CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE

ORIGINAL APPLICATION NO.170/01806/2018

DATED THIS THE 4th DAY OF JUNE 2019

HON'BLE DR. K.B. SURESH,MEMBER(J)

HON'BLE SHRI CV.SANKAR MEMBER (A)

MES-124777
B.Sankaranarayanan,
S/o Sri VG.Balakrishnan Nair,
Aged about 56 years,
Assistant Engineer, (Under Suspension)
O/o Garrison Engineer (I)
Belgaum 590009 ...Applicant

(By Advocate Shri NG.Phadke)

vs.

1.The Union of India,
By its Secretary,
Ministry of Defence,
South Block,
New Delhi-110001.

2.Engineer- in- Chief,
Army Head Quarters,
Kashmire House,
New Delhi-110001.

3.Chief Engineer,
Southern Command,
Pune- 411 001.

4. Garrison Engineer (I)
Belgaum 590009 ...Respondents

(By Shri HR.Sreedhara... Counsel)

ORDER (ORAL)

HON'BLE DR. K.B. SURESH, MEMBER (J):

1. We heard both counsels in great detail. The respondents file detailed reply.

2. The matter seems to be covered by the judgement of the Hon'ble Apex Court in State of Tamil Nadu vs. Promod Kumar IPS & another in Civil Appeal No.8427-8428/2018 which we quote:-

"JUD G M E N T

L. NAGESWARA RAO, J.

Leave granted.

1. *The first Respondent filed O.A. No.165 of 2016 in the Central Administrative Tribunal, Madras Bench challenging his suspension and the charge memo dated 29.10.2013. The Tribunal allowed O.A. No.165 of 2016 filed by the first Respondent by revoking his suspension. The Tribunal refused to set aside the charge memo. The first Respondent filed Writ Petition No.39989 of 2016 in the High Court of Madras challenging the judgment of the Tribunal in O.A.*

No.165 of 2016 in respect of the refusal to quash the charges framed against him. The Appellant - State of TamilNadu filed Writ Petition No.38696 of 2016 assailing the judgment of the Tribunal regarding the direction to reinstate the first Respondent by revoking his suspension. The High Court by its judgment dated 12.01.2017 upheld the judgment of the Tribunal revoking the suspension of the first Respondent. The High Court further quashed the disciplinary proceedings initiated by the Appellant against the first Respondent by declaring the charge memo dated 29.10.2013 as non est in law. Aggrieved by the said judgment of the High Court, the Appellant has approached this Court by filing the above appeal.

2. *The first Respondent is a member of the Indian Police Service and was allotted to the State of Tamil Nadu. He was posted as Inspector General of Police, West Zone, Coimbatore from 10.09.2008 to 19.02.2010. During his tenure in the said post, an FIR was registered against*

K.Mohanraj, K. Kathiravan and Kamalavalli Arumugam who were the Directors of M/s Paazee Forex Trading India Private Limited (hereinafter referred to as "M/s Paazee Forex") by the Central Crime Branch, Tirupur under Section 3 and 4 of the Prize Chits and Money Circulation Scheme (Banning) Act, 1978 and Section 420 of the Indian Penal Code, 1860 (IPC). M/s Paazee Forex was alleged to have cheated a large number of depositors to the tune of Rs.1,210 crores. The Directors of the company were granted anticipatory bail on 08.10.2009. Crime No.3068 of 2009 was registered under Section 365 IPC on 09.12.2009 pursuant to a written complaint that one of the Directors of M/s Paazee Forex, Ms. Kamalavalli Arumugam, was missing since 08.12.2009. The missing Director Kamalavalli Arumugam submitted a complaint to the Deputy Superintendent of Police, Tirupur that she was kidnapped on 08.12.2009. She stated in the complaint that three police officials and a private individual extorted Rs. 3 Crores approximately

for her release. The investigation of Crime No.26 of 2009 registered against M/s Paazee Forex on 24.09.2009 was transferred to the CB-CID, Vellore on 23.03.2010. Crime No.3068 of 2009 pertaining to the kidnapping of Kamalavalli Arumugam was also transferred to the CB-CID, Vellore.

3. *An association of investors of M/s Paazee Forex filed Criminal O.P. No.5356 of 2011 under Section 482 Cr.P.C. for a direction to transfer the investigation to the CBI. Mr.K. Loganathan, an investor in M/s Paazee Forex filed Criminal O.P. No.2691 of 2011 seeking transfer of investigation of Crime No.26 of 2009 from the State police to the CBI since he apprehended that the State police was protecting the Directors of M/s Paazee Forex and delaying the disbursal of money payable to the depositors.*

4. *In the meanwhile, the first Respondent was interrogated in connection with Crime No.3068 of 2009 on 06.04.2011. On investigation, it was found that Respondent No.1 abused his official position as Inspector General of Police and inter*

alia, was involved in extorting money from the Directors of M/s Paazee Forex and the delay in the repayment of money to the depositors of M/s Paazee Forex. He was arraigned as an accused in Crime No. 26 of 2009 by the Special Judge, CBI, Coimbatore on 28.02.2012.

5. *By an order dated 19.04.2011, the High Court directed the transfer of Crime No.3 of 2010 (originally Crime No.26 of 2009) registered against M/s Paazee Forex and Crime No.3068 of 2009 originating from the kidnapping of Kamalavalli Arumugam to the CBI.*

6. *The first Respondent filed an application for bail which was rejected by the High Court on 20.04.2012. Thereafter, he was arrested on 02.05.2012. The Principal Secretary to Government of Tamil Nadu by an order dated 10.05.2012 placed the first Respondent under suspension with effect from 02.04.2012 in terms of Sub-Rule 2 of Rule 3 of the All India Service (Discipline and Appeal) Rules, 1969 until further orders. It was mentioned in the said order that the first Respondent was arrested on 02.05.2012*

and was detained in custody for a period exceeding 48 hours. It is relevant to note that the first Respondent was released on bail on 28.06.2012.

7. *Writ Petition No.21801 of 2012 was filed by the first Respondent in the High Court of Madras praying for a direction "forbearing the Respondents (CBI and others) from proceeding further with conducting enquiry or investigating offences alleged to have been committed by the Petitioner (first Respondent) in connection with the case registered in FIR in RC No. 13(E)/2011/CBI/EOW/Chennai and pending on the file of the 5th Respondent (CBI)". The Writ Petition was dismissed by a learned Single Judge of the High Court of Madras by a judgment dated 05.12.2012 which was upheld by a Division Bench on 29.04.2013. In the meanwhile, the decision to initiate a disciplinary proceeding against the first Respondent was approved by the Disciplinary Authority on 05.04.2013. Pursuant thereto, a charge memo was*

issued to the first Respondent on 29.10.2013.

8. *The judgment of the High Court of Madras dated 19.04.2011 in Criminal O.P. No.2691 of 2011 and Criminal O.P. No. 5356 of 2011 by which Crime No.26 of 2009 and Crime No.3068 of 2009 were transferred to the CBI was challenged in this Court. The judgment dated 29.04.2013 of the Division Bench of the High Court of Madras in Writ Appeal No.12 of 2013 pertaining to the investigation by the CBI against the involvement of Respondent No.1 in Crime No.3068 of 2009 was assailed by the first Respondent in this Court. This Court by an order dated 17.03.2015 disposed of the SLPs with the following observations:*

> *"Without getting into the intricacies of the merits of the issues canvassed, we consider it just and appropriate, to remand the matter back to the High Court, requiring the High Court to adjudicate upon Writ Petition No.21801 of 2012 afresh, by impleading the appellant(s) in Criminal Original Petition Nos.2691 and 5356 of 2011, and by affording an opportunity to the appellant before this Court. In*

disposing of the aforesaid writ Petition, the jurisdiction exercised by the High Court, would be under Article 226 of the Constitution of India.

In the above view of the matter, the order dated 5.12.2012 passed by the High Court while disposing of the above writ Petition is hereby set aside. Parties are directed to appear before the High Court on 13.04.2015. We hope and trust, that the High Court shall dispose of the controversy at the earliest. Since, the appellant herein was not heard when the order dated 19.4.2011 was passed by the High Court while disposing of Criminal Original Petition Nos.2691 and 5356 of 2011, we consider it just and appropriate to further clarify, that the above order dated 19.4.2011, will not stand in the way of the appellant herein, when the High Court disposes of the matter afresh."

9. *A Petition filed by one of the accused for the return of certain seized documents was dismissed by a Special Judge, CBI on 15.07.2014. A Revision Petition was filed by one Pratap Singh Nagar to set aside the order of the*

Special Judge, CBI, Coimbatore and to direct return of the documents. A Single Judge of the High Court disposed off the Revision Petition on 13.08.2015 by observing that the CBI cannot proceed with the investigation in view of the order passed by this Court on 17.03.2015. Thereafter, the Special Court, CBI by an order dated 19.10.2015 ordered as follows:

> *"In the result in view of the orders passed by the Hon'ble Supreme Court of India in Civil Appeal No.3062/15 and by the Hon'ble Madras High Court in Crl. R.C. No.838/14 subject to the orders to be passed by the Hon'ble Madras High Court in W.P. 21801/12 and Crl. O.P.2691 and 5356/11 for the present this case in CC 2/13 is closed."*

10. *The first Respondent filed O.A. 165 of 2016 in the Central Administrative Tribunal, Madras Bench for quashing of the order of suspension dated 10.05.2013 and the charge memo dated 29.10.2013. He also sought for reinstatement with all consequential benefits. It is relevant to mention that the order of suspension dated 10.05.2012 was periodically extended after expiry of 180 days and the last extension was on*

06.07.2016.

11. *The Central Administrative Tribunal, Madras Bench refused to interfere with the charge memo by holding that the first Respondent had not exhausted his remedies by filing his objections or statement of defence. Liberty was given to the first Respondent to raise all the points before the appropriate authority. However, the Tribunal directed revocation of suspension by holding that there was no material to indicate that first Respondent had tampered with the evidence or influenced the witnesses. Therefore, the Tribunal held that a public servant cannot be continued under suspension for a prolonged period. Aggrieved by the direction issued by the Central Administrative Tribunal to reinstate the first Respondent, the Appellant, State of Tamil Nadu, filed a Writ Petition in the High Court. The judgment of the Tribunal to the extent that charge memo was not quashed was assailed by the first Respondent in another Writ Petition. By a judgment dated 12.01.2017, the High Court upheld the judgment of the Tribunal pertaining to*

revocation of suspension. Further, the High Court quashed the disciplinary proceedings on the ground that the charge memo was not approved by the disciplinary authority. Hence, this appeal by the State of Tamil Nadu.

12. *We have heard Mr. V. Giri, learned Senior Counsel appearing for the Appellant and Mr. P. Chidambaram, learned Senior Counsel appearing for the first Respondent. Mr.Giri contended that the first Respondent is involved in a serious crime which is pending trial. He stated that the initial suspension was under Rule 3(2) of the All India Service (Discipline and Appeal) Rules, 1969 for being detained in custody for a period of more than 48 hours. He submitted that periodical reviews were being conducted to consider the continuance of the suspension of Respondent No.1. He placed before us the proceedings of Review Committees and the orders passed pursuant to the recommendations, extending the period of suspension. Reinstatement of the first Respondent would not be in public interest and*

would also have an adverse effect on the ongoing trial, according to Mr.Giri. He further contended that the High Court committed an error in quashing the charge memo on the ground that it was not approved by the disciplinary authority. He submitted that a plain reading of Rule 8 of the All India Service (Discipline and Appeal) Rules, 1969 would indicate that initiation of disciplinary proceedings and issuance of a charge memo are at the same stage. In other words, the stage of initiation is not different from the stage of issuance of the charge memo. Mr.Giri submitted that ***Union of India v. B.V.Gopinath,*** *(2014) 1 SCC 351 was not correctly decided. According to him, approval of the disciplinary authority at the initial stage and the stage of initiation of the disciplinary proceedings is sufficient and there is no need for an approval of the charge memo by the disciplinary authority as held in the above judgment. He also placed before us the Tamil Nadu Government Business Rules, 1978 in support of his submissions.*

13. *On behalf of Respondent No.1, Mr.P.Chidambaram submitted that there is no need for the continuation of suspension of Respondent No.1, especially, when no material was brought to the notice of the Court about any attempt made by him to tamper with the evidence. He submitted that mere apprehension of Respondent No.1 influencing the witnesses, in case he is reinstated, is not a sufficient ground to deprive him the relief of reinstatement. He also submitted that the criminal case against him is dormant at present in view of the order passed by the Special Court closing the criminal case subject to further directions of the High Court in Writ Petition No. 21801 of 2012 after hearing the first Respondent. He pointed out that the High Court has given liberty to the Appellant to appoint the first Respondent in a non-sensitive post. Mr.Chidambaram relied upon the judgment of this Court in* ***B.V. Gopinath*** *(supra) and submitted that the issue pertaining to the approval of the disciplinary authority at the stage of issuance of a charge memo is no more res integra. He submitted that Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 and Rule 8 of the All India*

Service (Discipline and Appeal) Rules, 1969 are in pari materia.

14. *There are two issues which arise for consideration in this case. One pertains to the validity of the charge memo and the other relates to the continuance of Respondent No.1 under suspension. As the two issues are distinct and not connected to each other, we proceed to deal with them separately.*

Validity of the Charge-Memo

15. *Rule 8 of the All India Service (Discipline and Appeal) Rules, 1969 prescribes a procedure for imposing major penalties. A major penalty specified in Rule 6 cannot be imposed except after holding an enquiry in the manner prescribed in Rule 8. Where it is proposed to hold an enquiry against a member of the service under Rule 8, the disciplinary authority shall "draw up or caused to be drawn up" the substance of the imputation of misconduct or misbehavior into definite and distinct article of charge. The Rule further provides for an opportunity to be given to the delinquent to*

submit his explanation, the appointment of an inquiring authority and the procedure to be followed for imposition of a penalty with which we are not concerned in this case. The disciplinary authority as defined in Rule 2 (b) is the authority competent to impose on a member of the service any of the penalties specified in Rule 6. Rule 7 provides that the authority to institute proceedings and to impose penalty on a member of All India Service is the State Government, if he is serving in connection with the affairs of the State. There is no doubt that the Government of Tamil Nadu is the disciplinary authority. The authority to act on behalf of the State Government as per the Business Rules is the Minister for Home Department. There is no dispute that the Hon'ble Chief Minister was holding the said department during the relevant period (2011-2016). Matters pertaining to disciplinary action against IPS, IAS and IFS officers had to be dealt with by the Chief Minister as per Standing Order No.2 dated 09.01.1992 issued by the Chief Minister of Tamil Nadu under

Rule 35 (4) of the Business Rules which reads as follows

> ***"Paragraph 18. Disciplinary Action:-***
> *Files relating to disciplinary action against I.A.S./I.P.S./I.F.S. Officers in the senior-grade and above at the stage of issue of charge memo/show cause notice to the above officers alone should be circulated to the Chief Minister.*
>
> *In the case of Secretaries to Government where action is contemplated under Rule 17 (a) or 17 (b) of the Tamil Naidu Civil Services (CC &A) Rules such files should be circulated to the Chief Minister. In the case of Heads of Department files where action is contemplated under Rule 17 (b) of the T.N.C.S. (CC &A) Rules, alone should be circulated to the Chief Minister.*
>
> *In the case of District Revenue Officers, the files should be circulated to the Chief Minister only at the stage of imposition of penalty after obtaining the explanation of the officers.*
>
> *In the case of Joint Secretary Deputy Secretary where action is contemplated under Rule 17(b) of the T.N.C.S. (CC &A) Rules such cases should be circulated by the Chief Secretary to the Chief Minister.*
>
> *In respect of all other officers files should be circulated to the Chief Minister as per Business Rules."*

16. *By an order dated 19.04.2018, we directed the Chief Secretary, State of Tamil Nadu to file an affidavit explaining the position pertaining to the Business Rules and the standing orders. The affidavit filed by the Chief Secretary,*

Government of Tamil Nadu dated 14.05.2018 discloses that the first Respondent was arrested on 02.05.2012. He was placed under suspension on 10.05.2012 under Rule 3 (2) of the All India Service (Discipline and Appeal) Rules, 1969 after obtaining the approval of the Hon'ble Chief Minister on the note for circulation dated 09.05.2012. It was further stated in the affidavit that regular departmental action for a major penalty was initiated against Respondent No.1 under the All India Service (Discipline and Appeal) Rules, 1969 on 05.04.2013 after obtaining the approval of the Hon'ble Chief Minister.

17. *It is clear that the approval of the disciplinary authority was taken for initiation of the disciplinary proceedings. It is also clear from the affidavit that no approval was sought from the disciplinary authority at the time when the charge memo was issued to the delinquent officer. The submission made on behalf of the Appellant is that approval of the disciplinary authority for initiation of disciplinary proceedings*

was sufficient and there was no need for another approval for issuance of charge memo. The basis for such submission is that initiation of disciplinary proceedings and issuance of charge memo are at the same stage. We are unable to agree with the submission in view of the judgment of this Court in ***B.V. Gopinath*** *(supra). In that case the charge memo issued to Mr. Gopinath under Rule 14(3) of the Central Civil Service (Classification, Control and Appeal) Rules, 1965 was quashed by the Central Administrative Tribunal on the ground that the Finance Minister did not approve it. The judgment of the Tribunal was affirmed by the High Court. The Union of India, the Appellant therein submitted before this Court that the approval for initiation of the departmental proceedings includes the approval of the charge memo. Such submission was not accepted by this Court on an interpretation of Rule 14(3) which provides that the disciplinary authority shall "draw up or cause to be drawn up" the charge memo. It was held that if any authority*

other than the disciplinary authority is permitted to draw the charge memo, the same would result in destroying the underlying protection guaranteed under Article 311 (2) of the Constitution of India.

18. *Rule 8 (4) of the All India Service (Discipline and Appeal) Rules, 1969 also mandates that the disciplinary authority shall "draw up or cause to be drawn up" the charge memo. We see no reason to take a view different from the one taken by this Court in* ***B.V.Gopinath*** *(supra). We also see no substance in the submission made by the Senior Counsel for the State that the said judgment needs reconsideration. Assuming that Mr.Giri is right in his submission that the initiation of disciplinary proceedings and issuance of charge memo are at the same stage, the mandatory requirement of Rule 8 which provides for the charge memo to be drawn by the disciplinary authority cannot be ignored. We reject the submission on behalf of the Appellant that Gopinath's case can be distinguished on facts. We are not in agreement with the*

contention of the Appellant that the business rules and standing orders of the State of Tamil Nadu are quite different from the office orders and circulars issued by Union of India which formed the basis of the judgment in Gopinath's case. A close reading of the said judgment would disclose that reliance on the office note was only in addition to the interpretation of the Rule.

19. *It is also settled law that if the rule requires something to be done in a particular manner it should be done either in the same manner or not at all-* ***Taylor v. Taylor*** *(1875) 1 Ch.D. 426, 431. In view of the mandatory requirement of Rule 8 (4) and the charge memo being drawn up or cause to be drawn up by the disciplinary authority is not complied with, we are of the considered opinion that there is no reason to interfere with the judgment of the High Court on this issue. The only addition we would like to make is to give liberty to the disciplinary authority to issue a charge memo afresh after taking approval from the disciplinary authority.*

Suspension

20. *The first Respondent was placed under deemed suspension under Rule 3(2) of the All India Services Rules for being in custody for a period of more than 48 hours. Periodic reviews were conducted for his continuance under suspension. The recommendations of the Review Committees did not favour his reinstatement due to which he is still under suspension. Mr.P. Chidambaram, learned Senior Counsel appearing for the first Respondent fairly submitted that we can proceed on the basis that the criminal trial is pending. There cannot be any dispute regarding the power or jurisdiction of the State Government for continuing the first Respondent under suspension pending criminal trial. There is no doubt that the allegations made against the first Respondent are serious in nature. However, the point is whether the continued suspension of the first Respondent for a prolonged period is justified.*

21. *The first Respondent has been under suspension for more than six years. While releasing the first Respondent on bail, liberty*

was given to the investigating agency to approach the Court in case he indulged in tampering with the evidence. Admittedly, no complaint is made by the CBI in that regard. Even now the Appellant has no case that there is any specific instance of any attempt by the first Respondent to tamper with evidence.

22. *In the minutes of the Review Committee meeting held on 27.06.2016, it was mentioned that the first Respondent is capable of exerting pressure and influencing witnesses and there is every likelihood of the first Respondent misusing office if he is reinstated as Inspector General of Police. Only on the basis of the minutes of the Review Committee meeting, the Principal Secretary, Home (SC) Department ordered extension of the period of suspension for a further period of 180 days beyond 09.07.2016 vide order dated 06.07.2016.*

23. *This Court in* ***Ajay Kumar Choudhary v. Union of India, (2015) 7 SCC 291*** *has frowned upon the practice of protracted suspension and held that suspension must necessarily be for a short*

duration. On the basis of the material on record, we are convinced that no useful purpose would be served by continuing the first Respondent under suspension any longer and that his reinstatement would not be a threat to a fair trial. We reiterate the observation of the High Court that the Appellant State has the liberty to appoint the first Respondent in a non sensitive post.

24. *With the aforesaid observation, the appeals are disposed of.*

*.....J.**S.A. BOBDE]***

.....J. [L. NAGESWARA RAO]

New Delhi, August 21, 2018. "

3. Therefore, in compliance with the Hon'ble Apex Court judgement applicant may be immediately reinstated and be put in a nonsensitive post.

4. Therefore, OA is allowed to the limited extent. No order as to costs.

(CV.SANKAR)
MEMBER (A)

(DR. K.B. SURESH)
MEMBER (J)

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Annexures referred to by the applicant in OA No.1806/2018

Annexure A1: Copy of order of Suspension dt. 24.6.2016

Annexure A2: Copy of extension of Suspension order dt. 19.10.2016

Annexure A3: Copy of extension of Suspension order dt. 4.4.2017

Annexure A4: Copy of extension of Suspension order dt. 4.10.2017

Annexure A5: Copy of representation dt.2.2.2018

Annexure A6: Copy of memo of charge dt. 9.2.2018

Annexure A7: Copy of reply dt. 11.4.2018 to memo of charge

Annexure A8: Copy of order extending the period of Suspension order dt. 5.4.2018

Annexure A9: Copy of Communication dt. 7.4.2018

Annexure A10: Copy of impugned order dt. 3.10.2018

Annexure A11: Copy of judgement of the Hon'ble Apex Court dt. 21.8.2018 CA No.8427-8428/2018

Annexure A12: Copy of impugned order dt. 3.4.2019 extending the period of Suspension

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