IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE SANJAY DWIVEDI

ON THE 05th OF APRIL, 2024

WRIT PETITION No.20492 of 2020

BETWEEN:-

S.D. RICHHARIA, S/O. LATE HARIGOVIND RICHHARIA, AGED ABOUT 62 YEARS, OCCUPATION: DEPUTY COMMISSIONER (COMMERCIAL TAX), TAX AUDIT WING, BHOPAL, R/O. E.G. 9/3, CHARIMLI, BHOPAL (M.P.)

....PETITIONER

(BY SHRI MANOJ SHARMA – SENIOR ADVOCATE WITH SHRI QUAZI FAKHRUDDIN - ADVOCATE)

AND

STATE OF MADHYA PRADESH, THROUGH ITS PRINCIPAL SECRETARY, DEPARTMENT OF COMMERCIAL TAX, MANTRALAYA, VALLABH BHAWAN, BHOPAL (M.P.)

.....RESPONDENT

(BY SHRI GIRISH KEKRE AND SHRI PUNIT SHROTI – GOVERNMENT ADVOCATES)

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Reserved on : 09.02.2024
Pronounced on : 05.04.2024

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This petition having been heard and reserved for orders, coming on for pronouncement this day, the Court pronounced the following:

ORDER

This petition is of the year 2020. Since pleadings are complete and learned counsel for the parties are ready to argue the matter finally, therefore, it is heard finally.

2. The issue involved in the present case is that the petitioner although retired from service on 31.12.2020, received a show cause on 18.12.2020, submitted reply to the said show cause and got charge-sheet served upon him on 23.12.2020. He has filed this petition mainly on two grounds, firstly that the charge-sheet was issued to him by an incompetent authority and secondly that on the same set of facts and charges, earlier he was served with a charge-sheet but being satisfied with the reply submitted by the petitioner, the proceedings were dropped by the Department in the year 2016 and order in this regard got issued on 13.01.2016 (Annexure P/4) but again disciplinary proceeding was initiated which is illegal and is a clear example of double jeopardy.

3. To resolve the controversy involved in the case and the question emerges to be adjudicated, it is necessary to reproduce the facts of the case in nutshell which are as under:-

(3.1) The present petitioner was substantively holding the post of Dy. Commissioner (Commercial Tax) in the Tax Audit Wing, Department of Commercial Taxation, Bhopal. He was also holding the current charge of the post of Additional Commissioner (Commercial Tax), Bhopal Zone.

(3.2) The petitioner joined the services on 14.01.1988 as Sales Tax Officer after qualifying the examination through Public Service Commission. He was timely promoted during the period of 2009-2013. He also worked as OSD to the Ministry of Finance and Commercial

Taxation and subsequently during the period from April 2016 till 31.08.2020 as Deputy Secretary.

(3.3) That, during the period from 2003 to 2010 while working as Assistant Commissioner, Commercial Tax Division, due to certain assessment in the routine course of his functioning, petitioner faced a departmental action i.e. show cause notice *qua* Rule 16 of Charge Sheet under the Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966 (for short, 'Rules, 1966').

(3.4) Pursuant to the said show cause notice, petitioner submitted a detailed reply on 17.12.2014 and thereafter the State Government after examining the reply submitted by the petitioner found it acceptable and accordingly proceedings were dropped/closed against him.

(3.5) Thereafter, after having rendering more than 30 years of service, the petitioner was superannuated with effect from 31.12.2020 and order in this regard was issued on 06.01.2020. However, on 18.12.2020 (Annexure P/1), a show cause notice was issued to the petitioner for initiating disciplinary action against him in regard to the identical issues which were earlier raised by the Department vide notice dated 01.07.2014 (Annexure P/2) and were closed/dropped after due scrutiny by the Department vide order dated 13.01.2016 (Annexure P/4).

(3.6) During the pendency of the present petition, in pursuance to Annnexure P/1, the impugned charge-sheet dated 23.12.2020 (received on 28.12.2020) (Annexure P/6) was issued to the petitioner and that charge-sheet was also assailed by the petitioner and amendment in this regard has been made in the petition; hence, this petition.

4. Shri Manoj Sharma, learned senior counsel appearing for the petitioner has submitted that petitioner is assailing the action of the respondent mainly on the ground that the charge-sheet was issued to him

without prior approval of the State Government, in anticipation of approval by the Government. It is also contended by him that once order has been passed, dropping the charges levelled against the petitioner after considering the reply submitted by him then without challenging the said order, reviewing the same comes within the power exercised by the authority under Rule 29 of Rules, 1966 that too after after a period of four years but that cannot be done after such a long time. It is also contended by learned senior counsel that enquiry on the same set of facts and charges cannot be initiated once it is already dropped finally by the authority and as such, the impugned charge-sheet and disciplinary proceeding initiated against the petitioner is liable to be quashed for the reason that it is against the principles of natural justice as order earlier passed on 14.01.2016 (Annexure P/4) cannot be reviewed without giving any opportunity of hearing to the petitioner. As per Shri Sharma, learned senior counsel, the disciplinary action and even the impugned show cause notice was issued to the petitioner vide Annexure P/1 by the authority who is not competent to do so. He has drawn attention of this Court towards the note-sheets of the Department showing that rough draft of the show cause notice was placed before the concerning Minister and approval was taken but the final draft was never placed before the Minister and on the basis of the approval of the rough draft, the proceeding was initiated and show cause notice was issued. The note-sheets further reveal that the administrative approval of the concerning Minister was not taken but in anticipation of the said approval, the show cause notice and charge-sheet was issued to the petitioner. The note-sheets were obtained by the petitioner under Right to Information Act and filed along with the rejoinder. The relevant part of the note-sheet is reproduced herein below:-

"3/ उक्त तथ्य को दृष्टिगत रखते हुए उन्हें अतिरिक्त समय प्रदान किया जाना वर्तमान परिस्थितियों में उचित प्रतीत नहीं होता है। अतः श्री रिछारिया पर अधिरोपित आरोपों के लिये श्री रिछारिया के विरूद्ध मध्य प्रदेश सिविल सेवा (वर्गीकरण, नियंत्रण तथा अपील) नियम, 1966 के नियम 14 के अंतर्गत नियमित विभागीय जांच संस्थापित की जाकर आरोप पत्र उनकी सेवानिवृत्ती दिनांक 31.12.2020 के पूर्व जारी किया जाना प्रस्तावित है। तत्संबंध में माननीय मंत्री जी का प्रशासकीय अनुमोदन पृष्ठ 33/एन पर प्राप्त है। अनुमोदन की प्रत्याशा में श्री रिछारिया के विरूद्ध संस्थापित नियमित विभागीय जांच में जारी किए जाने वाले सूचना पत्र, आरोप पत्र एवं विवरण तथा साक्षियों एवं दस्तावेजों की सूची सहित नस्ती अनुमोदनार्थ प्रस्तुत।"

5. The respondent/State has submitted its reply taking a stand therein that Rule 29 of Rules, 1966 authorizes the Governor as well as Head of the Department directly under the State Government to exercise the power of review in appropriate cases in respect of a civil servant. It is stated in the reply that the order earlier passed on 14.01.2016 was found erroneous and, therefore, they sought review of the same exercising the power provided under Rule 29(2) of Rules, 1966. It is further stated by them that the bar of limitation to exercise power of review confined only to such orders which are appealable and the limitation for appeal is made applicable upon such orders. It is also stated in the reply that for invoking the power of *suo motu* review under Rule 29 in respect of an order which is not appealable, no limitation is prescribed and, therefore, according to the State, bar of limitation is not applicable in the present case. As per the respondent, the order dated 14.01.2016 (Annexure P/4) is only an opinion and not an order and it was always open for review as per Rule 29 of Rules, 1966. Thus, the State Government in the reply have based their case saying that the order dated 14.01.2016 can be reviewed at any time exercising power provided under Rule 29 of Rules, 1966. They have placed reliance upon judgments passed by the Supreme Court in case of **Indian National Congress (I) Vs. Institute of Social Welfare (2002) 5 SCC 685, State of Orissa Vs. Sangram Keshari**

Misr reported in 2010 (13) SCC 311, Union of India Vs. Kunisetty Satyanarayana (2006) 12 SCC 28 and also on a decision of **Delhi High Court in case of Syngenta India Ltd. Vs. Union of India 161 (2009) DLT 413.**

6. Rejoinder has been filed by the petitioner along with the note-sheets of the Department revealing that no loss was caused to the Government and as such, the delinquent cannot be held guilty for causing loss to the Government. As per the note-sheet, in anticipation of the approval of the Government, the charge-sheet was issued but as per the petitioner, anticipation of approval does not fulfill the requirement of law and does not make the charge-sheet valid as it has been issued by the authority not having competence to do so.

7. In the additional return submitted by the respondent/State, it is reiterated by them that the power provided under Rule 29 of Rules, 1966 has rightly been exercised.

8. Considering the rival contentions made by counsel for the parties and on perusal of the material available on record, the following questions emerge to be adjudicated which are as under:-

(i) Whether, in the existing circumstances, the order dated 14.01.2016 can be reviewed after four years exercising power provided under Rule 29 of the Rules, 1966;

(ii) Whether, the charge-sheet issued to the petitioner as per the note-sheets annexed by the petitioner along with the rejoinder can be said to have been issued by the competent authority when the same has been issued in anticipation of approval of the government.

9. In the opinion of this Court, the show cause notice dated 01.07.2014 (Annexure P/2) issued to the petitioner alleging misconduct in respect of an incident has been replied by the petitioner vide reply dated 17.12.2014 (Annexure P/3). Thereafter on 14.01.2016 (Annexure P/4), an order was issued by the Government accepting the explanation submitted by the petitioner in his reply and the matter was closed. From perusal of order dated 14.01.2016 (Annexure P/4), it is clear that the authority has considered each and every aspect of the matter and arrived at a conclusion that no material illegality and irregularity has been committed by the petitioner and on scrutiny of the facts which have been mentioned in the reply by the petitioner, the matter was directed to be closed against him.

10. Surprisingly, a show cause notice was again issued to the petitioner dated 18.12.2020 (Annexure P/1) reiterating the same facts asking the petitioner as to why disciplinary action shall not be initiated against him and even after passing the order dated 14.01.2016 (Annexure P/4), it is again reiterated that petitioner had caused loss to the Government amounting to Rs. 8,74,86,175/- and as such, action is required to be taken against him. These two views which have been taken by the authority in the order dated 14.01.2016 and in the show cause notice dated 18.12.2020 are contrary to each other. As per the stand taken by the respondent in the return, they are exercising the power of review as provided under Rule 29 of Rules, 1966 and as such, the order dated 14.01.2016 can be reviewed by the authority. According to the State, under the existing circumstances, bar of limitation would not come in their way. It is apt to mention the respective provision i.e. Rule 29 of the Rules, 1966 which are as under:-

"29. (1) Notwithstanding anything contained in these rules except Rule 11-

(i) the Governor; or

(ii) the head of a department directly under the State Government, in the case of a Government servant serving in a department or office (not being the secretariat), under the control of such head of a department, or

(iii) the appellate authority, within six months of the date of the order proposed to be reviewed, or

(iv) any other authority specified in this behalf by the Governor by a general or special order, and within such time as may be prescribed in such general or special order may at any time, either on his or its own motion or otherwise call for the records of any inquiry and review any order made under these rules or under the rules repealed by Rule 34 from which an appeal is allowed but from which no appeal has been preferred or from, which no appeal is allowed, after consultation with the Commission where such consultation is necessary, and may-

(a) confirm, modify or set aside the order; or

(b) confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or

(c) remit the case to the authority which made the order or to any other authority directing such authority to make such further inquiry as it may consider proper in the circumstances of the case; or

(d) pass such other orders as it may deem fit:

Provided that no order imposing or enhancing any penalty shall be made by any reviewing authority unless the Government servant concerned has been given a reasonable opportunity of making a representation against the penalty proposed and where it is proposed to impose; any of the penalties specified in clauses (v) to (ix) of Rule 10 or to enhance the penalty imposed by the order sought to be reviewed to any of the penalties specified in those clauses, no such penalty shall be imposed except after an inquiry in the manner laid down in Rule 14 [X X X] and except after consultation with the Commission where such consultation is necessary:

Provided further that no power to review shall be exercised by the head of department unless:

(i) the authority which made the order in appeal; or

(ii) the authority to which an appeal would lie, where no appeal has been preferred, is subordinate to him.

Explanation. - [(1)] The powers conferred on the Governor under this sub-rule shall in the case of a Class III or Class IV Government servant serving in a District Court or a Court Subordinate thereto be exercised by the Chief Justice. (2) No proceeding for review shall be commenced until after-

> (i) the expiry of the period of limitation for an appeal, or
> (ii) the disposal of the appeal where any such appeal has been preferred.
> (3) An application for review shall be dealt with in the same manner as if it were an appeal under these rules. [Explanation II- The powers conferred on the Governor under this rule shall, in the case of Judicial Officers be exercised by the High Court.]

As per the aforesaid provision and the stand taken by the respondent, it is clear that the bar of limitation is applicable only in respect of an order which is appealable whereas the order dated 14.01.2016 is not appealable and, therefore, limitation for exercising such a power by the Governor is not applicable.

11. However, I am not satisfied with the stand taken by the respondent and interpretation of sub-rule (2) of Rules, 1966 given by the respondent which provides that if any order is sought to be reviewed, the same can be done only within the period within which an appeal can be preferred. If the order is not appealable, it does not mean that the same cannot be reviewed because sub-clause (ii) of Sub-rule (2) of Rule 29 of the Rules, 1966 deals with the situation when appeal is preferred against an order whereas sub-clause (i) of Sub-rule (2) of Rule 29 of the Rules, 1966 deals with the situation when no appeal is preferred. Thus, the case in hand even otherwise would fall under clause (i) of Sub-rule (2) of Rule 29 of Rules, 1966. The law is well settled in respect of exercising the power of review which says that the maximum period for exercising power of review under Rule 29 is six months and not thereafter.

12. The Division Bench of this Court in case of **State of M.P. and another Vs. Om Prakash Gupta and another** reported in **2001(2) M.P.L.J. 690** while dealing with the similar provision on which petitioner is placing reliance has observed in paragraphs 18 and 19 as under:-

"18. The provision contained in rule 29(1) of the Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966, provides as under:
"29. (1) Notwithstanding anything contained in these rules except rule II.—
(i) the Governor; or
(ii) the head of a department directly under the State Government, in the case of a Government servant serving in a department or office (not being the secretariate), under the control of such head of a department, or
(iii) the Appellate Authority, within six months of the date of the order proposed to be reviewed, or
(iv) any other authority specified in this behalf by the Governor by a general or special order, and within such time as may be prescribed in such general or special order may at any time, either on his or its own motion or otherwise call for the records of any inquiry and review any order made under these rules or under the rules repealed by rule 34 from which an appeal is allowed but from which no appeal has been preferred or from, which no appeal is allowed, after consultation with the Commission where such consultation is necessary, and may—
(a) confirm, modify or set aside the order; or
(b) confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or
(c) remit the case to the authority which made the order or to any other authority directing such authority to make such further inquiry as it may consider proper in the circumstances of the case; or
(d) pass such other orders as it may deem fit:

Provided that no order imposing or enhancing any penalty shall be made by any reviewing authority unless the Government servant concerned has been given a reasonable opportunity of making a representation against the penalty proposed and where it is proposed to impose; any of the penalties specified in clauses (v) to (ix) of rule 10 or to enhance the penalty imposed by the order sought to be reviewed to any of the penalties specified in those clauses, no such penalty shall be imposed except after an inquiry in the manner laid down in rule 14(xxx) and except after consultation with the Commission where such consultation is necessary:

Provided further that no power to review shall be exercised by the head of department unless—
(i) the authority which made the order in appeal, or

> (ii) the authority to which an appeal would lie, where no appeal has been preferred, is subordinate to him.
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> *** **** ***
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> 19. A perusal of the aforesaid rule clearly indicates that the provision relating to the limitation of 6 months is in respect of the authorities referred to in rule 29(1)(i), (ii) and (iii) of the Rules. The use of word "or" in the aforesaid rule is indicative of the fact that the power of review could be exercised by any of the authorities referred to in the rule 29(1)(i), (ii) and (iii) of the Rules within a period of 6 months and not thereafter."

13. However, from perusal of the stand taken by the respondent/State in the reply it is clear that they have exercised the power of review as per Rule 29 of the Rules, 1966 but that stand is contrary to the orders and documents available on record for the reason that even in the show cause notice issued to the petitioner which is initially impugned by him and filed this petition, nowhere it is mentioned that the authority has exercised the power of review under Rule 29 of the Rules, 1966 and as such, the case is being re-opened. Not referring the said specific provision and giving an opportunity to the petitioner as to why the authority cannot exercise the power of review for re-opening the issue is contrary to the order dated 14.01.2016 which clearly demonstrates that petitioner was not aware about the said power under which the authority was acting upon. On the contrary, this Court can draw an inference that when said action of the authority has been assailed by the petitioner then to save themselves, respondent/State have taken a stand in their reply that acting under Rule 29 of the Rules, 1966, they exercised the power of review**.** Even in the charge-sheet issued to the petitioner which is also impugned in this petition, there was no reference of Rule 29 of Rules, 1966. It is the settled principle of law that the respondent has to satisfy the Court with the facts mentioned in the impugned order but by taking additional stand by way of an affidavit and supplementing a new fact

cannot be made the basis to justify their action. The Supreme Court in case of **Mohinder Singh Gill and another Vs. The Chief Election Commissioner, New Delhi and Others reported in AIR 1978 SC 851** has already laid down a law that the impugned order has to be tested on the basis of facts mentioned therein but that order and action of the respondent cannot be tested on the basis of any additional stand and facts supplemented by way of an affidavit by the authority. They have to justify their action only confining to the facts mentioned in the order. It is clear from the record that the respondent/State has taken a new stand only when the show cause notice dated 18.01.2020 (Annexure P/1) and charge-sheet dated 23.12.2020 was under challenge. In the aforesaid case, the Supreme Court has observed as under:-

> '**8**. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in Gordhandas Bhanji [Commr. of Police, Bombay v. Gordhandas Bhanji, 1951 SCC 1088 : AIR 1952 SC 16] :
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> "Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."
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> Orders are not like old wine becoming better as they grow older.'

From the aforesaid enunciation of law, I am of the opinion that in absence of any opportunity given to the petitioner, order dated 14.01.2016 cannot be given a go by and under the circumstances when that order was never assailed by the respondent for a period of four years, the second disciplinary action on the same set of charges cannot

be initiated against the petitioner, taking shelter of power of review, it is nothing but a double jeopardy.

14. This Court in **W.P. No. 10032/2022 (Rohini Prasad Pandey Vs. State of M.P. and another)** decided on **29.08.2023,** relying upon various Supreme Court judgments, has observed that once the charge-sheet issued against an employee has culminated into an order of punishment and that order was called in question by the delinquent by filing writ petition and the order passed by the High Court, setting aside the order of punishment was never assailed by the Department further then issuing second charge-sheet on the same set of facts is impermissible as the same hit by Article 20(2) of the Constitution of India and amounts to double jeopardy. The Court relying upon the Supreme Court judgments has observed in paragraphs 11 to 14 as under:-

> " 11. It is profitable to refer the judgment of Apex Court in **(2004) 13 SCC 342 Lt. Governor, Delhi and others vs. HC Narinder Singh**, wherein it was held that :-
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> > "4. Reading of the show-cause notice suggests as if it is in continuation of the departmental proceedings. Lack of devotion to duty is mentioned as the reason for the proposed action which was the subject-matter of the earlier proceedings as well. The second proposed action based on the same cause of action proposing to deny promotion or reversion is contemplated under the impugned show-cause notice. Second penalty based on the same cause of action would amount to double jeopardy. The Tribunal was, therefore, right in law in annulling such an action. We are not expressing any opinion on the ambit or scope of any rule."
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> > (**Emphasis supplied**)
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> 12. *Ratio decidendi* of above judgment was followed in **(2006) 12 SCC 28 Union of India and another vs. Kunisetty Satyanarayana** by holding thus :-
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> > "18. We agree with the learned counsel for the respondent that if the charge which has been levelled under the memo

> dated 23-12-2003 had earlier been enquired into in a regular enquiry by a competent authority, and if the respondent had been exonerated on that very charge, a second enquiry would not be maintainable."
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> 13. In nutshell, in the opinion of this Court, it was no more open to the department to issue another charge-sheet dated 04/04/2022 for the same misconduct for which petitioner has been punished. This, certainly amounts to double jeopardy as per Article 20 (2) of the Constitution.
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> 14. Thus, impugned charge-sheet dated 04/04/2022 is illegal and impermissible and deserves to jettisoned. The charge-sheet is accordingly set aside."

15. Thus, in view of the aforesaid, I am of the opinion that once disciplinary action was initiated alleging misconduct against the petitioner giving details of facts and illegality committed by him and after submitting reply to the said notice, the authority being satisfied with the same passed an order holding that no misconduct was committed by the petitioner and that order was never challenged by the authority further in any of the proceedings, the said order had attained finality and, therefore, second charge-sheet and initiation of disciplinary proceeding on the same set of charges that too after a period of four years and at the verge of retirement of the petitioner cannot be said to be proper and it is otherwise contrary to law and apparently illegal action on the part of the authority.

16. Even otherwise, taking shelter of Rule 29 of the Rules, 1966 is also not applicable and the authority cannot exercise such power because the period of limitation i.e. six months is the maximum period to exercise such power but since that period is already over, initiation of disciplinary proceeding against the petitioner that too after four years is impermissible.

17. The Supreme Court in case of **Union of India and Others Vs. B.V. Gopinath and other connected appeals** reported in **(2014) 1 SCC 351** has very categorically observed that approval for initiation of disciplinary proceeding would not amount to approval of charge memo by him. The charge-sheet issued and not placed before the competent authority for its approval but in anticipation of approval if the same is issued, the same cannot be said to be competent and valid. Paras 40, 41, 52 and 55 of the said judgment are relevant which reads as under:-

> "40. Article 311(1) of the Constitution of India ensures that no person who is a member of a civil service of the Union or an all-India service can be dismissed or removed by an authority subordinate to that by which he was appointed. The overwhelming importance and value of Article 311(1) for the civil administration as well as the public servant has been considered, stated and restated by this Court in numerous judgments since the Constitution came into effect on 19-1-1950 (sic). Article 311(2) ensures that no civil servant is dismissed or reduced in rank except after an inquiry held in accordance with the rules of natural justice. To effectuate the guarantee contained in Article 311(1) and to ensure compliance with the mandatory requirements of Article 311(2), the Government of India has promulgated the CCS (CCA) Rules, 1965.
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> 41. Disciplinary proceedings against the respondent herein were initiated in terms of Rule 14 of the aforesaid Rules. Rule 14(3) clearly lays down that where it is proposed to hold an inquiry against a government servant under Rule 14 or Rule 15, the disciplinary authority shall draw up or cause to be drawn up the charge-sheet. Rule 14(4) again mandates that the disciplinary authority shall deliver or cause to be delivered to the government servant, a copy of the articles of charge, the statement of the imputations of misconduct or misbehaviour and the supporting documents including a list of witnesses by which each article of charge is proposed to be proved. We are unable to interpret this provision as suggested by the Additional Solicitor General, that once the disciplinary authority approves the initiation of the disciplinary proceedings, the charge-sheet can be drawn up by an authority other than the disciplinary authority. This would destroy the underlying protection guaranteed under Article 311(1) of the Constitution of India. Such procedure would also do violence to the protective provisions contained under Article 311(2) which

ensures that no public servant is dismissed, removed or suspended without following a fair procedure in which he/she has been given a reasonable opportunity to meet the allegations contained in the charge-sheet. Such a charge-sheet can only be issued upon approval by the appointing authority i.e. Finance Minister.

……. ……. …….

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."

……. ……. …….

> 55. 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 the law."

18. In view of the aforesaid enunciation of law and the stand taken by the respondent not justifying as to how the impugned show cause notice and charge-sheet issued to the petitioner are valid and in anticipation how it could be issued, the stand taken by the petitioner, in the opinion of this Court is justified and as such, not only on the ground of competency but also on the ground that petitioner was not given any opportunity of hearing, exercising power of review under Rule 29 of Rules, 1966 that too beyond period of limitation is not sustainable in the eyes of law.

19. *Ex-consequentia*, the petition is **allowed**. The impugned show cause notice dated 18.12.2020 (Annexure P/1) and the charge-sheet dated 23.12.2020 (received on 28.12.2020) (Annexure P/6) are hereby quashed.

(SANJAY DWIVEDI)
JUDGE

rao