CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

OA/020/00162/2021 & OA/020/00174/2021

HYDERABAD, this the 7th day of April, 2021

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

Namarla Satyanarayana S/o Late Venkata Rao
Aged about 54 yrs, Occ : Asst. Commissioner
(Under suspension) Gr. A,
O/o The Principal Commissioner of Customs,
Custom House, Port Area, Visakhapatnam and
R/o D.No.34-14-37, Manual Street, Gnanapuram,
Visakhapatnam. ...Applicant (in both OAs)

(By Advocate : Mr. N. Vijay)

Vs.

1.Union of India, Ministry of Finance,
Department of Revenue, North Block,
New Delhi Represented by its Secretary.

2.The Chief Commissioner of Customs and Central Tax,
Visakhapatnam Zone, GST Bhavan, Visakhapatnam.

3.The Principal Commissioner of Customs,
Custom House, Port Area, Visakhapatnam.

....Respondents (in both OAs)

(By Advocate : Mrs. L. Pranathi Reddy, Addl. CGSC)

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

Through Video Conferencing:

2. The OAs are filed challenging the issue of the charge memo dated 4.2.2021 and for not permitting the Applicant to join as Asst. Commissioner though orders of promotion were issued. The OAs have been filed by the same applicant involving the same respondents and hence, a common order is passed.

3. Brief facts of the case are that the applicant, who belongs to the ST community, while working as Superintendent in the respondents organization was subjected to an inquiry in regard to complaints received from his brothers/ niece, about his caste and SSC certificate. The respondents allege that the applicant was dodging the inquiry by seeking leave, which was not granted. In the process, applicant was suspended on 4.5.2020 for unauthorised absence of 55 days. The suspension was challenged in OA 506/2020 which was allowed. Instead of revoking the suspension, respondents extended the suspension on 25.1.2021 and in the meanwhile albeit applicant was promoted as Asst. Commissioner on 24.12.2020, he is not being allowed to join the promoted post. Further, adding salt to the injury, an incompetent authority issued the charge memo on 4.2.2021. Aggrieved over the issue of the charge sheet and for not allowing the applicant to join the promoted post the OAs are filed.

4. The contentions of the applicant are that though the suspension has been set aside by the Tribunal in OA 506/2020 respondents did not honour the order. The complaints received relate to intra family property dispute

and therefore, do not warrant a major penalty disciplinary proceedings. Article 1 of the charge memo dated 4.2.2021 is vague. Based on the complaints received in regard to the caste, the District Collector after due inquiry has cancelled the caste certificate on 25.6.2018 and on appeal, the appellate authority i.e. Government of A.P has stayed the cancellation order on 12.7.2018. Besides, in regard to SSC certificate, the District Education Officer has stated that there are two SSC certificates with the names Namala Satyanarayana and Namarla Satyanarayana and that he could not confirm as to whether they belong to the same person. The brothers of the applicant have filed WP No.31545 of 2016 in the Hon'ble High Court of A.P. alleging that the applicant secured the job in the respondents organisation by submitting a fake caste certificate and the said WP is pending adjudication. Besides, when the applicant was under suspension respondents promoted the applicant as Asst. Commissioner, which belongs to the Group A cadre, and therefore issue of a charge sheet by the Principal Commissioner of Customs (PCC) is invalid, since PCC is not the competent authority. More over denial of promotion after the suspension was set aside is illegal and arbitrary.

5. Respondents per contra state that though the applicant was promoted as Asst. Commissioner on 24.12.2020 since he was under suspension he was not allowed to join the promotion post as per the relevant clause contained in the promotion order. Further, since the applicant was under suspension and continues to be in the cadre of Superintendent, the charge memo dated 4.2.2021 was issued by the competent authority. The suspension of the applicant was extended within the time period allowed to

implement the judgment in OA 506 of 2020. However, when the order of the Tribunal in the cited OA 506 of 2020 was challenged in WP 5358 of 2021, the Honble High Court of A.P did not interfere with the order of the Tribunal vide its order dated 5.3.2021 and hence, the suspension was revoked on 11.3.2021. The applicant cannot be promoted as Assistant Commissioner because the charge memo is pending against him. Tribunal should not interfere in matters relating to issuance of charge sheets.

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

7. I. The dispute is about issuing a charge sheet as well as not allowing the applicant to join as Asst. Commissioner (AC) on promotion. The applicant belongs to the ST community and based on complaints that his caste certificate is fake, the District Collector cancelled the certificate after due inquiry and on appeal the Govt. of A.P has stayed the order of the District Collector. Similarly in respect of the complaints about applicant's SSC certificate, the District Education officer has found that there were two individuals who were issued the SSC certificates with the names Namala Satyanarayana and Namarla Satyanarayana but could not state as to whether the two individuals were one and the same. However, in order to inquire about the complaints received, respondents directed the applicant to appear before the nominated officer for the purpose but the applicant was reported to have given evasive replies and was avoiding the inquiry by being on leave which was not sanctioned. Hence applicant was suspended for unauthorised absence of 55 days. The suspension was challenged by filing OA 506 of 2020 where in the suspension was set aside, by observing as under:

"II. By applying the said judgment to the instant case, we find that the applicant was suspended on 4.5.2020 and till date, no charge memo has been issued. Therefore, based on the judgment, the respondents need to necessarily revoke the suspension. The respondents, in our view, can revoke the suspension and place the applicant in a non-sensitive post and expedite the disciplinary proceedings against him. This would serve a dual purpose of extracting work from the applicant and save resources in the form of subsistence allowance paid to the applicant.

III. In view of the above, we set aside the impugned suspension order dated 4.5.2020 & the order dated 30.07.2020 extending the suspension of the applicant for a period of 90 days w.e.f. 2.8.2020, and direct the respondents to post the applicant in a non-sensitive post. They are also directed to take steps, if they so desire, to initiate disciplinary proceedings against the applicant as expeditiously as possible. The time period to implement the judgment is 3 months from the date of receipt of this order.

IV. With the above directions, the O.A. is allowed. MA/20/409/2020 shall stand closed. No order as to costs. "

II. The respondents received the order on 18.12.2020 and keeping in view the time limit of 3 months granted, extended the suspension on 259.1.2021 and contested the order of the Tribunal in the Hon'ble High court of A.P in WP 5358 of 2021, which was disposed of by the Hon'ble High Court, vide order dt. 05.03.2021, with the following observations:

With regard to the subsequent events, we note that the charge memo subsequently issued upon the respondent employee is under challenge before the Tribunal, hence we choose not to make any observations on the merits of such challenge. We, however, hold the decision of 4th petitioner to extend suspension of the respondent on 21.01.2021 inspite of the order of the Tribunal and after his promotion is non est in law. It shall, however, be open to the appropriate authority to take independent decision with regard to suspension of the respondent, if necessary, pending departmental enquiry in accordance with law without being influenced by the observations made in this order.

With these observations, Writ Petition is disposed of. No costs. "

The Hon'ble High Court has observed that the extension of suspension, despite the Tribunal order and after applicant's promotion, as

non est in law. Consequently, respondents revoked the suspension w.e.f 11.3.2021.

III. In regard to the allowing the applicant to join on promotion as Asst. Commissioner (AC), respondents state that since the Charge memo dated 4.2.2021 was pending, applicant cannot assume charge as AC. In this nexus, we observe that the applicant was promoted on 24.12.2020 as AC when he was under suspension and the charge memo was issued subsequent to his promotion. In other words the respondents were aware that the applicant was promoted to the cadre of Group A to which cadre the post of AC belongs to. The Appointing Authority for the Group 'A' Cadre is the Hon'ble President. When the events have unfolded in the manner they did, respondents need to have referred the matter to the Board for further directions in respect of the charge memo. Instead, charge memo was issued by PCC who was not the competent authority in respect of officers who are promoted to Group 'A' Cadre. More so in the light of the Tribunal order in OA 506/2020 setting aside the suspension of the applicant. Hon'ble High Court has observed in WP 5358 of 2021 dated 5.3.2021 that the suspension was *non est* in law. The Tribunal, while ordering revocation of suspension did remark that the respondents, if they so desire, can take steps to initiate disciplinary action as expeditiously as possible. The Ld. Counsel for the respondents stated that the respondents have acted in pursuance of the Tribunal order. We are not persuaded by this submission since disciplinary action has to be taken as per rules and law. It is incumbent on the respondents to act responsibly and by proper application of mind, more so while taking decisions which would have adverse civil consequences. The

argument that the applicant continues be in the post of Superintendent under suspension and therefore was given the charge sheet by PCC would not cut ice for reasons expounded supra. The respondents showed great haste in issuing the charge memo without appreciating the intricacies involved in the issue. The promotion order was issued in the name of the Hon'ble President by the Board and not by PCC and therefore, any further action in regard to processing of the disciplinary proceedings rests with the board/Competent authority on behalf of the Hon'ble President. Hence, the issue of the charge memo by PCC is invalid in the eyes of law since PCC ceases to be the disciplinary authority once the applicant has been promoted as AC. It requires no reiteration that the Hon'ble President has promoted the applicant as AC and therefore, he becomes the Appointing Authority and any charge memo to be issued to the applicant has to be approved by the Appointing Authority, as observed by the Hon'ble Supreme Court in ***Union of India & Ors v. B.V. Gopinath*** in Civil Appeal No.7761 of 2013 with connected cases, as under:

> *"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.*

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. xxx

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."

> *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.*

IV. The applicant is a serving employee and is, therefore available to be proceeded against on disciplinary grounds by the competent authority. The respondents did take necessary steps by application of mind in revocation of suspension but the same was not forthcoming in issuing the charge sheet. Hence the charge sheet issued on 4.2.2021 is vitiated since it was issued by an incompetent authority. The respondents have been harping on the fact that the Tribunal should not interfere in matters of issue of charge sheet. We agree that 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. An action without jurisdiction is arbitrary and illegal. In the instant case, PCC without jurisdiction has issued the charge memo and therefore it has to go, as per the legal principle laid down by the Hon'ble Apex Court cited supra. Thus the Hon'ble Apex Court judgments relied upon by the respondents would not therefore come to their assistance because of its own judgment in B.V. Gopinath.

V. Thus, in view of the aforesaid circumstances, we set aside the charge memo dated 4.2.2021 and direct the respondents to allow the applicant to join as Assistant Commissioner on a notional basis from the

date of revocation of the suspension by the respondents with consequential benefits thereof excepting back wages. Time calendared to implement the judgments is 3 months from the date of receipt of this order. In the same vein, we grant liberty to the respondents, if they are so advised, to initiate disciplinary proceedings against the applicant as deemed fit in terms of the extant rules and law.

With the above directions, the OAs are disposed of with no order as to costs.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

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