subsist. To reiterate, though at the cost of repetition, respondents have framed RS (D&A) Rules

where in the GM has been empowered to initiate disciplinary proceedings. Thus there is no contravention of the Hon'ble Supreme Court judgment, as presented by the applicant, since it was left open to the State Govt and G.O.I to make a rule prescribing that any disciplinary proceeding is to be initiated by the Appointing Authority. Respondents through a statute have designated the GM as the competent authority to issue the charge sheet with certain provisos in imposing the penalties. Hence the interpretation of rule 13 of the CCS (CCA) by the Hon'ble Apex Court would be of no assistance to the applicant in the instant case.

V. An allied contention made, relying on Gopinath, is that the Hon'ble Minister has given approval for initiating the disciplinary proceedings, though it is the President who is competent to do so. Further, the Minister has not approved the charge sheet. The applicant is making contradictory statements in different paras of the OA as under:

In Page 8 of the OA, applicant stated that:

> *"..the Disciplinary authority shall be the President only. In view of the fact that the Minister for Railway has not applied his mind and given approval to initiate major penalty proceedings and **not approved the charges leveled against the applicant**, the subject charge memo has to be declared as null and void in law…"*

Again in page 9, the applicant stated as under:

> *"Hence, the **Minister** concerned on behalf of the President **shall only personally approve the charges** leveled against the applicant who belongs to Group A services…"*

In Page 11 Para 5.2 of the OA, he stated as under:

> *"Since, the President is the competent authority to initiate major penalty proceedings in respect of a Group A Officer, President alone should approve the content of the charges."*

Be that as it may, even this contention holds no water since as per RS (D&A) Rules cited supra, the GM can enact the role of a disciplinary authority. As per Gopinath judgment referred to by the applicant, delegation is permissible subject to there being a provision in the relevant rules but not sub delegation. Power to issue the charge sheet has been delegated to the GM under the statutory RS (D& A) rules and there has been no sub delegation. Applicant incessant submission that since the charge sheet was not approved by the Railway Minister, the verdict of the Hon'ble Supreme Court in B.V.Gopinath has been infringed. It is not so, since in Gopinath, the disciplinary authority was the Finance Minister as per para 43 of the copy of the judgment enclosed by the applicant, whereas in respect of the applicant, the rules referred to have given the required authority to the GM to discharge the responsibility of a disciplinary authority with certain riders. Indeed, the specific observation in the Gopinath judgment are as under:

> *43. xxxxx The competent authority for approval of the charge memo is clearly the Finance Minister. There is no second authority specified in the order.*
>
> *xxx*
>
> *53. 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.*

Besides, entertaining a plea against the charge sheet would be premature, since it does not give rise to any cause of action, for the reason that it does not amount to an adverse order affecting the rights of the applicant. As seen from details cited supra the competent authority has issued the charge sheet. The inquiry has commenced and there could be a

possible outcome of holding the charges as not proved and dropping the disciplinary proceedings. Therefore, it is the final order which would reveal as to whether the applicant has a grievance. Until then, we are of the view that, intervening in the matter would not be in the interest of the applicant as well. While making the above observations, we rely on the observations made by the Hon'ble Madras High Court in ***A.Ananthakumar vs The Registrar General*** on 20 December, 2019 in W.P.No.30961 of 2019, relying on a catena of judgments of Hon'ble Apex Court, as under:

> *7. The law regarding the power of a Writ Court to interfere at the stage of charge memo while exercising its jurisdiction under Article 226 of the Constitution of India is well settled. The Hon'ble Supreme Court in the case of Union of India v. Kunisetty Satyanarayana, (2006) 12 SCC 28, has observed as under:-*
>
> > *"13.It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge-sheet or show-cause notice vide Executive Engineer, Bihar State Housing Board v. Ramesh Kumar Singh[(1996) 1 SCC 327 : JT (1995) 8 SC 331] ,Special Director v. Mohd. Ghulam Ghouse[(2004) 3 SCC 440 : 2004 SCC (Cri) 826 : AIR 2004 SC 1467] ,Ulagappa v. Divisional Commr., Mysore[(2001) 10 SCC 639] ,State of U.P. v. Brahm Datt Sharma[(1987) 2 SCC 179 : (1987) 3 ATC 319 : AIR 1987 SC 943] , etc.*
> >
> > *14.The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ petition lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of anyone. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance. "*
>
> *In view of the said judgment, this Court at this juncture is not inclined to go into the correctness or otherwise of the charge memo."*

Considering the above deliberations, the issue of the charge sheet by the GM is not liable to be questioned and particularly, at the present stage. It is also not explained as to why the applicant has not challenged the charge sheet in OA 333/2019 and confined it to the supply of Original documents.

VI. Now, we come to the aspect of simultaneous conduct of disciplinary and criminal proceedings. The argument of the applicant is that any evidence let in during the disciplinary inquiry will be prejudicial to pursue the cause of the applicant in the criminal case. Legally, the two proceedings are in different planes. Their objectives and operations are different. Disciplinary proceedings, focus on the aspect of misconduct for imposing the appropriate penalty and in criminal proceedings the offences under PC act are weighed in order to impose the apt sentence. There is a difference between the standard of proof, mode of inquiry and the rules relating to inquiry and trial, as observed by the Hon'ble Apex Court in ***Karnataka Power Transmission Corporation Ltd vs. Sri C Nagaraju & Anr.*** on 16th September, 2019 in Civil Appeal No. 7279 of 2019 (Arising out of SLP (C) No. 25909 of 2013) as under:

> *"9. Acquittal by a criminal court would not debar an employer from exercising the power to conduct departmental proceedings in accordance with the rules and regulations. The two proceedings, criminal and departmental, are entirely different. They operate in different fields and have different objectives. In the disciplinary proceedings, the question is whether the Respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be, whereas in the criminal proceedings, the question is whether the offences registered against him under the PC Act are established, and if established, what sentence should be imposed upon him. The standard of proof, the mode of inquiry and the rules governing inquiry and trial in both the cases are significantly distinct and different"*

True to speak, there is no legal block for simultaneously proceeding in disciplinary case and criminal trial. The need to stay disciplinary proceedings would depend on the facts and circumstances of each case. Applicant claims that the defence revealed in the disciplinary case would jeopardise his criminal case. The moot point is the advisability, desirability or propriety to stay the disciplinary case, has to be gone into on a case to case basis. It is in the best interest of the employee that a disciplinary case has to be completed early so that he can be mentally free from the Damocles' sword of the pending disciplinary case. Therefore, the desirability to continue with the inquiry ordered by the respondents and advisable in the long term interests of the applicant. Generally criminal cases get procrastinated for legal reasons and it is settled that if the criminal case is delayed then it is good ground for going ahead with the disciplinary case even if they are held over at the earlier stage. In the present case the criminal case was filed in 2018 and now we are in 2021. One does not know when the criminal case will be finalised. The purpose of disciplinary proceedings is to restore the honour of the charged employee if found innocent and if not to be dealt as per law. Continuing officials facing allegations of misdemeanour indefinitely under the pretext of pendency of criminal proceedings, is not in Organisational interest. Therefore staying of disciplinary proceedings should not be a matter of course. Sometimes, the disciplinary proceedings may be unfounded and this can be no ground to procrastinate the disciplinary proceedings. The charges are serious relating to alleged corruption and by way of interim order dt.06.01.2020, the respondents were directed to keep the departmental proceedings in abeyance for a period of six months or till the criminal proceedings are

completed, whichever is earlier. More than 2 years have lapsed since the issue of the charge sheet and the criminal case. The interest of the applicant and the administration should not suffer on account of pending criminal case. We take support of the observation of the Hon'ble Apex Court in ***State of Rajasthan vs Shri B.K. Meena & Others*** on 27 September, 1996 as under, in stating the above:

> *It would be evident from the above decisions that each of them starts with the indisputable proposition that there is no legal bar for both proceedings to go on simultaneously and then say that in certain situations, it may not be 'desirable', 'advisable' or 'appropriate' to proceed with the disciplinary enquiry when a criminal case is pending on identical charges. The staying of disciplinary proceedings, it is emphasised, is a matter disciplinary proceedings, it is emphasised, is a matter to be determined having regard to the facts and circumstances of a given case ad that no hard and fat rules can enunciated in that behalf. The only ground suggested in the above questions as constitution a valid ground for staying the disciplinary proceedings is "that the defence of the employee in the criminal case may not be prejudiced." This ground has, however, been hedged in by providing further that this may be done in cases of grave nature involving questions of fact and law. In our respectful opinion, it means that not only the charges must be grave but that the case must involve complicated questions of law and fact. Moreover, 'advisability', 'desirability' or 'propriety', as the case may be, has to be determined in each case taking into consideration all the facts and circumstances of the case. The ground indicated in D.C.M. and Tata Oil Mills is not also an invariable rule. It is only a factor which will go into the scales while judging the advisability or desirability of staying the disciplinary proceedings. One of the contending consideration is that the disciplinary enquiry cannot be - and should not be delayed unduly. So far as criminal cases are concerned, it is well- known that they drag on endlessly where high officials or persons holding high public offices involved. They get bogged down on one or the other ground. They hardly ever reach a prompt conclusion. That is the reality in spite of repeated advice and admonitions from this Court and the High Courts. If a criminal case is unduly delayed that may itself be a good ground for going ahead with the disciplinary enquiry even where the disciplinary proceedings are held over at an earlier stage. The interests of administration and good government demand that these proceedings are concluded expeditiously. It must be remembered that interests of administration demand that the undesirable elements are thrown out and any charge of misdemeanor is enquired into promptly. The disciplinary proceedings are meant not really to punish the guilty but to keep the administrative machinery unsullied by getting rid of bad elements. The interest of the delinquent officer also lies in a prompt conclusion of the disciplinary proceedings. If he is not guilty of the charges, his honour should be vindicated at the earliest possible moment and if he is guilty, he should be dealt with promptly according to law. It is not also in the interest of administration that persons accused of serious misdemeanor should be continued in office indefinitely, i.e., for long periods awaiting the result of criminal proceedings. It is not in the interest of administration. It only serves the interest of the guilty and dishonest. While it is not possible to enumerate the various factors, for and against the stay of disciplinary proceedings, we found it necessary to emphasise some of the important considerations in view of the fact that very often the disciplinary proceedings are*

being stayed for long periods pending criminal proceedings. Stay of disciplinary proceedings cannot be, and should not be, a matter of course. All the relevant factors, for and against, should be weighed and a decision taken keeping in view the various principles laid down in the decisions referred to above. We are quite aware of the fact that not all the disciplinary proceedings are based upon true charges; some of them may be unfounded. It may also be that in some cases, charges are levelled with oblique motives. But these possibilities do not detract from the desirability of early conclusion of these proceedings. Indeed, in such cases, it is all the more in the interest of the charged officer that the proceedings are expeditiously concluded. Delay in such cases really works against him. Now, let us examine the facts of the present case. The memo of charges against the respondent was served on him, along with the articles of charges, on 13.10.92. On 9.2.93, he submitted a detailed reply/defence statement, running into 90 pages, controverting the allegations levelled against him. The challan against him was filed on 15.5.93 n the criminal court. The respondent promptly applied to the Tribunal and got the disciplinary proceedings stayed. They remain stayed till today. The irregularities alleged against the respondent are of the year 1989. The conclusion of the criminal proceedings is nowhere in sight. (Each party blames, the other for the said delay and we cannot pronounce upon it in the absence of proper material before us.) More than six years have passed by. The charges were served upon the respondent about 4 years back. The respondent has already disclosed his defence in his elaborate and detailed statement filed on 9.2.93. There is no question of his being compelled to disclose his defence in the disciplinary proceedings which would prejudice him in a criminal case. The charges against the respondent are very serious. They pertain to misappropriation of public funds to the tune of more than Rupees one crore. The observation of the Tribunal that in the course of examination of evidence, new material may emerge against the respondent and he may be compelled to disclose his defence is, at best, a surmise - a speculator reason. We cannot accept it as valid. Though the respondent was suspended pending enquiry in May, 1990, the order has been revoked in October 1993. The respondent is continuing in office. It is in his interest and in the interest of good administration that the truth or falsity of the charges against him is determined promptly. To wit, if he is not guilty of the charges, his honour should be vindicated early and if he is guilty, he should be dealt with appropriately without any avoidable delay. The criminal court may decide - whenever it does - whether the respondent is guilty of the offences charged and if so, what sentence should be imposed upon him. The interest of administration, however, cannot brooke any delay in disciplinary proceedings for the reasons indicated hereinabove.

Xxxxx

Staying of disciplinary proceedings pending criminal proceedings, to repeat, should not be matter of course but a considered decision. Even if stayed at one stage, the decision may require reconsideration if the criminal case gets unduly delayed. We must make it clear that we have not case, and we should not be understood to have cast, any reflection on the merits of either party's case. What we have said is confined to the question at issue, viz., the desirability or advisability of staying the disciplinary proceedings against the respondent pending the criminal proceeding/case against him. For the above reasons, it must be held that the Tribunal was in error in staying the disciplinary proceedings pending the criminal proceedings against the respondent. The appeal is accordingly allowed with costs. The order of the Tribunal is set aside. The disciplinary proceedings against the respondent shall go on expeditiously without waiting for the result of the criminal proceedings. The costs of the appellant are estimated at Rs. 5,000/-."

As per the above observation of the Hon'ble Supreme Court if there is a delay in processing of the criminal case, the disciplinary proceedings can go on and there is no embargo in conducting simultaneous proceedings.

The Hon'ble Apex Court referred to the observations in B.K.Meena cited supra and in Paul Anthony case relating to the conduct of the simultaneous proceedings, in **Hindustan Petroleum Corporation Ltd & Ors. vs Sarvesh Berry on 9 December, 2004** in Appeal (civil) 7980 of 2004 and held as under:

> *The aforesaid position was also noted in State of Rajasthan v. B.K. Meena (1996 (6) SCC 417).*
>
> *There can be no straight jacket formula as to in which case the departmental proceedings are to be stayed. There may be cases where the trial of the case gets prolonged by the dilatory method adopted by delinquent official. He cannot be permitted to, on one hand, prolong criminal case and at the same time contend that the departmental proceedings should be stayed on the ground that the criminal case is pending.*
>
> *In Capt. M. Paul Anthony's case (supra) this Court indicated some of the fact situations which would govern the question whether departmental proceedings should be kept in abeyance during pendency of a criminal case. In paragraph 22 conclusions which are deducible from various decisions were summarised. They are as follows:*
>
> *(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.*
>
> *(ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.*
>
> *(iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge-sheet.*
>
> *(iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.*
>
> *(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account*

of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest.

Again, in 2007, Hon'ble Supreme Court has made similar observations in **Noida Entrepreneurs Assn vs NOIDA & Ors** on 15 January, 2007 in Writ Petition (Civil) No.150 of 1997. Relying on the judgments cited supra and other judgments, the Hon'ble Principal Bench of this Tribunal in OA 3307/2011 on 12.04.2012 has in fact held that it is all the more necessary to expedite disciplinary proceedings when simultaneous proceedings are initiated, in view of the need to handle corruption cases for orderly functioning of the public offices, as under:

"25. The criminal case against the Applicant is on his alleged violation of the law of the land by commission of alleged offences punishable under IPC and POC Act, but the departmental proceeding has been initiated against the applicant for alleged misconduct under Rule 14 of CCS (CCA) Rules, 1965 for his act exhibiting lack of integrity, lack of devotion to duty and conduct unbecoming of a Government servant. We, therefore, find no reasons as to why the departmental proceeding should not be continued. On the other hand, we feel that the departmental proceeding should not only be continued but also expeditiously completed.

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30. At this stage, we may note that if the applicant is not guilty of the misconduct in the departmental proceedings and the same gets completed well in advance before the Trial is completed in the criminal case, he would be in better footing to prove her innocence before the Trial Court. At the same time, we note that in case the applicant is found to be guilty of the alleged misconduct in the departmental proceedings on the allegations which have been levelled against him, the respondents cannot keep quiet but to take action to complete the case in a timely manner. Such expeditious decision taken by the Competent Authority should set an example to others not to commit similar nature of misconducts in future. It is apt for us to cite the observations of Honble Apex Court in the case of K.C. Sareen Versus C.B.I., Chandigarh [2001 (6) SCC 584] which are more relevant to the case at hand and the same reads as follows :-

Corruption by public servants has now reached a monstrous dimension in India. Its tentacles have started grappling even the institutions created for the protection of the republic. Unless those tentacles are intercepted and impeded from gripping the normal and orderly functioning of the public offices, through strong legislative, executive as well as judicial exercises the corrupt public servants could even paralyse the functioning of such institutions and thereby hinder the democratic polity.

There is a delay in the adjudication of the criminal case for understandable reasons and the disciplinary proceedings have been stayed for more than an year by an interim order of the Tribunal. Thus in view of the elaborate deliberations on the issue by the Hon'ble Apex Court cited supra and the issue being one of alleged corruption, we are of the view that the respondents should be given the green signal to proceed with the disciplinary inquiry.

VII. One another contention of the applicant was the appointing of the Inquiry Officer before he could present his defence to the charge sheet and hence violative of the Rule 9 (a)(i) of RS (D&A) Rules. Under the same Rule, clause 9 (b) states as under:

> *9(b) If no written statement of defence is submitted by the Railway servant, the disciplinary authority may itself inquire into the articles of charge or may, if it considers it necessary to do so, appoint, under sub-rule (2) an inquiring authority for the purpose and also inform the Railway servant of such appointment.*

In this regard we observe that at para 4.2 of the OA, it is stated as under:

> *"The applicant submitted a reply on 28.12.2018 to the Charge Memorandum highlighting certain violations in the procedure followed for issuing the Charge Memorandum."*

But not enclosed the reply dt. 28.12.2018, as contended by the respondents. However, the said letter is extracted in the Order in OA 333/2019. On a perusal of the same, it is seen that the applicant he primarily stated -

(i) that charge sheet should be issued by the appropriate disciplinary authority and it has to be signed by the DA only, not by another lower authority
(ii) All RUDs must be signed by appropriate DA, not by any lower authority
(iii) RUDs not signed by the competent authority

Further, Q5 in the preliminary hearing dt. 13.11.2019, the answer to the same & IO Ruling thereon, read as under

> *"Q5. Have you submitted your reply to the memorandum of charges? In case you have done so, please submit a copy of the same to IO.*
>
> *Ans.: As mentioned in answer to Q4, I was not given reasonable opportunity to give written reply to the charge memorandum of all articles of charges. I am waiting for positive reply to show me the said documents, but straight away IO & PO have been appointed.*
>
> *IO's Ruling: In view of the answers to Q. No.4 & 5, IO has decided to continue with the inquiry."*

The above facts thus establish are that the applicant has not given a reply to the charge sheet and is seeking original documents, though attested copies were furnished and valid under the Evidence Act as cited supra. Further, the IO has given a ruling on 13.11.2019 that the RUDs attested by DSP/CBI/VSKP were as good as originals and he has DSP, CBI will be requested to furnish the original documents in the subsequent sittings. The issue of supply of documents has already been dealt by the Tribunal in OA 333/2019 and the relief sought was rejected and the said order has attained finality. On receipt of the attested copies, the applicant could have given the reply, since the applicant is well aware that the documents are with the CBI Court as per his own admission in para 4.3 of the OA, as extracted hereinabove. Therefore, it is not a case of the original documents not being available. Hence, not giving a reply is a decision of the applicant. Under the pretext that original documents have not been furnished, the applicant cannot expect the respondents to be mute spectators even though the rules provide for an alternative course of action. Having not given the reply and finding fault with the respondents for having appointed the I.O, asserting

that it is against Rule 9, is not sustainable. The Rule 9 (b) extracted above, in no uncertain terms, affirms that if the defence statement is not received then the IO can be appointed.

VIII. Moreover, it cannot be denied that the applicant is facing allegations of illegal gratification. The question that would arise is that, is it advisable to allow the mental agony of the applicant to persist till the criminal case is finalised. The applicant will not be able to climb up the career ladder as long as the disciplinary case is pending and it would be the talk of the town that he is facing disciplinary as well as criminal cases relating to alleged bribe. Even if the applicant is acquitted in a criminal case, the law does not forbid the respondents to proceed against the applicant on grounds of misconduct. The applicant expressing confidence at para 4.8 of the OA (extracted hereunder), that he would come clean in the criminal case, would mean he has defence which would tear into the prosecution case and when he has such a defence, the same would be good enough to allow him to sail through in the disciplinary case as well.

> *"The applicant is confident of proving his innocence in the subject criminal case as a false case is foisted against him."*

When the applicant having exuded such confidence it is not understood as to why he is expressing apprehension about the defence submitted in the disciplinary case would compromise the defence in the criminal trial. We are of the view that the defence of the applicant being rock solid as claimed, it would not be in his interest to seek deferment of the disciplinary proceedings. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and

to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether, in fact, prejudice has been caused to the employee or not on account of the allowing the disciplinary case to go on, has to be considered on the facts and circumstances of each case. Where, therefore, even after the law is well settled that the basis and foundation of the disciplinary case and that of a criminal trial are different, it would be a likely case of miscarriage of justice to stall the disciplinary inquiry. Indeed the applicant has not been condemned but only given an opportunity to disprove the allegations made. On the contrary, it would also be possible that the elements of the inquiry report in the disciplinary case could bolster the defences in the criminal trial. This possibility cannot be ruled out. In cases of corruption, Hon'ble Supreme Court in **Vinod Kumar Garg vs State (Govt. of National Capital) on 27 November, 2019** in Criminal Appeal No. 1781 of 2009 has observed that in criminal trial, it is safe to accept the prosecution witness on the basis of the oral evidence of the complainant and the official witnesses even if the trap witnesses turn hostile or are found not to be independent. The relevant para is extracted hereunder:

> *"xxxx Relevant in this context would be to refer to the judgment of this Court in State of U.P. v. Dr. G.K. Ghosh- (1984) 1 SCC 254- wherein it was held that in a case involving an offence of demanding and accepting illegal gratification, depending on the circumstances of the case, it may be safe to accept the prosecution version on the basis of the oral evidence of the complainant and the official witnesses even if the trap witnesses turn hostile or are found not to be independent. When besides such evidence, there is circumstantial evidence which is consistent with the guilt of the accused and inconsistent with his innocence, there should be no difficulty in upholding the conviction. "*

Thus, the defence in a criminal trial has a wide spectrum of consideration and therefore would not essentially bank on the defence let in the disciplinary case. May be it could be a small spec of a whole universe of defence trial. Therefore, the apprehension expressed by the Ld. Counsel for the applicant that the defence revealed in the disciplinary case may cause issues in the criminal trial appears to be an unfounded fear and not more than that.

IX. Nevertheless, Hon'ble Supreme Court on **25.2.2020 in Life Insurance Corporation of India v Mukesh Poonamchand Shah,** has held emphatically that restraining the competent authority in proceeding with the show cause notice pending criminal trial is not valid in law. The relevant paras are extracted hereunder:

14 The position in this regard was elaborated upon in a judgment of a two judge Bench decision of this Court in Dy Director of Collegiate Education (Admn) v S Nagoor Meera13, where Justice B P Jeevan Reddy speaking for the Court held:

> *"8. ... taking proceedings for and passing orders of dismissal, removal or reduction in rank of a government servant who has been convicted by a criminal court is not barred merely because the sentence or order is suspended by the appellate court or on the ground that the said government servant-accused has been released on bail pending the appeal."*

This Court specifically disapproved of the view of the Tribunal that until the appeal against the conviction was disposed of, action under clause(a) of the second proviso to Article 311(2) was not permissible.

The Court held: (1995) 3 SCC 377

> *"10. What is really relevant thus is the conduct of the government servant which has led to his conviction on a criminal charge. Now, in this case, the respondent has been found guilty of corruption by a criminal court. Until the said conviction is set aside by the appellate or other higher court, it may not be advisable to retain such person in service. As stated above, if he succeeds in appeal or other proceeding, the matter can always be reviewed in such a manner that he suffers no prejudice."*

This view has been reiterated in another two judge Bench decision of this Court in K C Sareen v CBI14. Justice K T Thomas, speaking for the Court, held:

> *"12. ...When a public servant who is convicted of corruption is allowed to continue to hold public office, it would impair the morale of the other persons manning such office, and consequently that would erode the already shrunk confidence of the people in such public institutions besides demoralising the other honest public servants who would either be the colleagues or subordinates of the convicted person. If honest public servants are compelled to take orders from proclaimed corrupt officers on account of the suspension of the conviction, the fallout would be one of shaking the system itself..."*

> *16. In the present case, following the conviction of the respondent by the Special Judge CBI, the appellant was acting within jurisdiction in issuing a notice to show cause under Regulation 39(4) of the 1960 Regulations. The learned single judge was correct in dismissing the special civil application filed by the respondent challenging the notice to show cause issued by the appellant. <u>The judgment of the Division Bench restraining the appellant from taking a final decision on the show cause notice pending the disposal of the criminal appeal has no valid basis in law.</u>*

> *17 We accordingly allow the appeal and set aside the impugned judgment and order of the Division Bench dated 10 April 2018. As a consequence, we confirm the order and judgment of the learned single judge dismissing the Special Civil Application filed by the respondent. There shall be no order as to costs."*

X. Applicant has also averred that Hon'ble Apex Court has observed that no rule shall be inconsistent with Article 311 (1) of the Constitution. The Article states as under:

> ***Article 311 (1).*** *No person who is a member of a civil service of the Union or an all* ***India*** *service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by a authority subordinate to that by which he was appointed.*

In the instant case, the issue has not progressed to the stage of removal or dismissal. It is in the infancy stage of the preliminary rounds of inquiry. RS (D & A) Rules provide for imposing of minor penalties by the GM and the major penalties of removal or dismissal by the appointing authority. Hence

the rules framed are not in variance with the judgment relied upon by the applicant.

XI. Besides, the applicant contends that the higher authority like the Hon'ble President issuing sanction for prosecution in the criminal case has given a signal to the lower authority like the GM to proceed in the matter and therefore administrative bias has crept in. The contention made is a general statement which will not be sufficient to attribute bias. There is no cogent evidence on record to affirm the bias. It was the making of the applicant that he got trapped in a CBI case and on seeking sanction it was given. Hence there was no ill intention on part of the respondents in issuing the sanction and therefore such a decision influencing the lower authority is farfetched, to smear the decision with the colour of administrative bias. The prosecution sanction is not given just for the applicant but many other Govt. employees who are involved in CBI cases. Therefore, it cannot be said that the sanctions issued by the President as the Appointing Authority have influenced the lower authorities to initiate disciplinary action. The institution of CBI has been constituted to stop the corrupt in their tracks. It has to be allowed to do its job. Basis for bias depends on the whole evidence and whether a reasonable man would in the circumstances infer that there is real likelihood of bias. Tribunal must look at the impression which other people have, as is required under the principle that justice must not only be done but seen to be done. The impression of right minded persons, is that the sanction is given by the President where in CBI makes out a case and not that it is given because CBI has sought. The criminal and the disciplinary cases are on different tracks, the former being a

walking marathon and the later a 100 meter dash with different parameters of evaluations. Applicant has only surmised that the sanction has influenced the lower authority to proceed with the disciplinary case without evidence. Hence we reject the contention made. In stating the above we rely on the observations of the Hon'ble Supreme Court, as under, in ***State of Punjab Vs. VK Khanna & Ors.*** in Appeal (Civil) 6963 2000 dated 30/11/2000 - (2001) 2SCC 330 : 2001 SCC (L&S) 1010,

> *Whereas fairness is synonymous with reasonableness bias stands included within the attributes and broader purview of the word malice which in common acceptation means and implies spite or ill will. One redeeming feature in the matter of attributing bias or malice and is now well settled that mere general statements will not be sufficient for the purposes of indication of ill will. There must be cogent evidence available on record to come to the conclusion as to whether in fact, there was existing a bias or a malafide move which results in the miscarriage of justice (see in this context Kumaon Mandal Vikas Nigam v. Girija Shankar Pant & Ors: JT 2000 Suppl.II 206). In almost all legal enquiries, intention as distinguished from motive is the all important factor and in common parlance a malicious act stands equated with an intentional act without just cause or excuse.*
>
> *xxxx*
>
> *In Girija Shankar Pants case (supra) this Court having regard to the changing structure of the society stated that the modernisation of the society with the passage of time, has its due impact on the concept of bias as well. Tracing the test of real likelihood and reasonable suspicion, reliance was placed in the decision in the case of Parthasarthy (S. Parthasarthy v. State of Andhra Pradesh: 1974 (3) SCC 459) wherein Mathew, J. observed:*
>
> *16. The tests of real likelihood and reasonable suspicion are really inconsistent with each other. We think that the reviewing authority must make a determination on the There must exist circumstances from which reasonable men would think it probable basis of the whole evidence before it, whether a reasonable man would in the circumstances infer that there is real likelihood of bias. The Court must look at the impression which other people have. This follows from the principle that justice must not only be done but seen to be done. If right minded persons would think that there is real likelihood of bias on the part of an inquiring officer, he must not conduct the enquiry; nevertheless, there must be a real likelihood of bias. Surmise or conjecture would not be enough. or likely that the inquiring officer will be prejudiced against the delinquent. The Court will not inquire whether he was really prejudiced. If a reasonable man would think on the basis of the existing*

> *circumstances that he is likely to be prejudiced, that is sufficient to quash the decision (see per Lord Denning, H.R. in Metropolitan Properties Co. (F.G.C.) Ltd. v. Lannon and Others, etc. : (1968) 3 WLR 694 at 707).*

XII. Time and again instructions are being issued by the CVC (dated 3.3.1999) and the G.O.I to complete the disciplinary proceedings at the earliest. Time spans are fixed to complete each stage of the case. The motive is that an innocent employee should not suffer the stigma of a disciplinary case so that he can carry on with his career. Pending disciplinary case is a de-motivating factor as it will not allow the employee to concentrate on his work. Therefore, the urgency to dispose of disciplinary cases in Organizational and individuals interest. Hon'ble Supreme Court in **Prem Nath Bali v Registrar, High Court of Delhi & anr,** in Civil Appeal No. 958 of 2010, has observed that the disciplinary inquiry has to be completed in 6 months and definitely not beyond an year as under:

> *33) Keeping these factors in mind, we are of the considered opinion that every employer (whether State or private) must make sincere endeavor to conclude the departmental inquiry proceedings once initiated against the delinquent employee within a reasonable time by giving priority to such proceedings and as far as possible it should be concluded within six months as an outer limit. Where it is not possible for the employer to conclude due to certain unavoidable causes arising in the proceedings within the time frame then efforts should be made to conclude within reasonably extended period depending upon the cause and the nature of inquiry but not more than a year.*

Respondents are bound by the legal principle stated and they need to proceed with the inquiry.

XIII. One another averment made by the applicant is that the instructions contained in DOPT OM dated 1.8.2007 have been violated.

Paras 3 & 5 of the memo, reproduced below, do permit simultaneous proceedings and therefore, the averment lacks the force and momentum to sustain the contention.

"3. However, if the charge in the criminal case is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case. This will depend upon the nature of offence and the evidence and material collected against the Government servant during investigation or as reflected in the charge sheet. If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were kept pending on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty, his honor may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest, if the case so warrants.

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5. It is therefore, clarified that stay of disciplinary proceedings is not a must in every case, where there is a criminal trial on the very same charges and the concerned authority may decide on proceeding with the departmental proceedings after taking into consideration the facts and circumstances of each case and the guidelines given by the Hon'ble Supreme Court, as mentioned in the preceding paragraphs."

We have gone through the other averments made in the OA carefully and in view of their irrelevance, the same have not been commented upon.

XIV. Therefore, in view of the aforesaid circumstances, the OA is devoid of merit, merits dismissal and hence dismissed. Pending MA stands closed. No order as to costs.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

evr