

**Central Administrative Tribunal
Principal Bench
New Delhi**

OA No.1125/2014

Reserved on : 12.08.2016
Pronounced on : 21.02.2017

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. K. N. Shrivastava, Member (A)**

Dr. Hari Prasad S/o Prem Singh,
R/o H.No.1849, Sector 28,
Faridabad (Haryana). ... Applicant

(By Advocate: Mr. Yogesh Sharma)

Versus

1. Union of India through its Secretary,
Department of Agriculture & Cooperation,
Ministry of Agriculture, Govt. of India,
Krishi Bhawan, New Delhi.
2. Deputy Secretary (Vigilance)
Department of Agriculture & Cooperation,
Ministry of Agriculture, Govt. of India,
Krishi Bhawan, New Delhi. ... Respondents

(By Advocates: Mr. N. K. Aggarwal)

O R D E R

Justice Permod Kohli, Chairman :

The applicant joined the service of the respondents on 24.12.1980 as Junior Chemist and earned promotions from time to time up to the rank of Joint Director (Chemistry). He retired on attaining superannuation on 30.09.2013 from the post of Joint Director (Chemistry) in the Directorate of Plant Protection,

Quarantine and Storage, Ministry of Agriculture. A complaint was lodged by one Dr. S. S. Bhatnagar on 06.06.2011 with Superintendent of Police, CBI, Anti Corruption, Zone New Delhi against the applicant, whereupon a criminal case was registered against him u/s 7 read with sections 13 (1) (d) and 13 (2) of Prevention of Corruption Act, 1988. A charge-sheet was filed before the CBI Court on completion of investigation and grant of sanction for prosecution. A major penalty charge-sheet under rule 14 of the CCS (CCA) Rules, 1965 was also served upon the applicant vide memorandum dated 14.03.2012. The applicant challenged the charge-sheet before this Tribunal in OA No.3701/2012. Said OA was later withdrawn on 09.10.2013. The disciplinary authority appointed one Kamal Prakash, Deputy Secretary, Ministry of Agriculture, as inquiry officer to conduct inquiry in respect of the charge-sheet dated 14.03.2012. The applicant opposed appointment of Kamal Prakash as inquiry officer on the ground that he was junior to the applicant. Representation of the applicant against appointment of inquiry officer was rejected vide the impugned order dated 11.10.2013. Applicant's demand for inspection of certain original documents was also rejected vide the said impugned order. The applicant has also challenged the charge memorandum dated 14.03.2012 on the ground that the same was not approved by the disciplinary authority.

2. This matter was taken up for hearing. Learned counsel for the applicant also placed on record copy of a judgment dated 06.08.2015 passed by Special Judge, CBI, Panchkula (Haryana). Vide this judgment, the applicant has been acquitted of the charges framed against him u/s 7 read with sections 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988.

3. In the counter affidavit filed by the respondents the contentions of the applicant, both on the question of inquiry officer being junior to him and non-supply of the original documents, are disputed. In respect to the status of the inquiry officer, it is stated that he belongs to a different cadre and thus the concept of senior or junior is not attracted. It is further stated that both the applicant and the inquiry officer are in the same grade pay of Rs.7600/-. The respondents have reiterated the stand in the impugned order dated 11.10.2013 stating that as regards the original documents the applicant was conveyed that the authenticity of the copies has to be established during the course of inquiry and thus inspection of original documents was not sanctioned. The respondents have also relied upon office memorandum dated 16.03.2012 (Annexure A-2 to the OA) whereby copies of the documents demanded by the applicant were furnished to him.

4. During the course of arguments, much emphasis has been laid on the plea of the applicant that the impugned charge memorandum has not been approved by the competent authority. In this regard reference is made to the averments made in para 4.13 of the OA wherein it is stated that during pendency of the inquiry, the applicant also came to know that the charge-sheet was not approved by the competent authority, i.e., the Hon'ble Minister of Agriculture. In reply to the averments made in para 4.13, the respondents have made following statement:

“4.13 & 4.14 That the contents of paras 4.13 & 4.14 of the OA are wrong and denied and in reply it is submitted that the President as DA (Disciplinary Authority) i.e. the Hon'ble Agriculture Minister approved the disciplinary proceedings under Rule 14 of CCS (CCA) Rules, 1965 against the applicant and to serve charge sheet on the applicant vide Annexure R-3 dated 04-03-2012. The charge sheet was signed by the then Additional Secretary & Chief Vigilance Officer “for and on behalf of President of India” as per the procedure.”

In order to support the contentions raised in the counter affidavit, the respondents have also placed on record the notings from official record as Annexure R-3 to canvass that the disciplinary authority, i.e., the Hon'ble Agriculture Minister had approved initiation of disciplinary proceedings and serving of charge-sheet.

5. Learned counsel for the applicant relied upon the judgment of the Apex Court in *Union of India & others v B. V.*

Gopinath & others [(2014) 1 SCC 351]. Reference is made to paras 30, 49, 50 and 52 of the judgment, which read as under:

“30. 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 and Appeal) Rules, 1965 makes it amply clear and the only interpretation possible is that the stage of initiating the disciplinary proceedings under Rule 14(2) is distinct and separate from issuing a charge memo under 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 and Appeal) Rules, 1965.”

“49. We are unable to accept the submission of the learned Additional Solicitor General. Initially, when the file comes to the Finance Minister, it is only to take a decision in principle as to whether departmental proceedings ought to be initiated against the officer. Clause (11) deals with reference to CVC for second stage advice. In case of proposal for major penalties, the decision is to be taken by the Finance Minister. Similarly, under Clause (12) reconsideration of CVC's second stage advice is to be taken by the Finance Minister. All further proceedings including approval for referring the case to DoP&T, issuance of show-cause notice in case of disagreement with the enquiry officer's report; tentative decision after CVC's second stage advice on imposition of penalty; final decision of

penalty and revision/review/memorial have to be taken by the Finance Minister.

50. In our opinion, the Central Administrative Tribunal as well as the High Court has correctly interpreted the provisions of Office Order No. 205 of 2005. Factually also, a perusal of the record would show that the file was put up to the Finance Minister by the Director General of Income Tax (Vigilance) seeking the approval of the Finance Minister for sanctioning prosecution against one officer and *for initiation* of major penalty proceeding under Rules 3(1)(a) and 3(1)(c) of the Central Civil Services (Conduct) Rules against the officers mentioned in the note which included the respondent herein. Ultimately, it appears that the charge memo was not put up for approval by the Finance Minister. Therefore, it would not be possible to accept the submission of Ms Indira Jaising that the approval granted by the Finance Minister for initiation of departmental proceedings would also amount to approval of the charge memo."

"52. In our opinion, the submission of the learned Additional Solicitor General is not factually correct. The primary submission of the respondent was that the charge-sheet not having been issued by the disciplinary authority is without authority of law and, therefore, non est in the eye of the law. This plea of the respondent has been accepted by CAT as also by the High Court. The action has been taken against the respondent in Rule 14(3) of the CCS (CCA) Rules which enjoins the disciplinary authority to *draw up* or *cause to be drawn up* the substance of imputation of misconduct or misbehaviour into definite and distinct articles of charges. The term "cause to be drawn up" does not mean that the definite and distinct articles of charges once drawn up do not have to be approved by the disciplinary authority. The term "cause to be drawn up" merely refers to a delegation by the disciplinary authority to a subordinate authority to perform the task of drawing up substance of proposed "definite and distinct articles of charge-sheet". These proposed articles of charge would only be finalised upon approval by the disciplinary authority. Undoubtedly, this Court in *P.V. Srinivasa*

Sastry v. CAG [(1993) 1 SCC 419 : 1993 SCC (L&S) 206 : (1993) 23 ATC 645] has held that Article 311(1) does not say that even the departmental proceeding must be initiated only by the appointing authority. However, at the same time it is pointed out that: (SCC p. 422, para 4)

“4. ... However, it is open to the Union of India or a State Government to make any rule prescribing that even the proceeding against any delinquent officer shall be initiated by an officer not subordinate to the appointing authority.”

It is further held that: (SCC p. 422, para 4)

“4. ... Any such rule shall not be inconsistent with Article 311 of the Constitution because it will amount to providing an additional safeguard or protection to the holders of a civil post.”

6. With a view to examine the respective contentions of the parties, record was called for. The respondents have produced two files – (1) file No.13011/22/2011-AVU (Vigilance Section), and (2) file No.13011/22/2011-AVU (Main File) (AV Unit). The first file contains the notings. The noting at page 15, after giving background of the case up to para 7, indicates that the documents sent by PP Division for first stage advice of CVC were examined and some deficiencies were noticed therein, which included want of clarity with regard to articles of charge III and IV. A second set of noting is at pages 17 and 18. In this noting, after giving background of the case against the applicant, it is noted that some of the documents mentioned therein required for referring the case to CVC for its first stage advice had not been submitted by the PP Division as per circular dated

13.03.2006 issued by CVC. A similar noting is at pages 19-20, again noticing deficiencies in submission of various documents. With regard to the charges against the applicant, following has been noticed:

“(f) Since the charges is splitted into many, this requires some refurbishing/recasting and to be kept to minimum basic charges.”

Then comes the relevant noting which is at pages 29-30 of the file. After noticing the background of the case, as in the earlier notings, following notings are made in paras 7 to 11:

“7. Since, PP Division had issued sanction for prosecution without seeking advice of CVC, vide AVU OM dated 2-09-2011, CVC was requested for their ex-post-facto approval.

8. CVC, vide their OM dated 03-10-2011 (p.57/c), while granting their ex-post-facto approval for sanction for prosecution against Dr. Hari Prasad, Jt. Director (Chem.), has further advised to put up the case against Dr. Hari Prasad for seeking Commission’s First Stage Advice for initiating Regular Departmental Action (RDA) for major penalty proceedings against Dr. Hari Prasad as per CBI’s recommendations.

9. Accordingly, CVC ex-post facto approval in respect of prosecution sanction against Dr. Hari Prasad was conveyed to PP Division with the direction to submit draft charge-sheet alongwith necessary documents for obtaining CVC 1st stage advice as per CVC’s Circular dated 13-03-2006.

10. PP Division vide their letter dated 29-11-2011 forwarded the documents for obtaining CVC 1st stage advice and vide AVU’s OM dated 07-01-2012, the case was referred to CVC for their 1st stage advice.

11. Now, CVC, vide their OM dated 25-01-2012, has advised initiation of major penalty against Dr. Hari Prasad, Joint Director (Chemistry), Central Insecticides Board & Registration Committee (CIB&RC), Faridabad."

Above notings relate to obtaining CVC's advice, even reference to draft charge-sheet in para 9 above is also for the same purpose. The file was thereafter placed before various officers up to Secretary (Agriculture), and after their approval the file was approved by the Hon'ble Agriculture Minister on 04.03.2012. The note which was approved by the Hon'ble Minister reads as under:

"12. The approval of Hon'ble Agriculture Minister is therefore solicited for initiating disciplinary proceedings under Rule 14 of CCS (CCA) Rules, 1965 and serving of charge sheet against Dr. Hari Prasad, Joint Director (Chemistry)."

Based upon this approval, it is argued on behalf of the respondents that the Hon'ble Agriculture Minister had approved not only initiation of disciplinary proceedings under rule 14 of the CCS (CCA) Rules, 1965, but also serving of the charge-sheet.

7. Learned counsel for the respondents referred to the second file (No.13011/22/2011-AVU), which contains some draft charge-sheets. There is one draft charge-sheet which is dated 09.01.2012 at page 193. Another undated draft charge-sheet (though month and year mentioned as January, 2012) is at page 200. Another charge-sheet dated 14.03.2012 is at page 211. The charge-sheets

which are said to be draft charge-sheets prepared in January, 2012 were forwarded to CVC. CVC in its OM dated 25.01.2012 has considered the memorandum dated 09.01.2012, i.e., the draft charge-sheet, and advised initiation of major penalty proceedings against the applicant. The relevant memorandum reads as under:

“Sub: Disciplinary proceedings against Dr. Hari Prasad, Joint Director (Chemistry), CIB&RC, Directorate of Plant Protection, Quarantine & Storage, Faridabad.

Department of Agriculture & Cooperation may refer to their O.M. No.13011/22/2011 dated 09.01.2012 on the above subject.

2. The case has been examined by the Commission. The Commission in agreement with the CVO, ICAR, advised initiation of major penalty against Dr. Hari Prasad, Joint Director (Chemistry), Central Insecticides Board & Registration Committee (CIB&RC), M/o Agriculture, Faridabad.”

It is accordingly argued by the learned counsel for the respondents that the draft charge-sheet had been prepared when the file was placed before the Hon'ble Agriculture Minister.

8. We have carefully perused the entire record of the notings in file No.13011/22/2011-AVU of Vigilance Section and find that the note at para 12 (p.30) reproduced hereinabove, was approved by the Hon'ble Agriculture Minister. The draft charge-sheet was not on record of this file. Not only this, there is no mention in the entire notings that draft charge-sheet, or for that matter, second file

No.13011/22/2011-AVU containing the draft charge-sheet was placed before the Hon'ble Minister for his approval. Merely because the draft charge-sheet was sent to CVC for its advice does not *ipso facto* establish that the said charge-sheet was placed before the disciplinary authority (Hon'ble Agriculture Minister) for his approval. The record belies the averments in the counter affidavit and the submissions of counsel for the respondents. Even the reply to para 4.13 of the OA in the counter-affidavit says that the Hon'ble Agriculture Minister had approved the disciplinary proceedings under rule 14 of the CCS (CCA) Rules, 1965 against the applicant and to serve charge-sheet on him. There is no averment that the draft charge-sheet was placed before the Hon'ble Minister and it was approved.

9. In para 30 of the judgment in the case of *B. V. Gopinath (supra)*, the Apex Court categorically laid down that there are two distinct stages envisaged under rule 14(2) and 14(3), i.e., initiating the disciplinary proceedings, and issuing charge memorandum. Sub-rules (2) and (3) of rule 14 are reproduced hereunder:

“(2) Whenever the Disciplinary Authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a Government servant, it may itself inquire into, or appoint under this rule or under the provisions of the Public Servants (Inquiries) Act, 1850, as the case may be, an authority to inquire into the truth thereof:

(3) Where it is proposed to hold an inquiry against a Government servant under this rule and rule 15, the Disciplinary Authority shall draw up or cause to be drawn up-

- (i) the substance of the imputations of misconduct or misbehaviour into definite and distinct articles of charge.
- (ii) a statement of the imputations of misconduct or misbehaviour in support of each article of charge, which shall contain-
 - (a) a statement of all relevant facts including any admission or confession made by the Government servant;
 - (b) a list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained."

From a reading of the aforesaid provisions, we find that the same material is to be examined by the disciplinary authority while forming opinion for initiation of disciplinary proceedings under rule 14(2) and while preparing charge-sheet under rule 14(3), the first step being decision to initiate disciplinary proceedings and the second step to prepare/approve the charge-sheet. Thus, the Hon'ble Supreme Court has observed that there are two distinct stages. From the notings we find that the proposal contained in para 12 of the notings referred to hereinabove for initiation of disciplinary proceedings and serving of the charge-sheet was approved by the Hon'ble Minister. We are of the considered opinion that there is no prohibition in combining the two stages if the material to formulate an opinion for initiating disciplinary proceedings and for framing the

charges is same, provided a charge-sheet is duly prepared and placed before the disciplinary authority for its consideration and approval. However, if no charge-sheet is prepared or placed before the disciplinary authority when approval for initiation of disciplinary proceedings is obtained, it cannot be said that the charge-sheet also stands approved even if approval to issue the charge-sheet is granted by the disciplinary authority. In the present case, we find that though the charge memorandum was drafted on 09.01.2012 and the same was forwarded to CVC for its advice, but no such charge memorandum was placed before the disciplinary authority, i.e., the Hon'ble Agriculture Minister, for his consideration and approval along with approval for initiation of disciplinary proceedings and serving of charge-sheet. Thus, the matter is squarely covered by the dictum of the judgment in *B. V. Gopinath (supra)*.

10. Insofar as the other contention of the applicant that original documents were not shown to him is concerned, the disciplinary authority vide the impugned order dated 11.10.2013 has already conveyed that the said documents would be proved according to law during the course of inquiry. Assuming such documents are not proved in the inquiry, the ultimate benefit would go to the applicant. Thus, the contention of the applicant for quashing the disciplinary proceedings on this ground is liable to be rejected.

11. As regards the status of the inquiry officer, the respondents have stated that both the officers, i.e., the applicant and the inquiry officer, are in the same grade but belong to different cadres. This ground also does not seem to be available for quashing the proceedings. However, we are of the opinion that the disciplinary authority must consider the representation of the applicant for change of the inquiry officer to avoid any unnecessary future challenge.

12. This OA is accordingly allowed. Impugned charge memorandum dated 14.03.2012 is hereby set aside for want of approval by the competent authority. The respondents are granted liberty to initiate fresh disciplinary proceedings after complying with the mandate of law, if so advised. Since we have directed the respondents to also consider the representation of the applicant for change of the inquiry officer, the disciplinary authority shall take a decision in this regard before commencement of the fresh proceedings, if sought to be initiated. No order as to costs.

(K. N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

/as/