2025:DHC:8985-DB

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 27.08.2025
Pronounced on: 10.10.2025

\+ **W.P.(C) 2742/2024**

UNION OF INDIA THROUGH SECRETARY & ORS.
.....Petitioners

Through: Mr.Vijay Joshi and Mr.Shubham Chaturvedi, Advs.

versus

S K JASRA
.....Respondent

Through: Mr.Avneesh Garg, Ms.Pavitra Singh and Ms.Iptisha, Advs.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MS. JUSTICE MADHU JAIN

J U D G M E N T

NAVIN CHAWLA, J.

1. This petition has been filed challenging the Order dated 27.09.2023 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as the, 'Tribunal') in OA No. 2406/2021 titled ***Shri S K Jasra vs. Union of India and Ors.***, allowing the OA filed by the respondent herein with the following directions:

> *"14. In view of the aforesaid facts, discussion, Rule and law, the OA is allowed with the following directions:*
> *(i) The impugned charge Memo dated 24.3.2009 and the impugned orders are set aside;*

(ii) The applicant shall be entitled to all consequential benefits in accordance with the relevant rules and instructions;
(iii) The respondents shall comply with the aforesaid directions by passing the necessary order(s) as expeditiously as possible and in any case within eight weeks of receipt of a copy of this Order;
(iv) However, the respondents shall remain at liberty to proceed against the applicant afresh, if they so decide, of course, in accordance with the relevant rules on the subject;"

FACTS OF THE CASE:

2. The brief facts in which the present petition arises are that Smt. Nirmala Devi, who was a Peon in the Directorate of Pay, Pension and Regulations, filed two complaints against the respondent, the then Joint Director in the Directorate of Pay, Pension and Regulations, Air Headquarters, Ministry of Defence, alleging sexually inappropriate behaviour towards her daughter and daughter-in-law. The first complaint was filed on 31.05.2007, addressed to the Deputy Chief Administrative Officer (TCW), while the second was filed on 11.06.2007, addressed to the Chairperson of the Sexual Harassment Complaints Committee.

3. Following the first complaint, an internal investigation was conducted by the Joint Director, who submitted his report to the Directorate Personnel Civilian, Air Headquarters on 28.06.2007. It was observed therein that the transfer of both, Smt. Nirmala Devi as well as the respondent, would be ideal.

4. Thereafter, the Committee on Sexual Harassment submitted its report, wherein it was opined that although there was insufficient

corroboratory evidence to establish a clear case of sexual harassment, underlying currents of actions causing anguish and trauma existed, and needed to be taken cognizance of.

5. Accordingly, a chargesheet dated 24.03.2009 was issued against the respondent for violation of Rule 3(1)(iii) of CCS (Conduct) Rules, 1964, that is, the conduct unbecoming of a Government servant.

6. A bias petition was filed by the respondent against the Inquiry Officer on 18.05.2009, and a represenation against the chargesheet was filed on 29.05.2009. However, both were rejected on 22.07.2009.

7. Thereafter, on 18.12.2009, the Inquiry Officer submitted his inquiry report, holding the charge against the respondent as proved.

8. Based on this report, the Disciplinary Authority passed an order on 21.09.2010, that is, the 1st penalty order directing that the respondent would not receive salary increases for two years and that his future increases would be postponed. The respondent's review petition against the same was rejected *vide* Presidential Order dated 10.01.2011.

9. Aggrieved by the 1st penalty order, the respondent filed O.A. No. 654/2011 (1st OA) before the learned Tribunal, which, *vide* an Order dated 28.02.2012, set aside the first penalty order and remanded the matter back to the Disciplinary Authority. This was challenged by the petitioners by filing W.P.(C) 3820/2012 before this Court, and this Court, *vide* Order dated 25.07.2012, upheld the learned Tribunal's Order while extending the time for passing a speaking order and stating that the Disciplinary Authority would remain uninfluenced by the learned Tribunal's findings. In compliance with the same, the

Disciplinary Authority passed a speaking order on 28.09.2012, that is, the 2nd penalty order, imposing a penalty of reduction in rank from Joint Director (in-situ) to Deputy Director on the respondent.

10. The respondent again approached the learned Tribunal by filing O.A. No. 3577/2012 (2nd OA), challenging the 2nd penalty order.

11. The learned Tribunal, *vide* an Order dated 10.09.2013, declined to interfere with the order, but, at the same time, directed the petitioners to take a view regarding the penalty imposed. The challenge thereagainst filed before this Court was dismissed *vide* an Order dated 28.05.2015 and costs were imposed on the respondent. The Special Leave Petition filed before the Supreme Court against this Order was also dismissed as withdrawn. In compliance with this Court's Order 28.05.2015, the Disciplinary Authority then passed another order on 27.08.2015, reiterating the punishment imposed in the 2nd penalty order. The respondent submitted review petitions against this, which were rejected *vide* an order dated 02.02.2016.

12. The respondent then filed O.A. No. 852/2017 (3rd OA) before the learned Tribunal against the orders dated 27.08.2015 and 02.02.2016, which were partly allowed and it was directed that the punishment imposed in 1st penalty order be made operative. The same was implemented by the petitioners on 16.01.2019. The writ filed by the respondent against the learned Tribunal's Order was dismissed by this Court *vide* Order dated 18.09.2019.

13. The respondent, on 23.09.2019, filed a review petition before the Disciplinary Authority under Rule 29-A of the CCS(CCA) Rules, 1965, stating that he came to know through RTI during the month of

September 2019, that the chargesheet lacked the Disciplinary Authority's approval. This petition was however rejected on 19.02.2020 and his subsequent request to re-examine the same was also denied on 19.01.2021.

14. The respondent thereafter filed the OA in question (4th OA) before the learned Tribunal, challenging the chargesheet dated 24.03.2009, the Order dated 17.04.2009 appointing the Inquiring Authority, the Order dated 20.07.2009 appointing the Presenting Authority, the penalty Order dated 16.01.2009, as well as, the Presidential Order dated 19.02.2020 and the PPO dated 13.02.2020.

15. Finding merit in the contention raised by the respondent, the learned Tribunal, *vide* the Impugned Order, set aside the chargesheet along with the other orders, and directed that the respondent shall be entitled to all consequential benefits.

16. Aggrieved thereof, the petitioners have filed the present petition before this Court.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE PETITIONERS

17. At the outset, the learned counsel for the petitioners submits that this is the fourth round of litigation and that the conduct of the respondent in re-agitating issues which have attained finality, is violative of the principle of *Interest Republicae ut sit finis Litium*, that is, it is in the interest of State that there must be end to litigation.

18. He places reliance on the Judgement of the Supreme Court in ***Orissa Administrative Tribunal Bar Association vs. Union of India***,

2023 SCC OnLine SC 309, to submit that once this Court, *vide* its Judgment dated 18.09.2019 in W.P.(C) 10088/2019, confirmed the decision of the learned Tribunal upholding the 1st penalty order on merits, the same was binding on the learned Tribunal and could not have been re-agitated by the respondent.

19. He highlights that the law only helps those who are vigilant and states that even though the respondent claims to have received information through RTI on 07.09.2019 regarding the lack of the Disciplinary Authority's approval, he did not raise this plea before this Court at the time of filing of W.P.(C) 10088/2019 on 18.09.2019. Placing reliance on the Judgment of the Supreme Court in ***Dnyandeo Sabaji Naik vs. Pradnya Prakash Khadekar,*** (2017) 5 SCC 496, he submits that therefore, a frivolous claim, such as the one at hand, should be dismissed with exemplary costs.

20. The learned counsel for the petitioners on merits submits that to initiate disciplinary proceedings against the respondent under Rule 14 of the CCS (CCA) Rules, 1965, a detailed note of the case was submitted for the Disciplinary Authority's approval. The Hon'ble Raksha Rajya Mantri duly approved the same and it is only thereafter that the chargesheet dated 24.03.2009 was issued. He submits that as the form and contents of the chargesheet had the approval of the Disciplinary Authority, the same was signed by a lower functionary with the annotation '*By order and in the name of the President*' in accordance with the Authentication (Orders and other Instruments) Rules, 2002.

21. He submits that as per the Government of India, MHA Memo

dated 16.04.1969, in cases where the Disciplinary Authority is the Hon'ble President, once the Hon'ble Minister approves the initiation of the disciplinary proceedings, there is no need to show the file to the Hon'ble Minister while issuing orders under Rule 14 (2), 14(4), 14(5) of the CCS(CCA) Rules, 1965.

22. He submits that even otherwise, the respondent had also filed a bias petition against the Inquiry Officer on 18.05.2009 and a representation dated 26.05.2009, requesting the revocation of the chargesheet as well as quashing of the investigation proceedings. He highlights that it was the Hon'ble Raksha Rajya Mantri who denied these claims of the respondent *vide* a speaking order, showcasing the fact that he was well-versed with the case. He highlights that thereafter, the file went to the Hon'ble Raksha Rajya Mantri again in January 2010 for a decision on the Inquiry Report. He submits that therefore it cannot be said that the chargesheet did not have the approval of the Disciplinary Authority.

23. He submits that the learned Tribunal has erred in placing reliance of the Judgment of the Supreme Court in ***Union of India vs. B.V. Gopinath***, (2014) 1 SCC 351, as the said Judgment cannot be said to have retrospective applicability to chargesheets that have been already issued.

24. He places reliance on the Judgment of the Supreme Court in ***Mineral Area Development Authority vs. M/s Steel Authority of India***, 2024 SCC OnLine SC 1974, to further highlight that re-opening of disciplinary proceedings concluded before the newly interpreted law, results in grave prejudice to the administration which outweigh

the benefit for which it was made.

25. He submits that therefore the Impugned Order passed by the learned Tribunal is erroneous and deserves to be set aside.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE RESPONDENT

26. The learned counsel for the respondent submits that the impugned chargesheet contained a fallacious annotation which stated that it was '*By order and in the name of the President*', due to which the respondent initially had not doubted that the chargesheet had the approval of the Disciplinary Authority. He submits that the respondent came to know about the illegality of the chargesheet only in September 2019, when he got the photocopies of the noting sheets of the disciplinary case under RTI. He submits that from the said notings, the respondent became aware of the fact that the chargesheet as well as the orders appointing Inquiry Officer/Presenting officer, were not approved by the Competent Authority, which is a violation of Rules 14(3) and 14(5) of CCS (CCA) Rules, 1965. He highlights that the respondent then filed a review petition before the Reviewing Authority, under Rule 29A of CCS (CCA) Rules, 1965 on 23.09.2019, which was rejected *vide* a presidential order dated 19.02.2020, which led to the filing of the Impugned OA.

27. He submits that the plea of the petitioners that the respondent ought to have raised this grievance before this Court in W.P. (C) 10088/2019 or at that stage itself filed an OA before the learned Tribunal, is erroneous. He submits that W.P. (C) 10088/2019 was filed

before this Court on 07.09.2019, that is, before the receipt of the information under the RTI, and therefore, was confined to grounds that had been urged before the learned Tribunal in the 3rd round of litigation. As regards approaching the learned Tribunal, he submits that Section 20 of the Administrative Tribunals Act, 1985 mandates that an applicant should ordinarily exhaust their available remedies prior to approaching the learned Tribunal, and it is due to this reason that the respondent filed the review petition before the Competent Authority prior to approaching the learned Tribunal by way of the OA and in accordance with Section 20 of the Administrative Tribunals Act, 1985.

28. He submits that this is a case of concealment by the petitioners and, therefore, principles of estoppel and constructive *res judicata* cannot be applicable to the same. He places reliance on the Judgments of the Supreme Court in ***Mathura Prasad Bajoo Jaiswal vs. Dossibai N B Jeejeebjhoy***, (1970) 1 SCC 613; ***Ashok Leyland Ltd. vs. State of T.N. and Anr.***, (2004) 3 SCC 1; ***Srihari Hanumandas Totala vs. Hemant Vithal Kamat & Ors.;*** (2021) 9 SCC 99; and of this Court in ***G.S.V.S Prabhakara Rao & Anr. vs. National Highways Authority of India,*** 2023:DHC:8197-DB.

29. Placing reliance on the Judgment of the Supreme Court in ***State of Orissa and Ors. vs. Brundaban Sharma and Anr***., 1995 Supp (3) SCC 249, he highlights that irrespective, the validity of an order *void-ab-intio* can be questioned in any proceedings and at any stage.

30. On merits, while placing reliance on the Judgment of the Supreme Court in ***B.V. Gopinath*** (supra), he highlights that it is

settled law that the chargesheet must be approved by the competent authority and that the non-approval of the same makes it non-existent in law. He further submits that in ***B.V. Gopinath*** (supra), the Supreme Court merely clarified the existing rules, and that the OM dated 16.04.1969 does not provide any exemption from the mandate of Rule 14(3) of CCS (CCA) Rules 1965.

31. He states that the even in the cases of ***Sunny Abraham vs. Union of India and Anr.***, 2021 SCC OnLine 1284, and ***All India Institute of Medical Sciences vs. S.P. Vashisht***, 2023 SCC OnLine Del 3168, the chargesheets in question were issued prior to the passing of the Judgment in ***B.V. Gopinath*** (supra) and, therefore, the submission of the learned counsel for the petitioners on the non-applicability of ***B.V. Gopinath*** (supra) on chargesheets issued prior to the date of the said Judgement, holds no water.

ANALYSIS AND FINDINGS

32. We have considered the submissions made by the learned counsels for the parties.

33. It is not disputed before us by the petitioners that the chargesheet dated 24.03.2009 issued under Rule 14 of the CCS (CCA) Rules, 1965, did not have the approval of the Hon'ble Raksha Rajya Mantri, that is, the Competent Authority. The only contention of the petitioners is that the Hon'ble Raksha Rajya Mantri had approved the decision to initiate disciplinary proceedings against the respondent and the subsequent orders that were passed in the proceedings.

34. In ***B.V. Gopinath*** (supra), the Supreme Court, however, had

rejected the similar plea as taken by the petitioners herein and had held 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 chargesheet can only be issued upon approval by the appointing authority i.e. Finance Minister.

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48. *Much was sought to be made by Ms Indira Jaising on Clause (10) of the order which provides that once the Finance Minister has approved the initiation of departmental proceedings, the ancillary action can be initiated by CVO. According to the learned Additional Solicitor General, the decision taken by the Finance Minister would also include the decision for approval of charge memo. She pointed out the procedure followed for initiation of penalty proceedings/disciplinary proceedings. She submitted that the decision to initiate disciplinary proceedings is based on a satisfaction memo prepared by CVO. This satisfaction memo is submitted to the Member (P&V), Central Board of Direct Taxes, New Delhi who after being satisfied that the memo is in order, forwards it to the Chairman, CBDT who in turn, upon his own satisfaction forwards it to Secretary (Revenue) and finally to the Finance Minister. Based on the satisfaction memo, the Finance Minister, who is the disciplinary authority in this case, takes the decision to initiate disciplinary proceedings. While taking the said decision, the Finance Minister has before him, the details of the alleged misconduct with the relevant materials regarding the imputation of allegations based on which the charge memo was issued. Therefore, approval by the*

Finance Minister for initiation of the departmental proceedings would also cover the approval of the charge memo.

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.*

51. *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 Additional Solicitor General, the respondent is not claiming that the rules of natural justice have been violated as the charge memo was not approved by the disciplinary authority. Therefore, according to the Additional Solicitor General, CAT as well as the High Court erred in quashing the charge-sheet as no prejudice has been caused to the respondent.*

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."*

35. In ***Sunny Abraham*** (supra), the Supreme Court held that any chargesheet issued without the approval of the Disciplinary Authority, would in fact be *non est* and cannot be later ratified by a *post facto* approval. We quote from the Judgment as under:-

> ***"14.*** *We do not think that the absence of the expression "prior approval" in the aforesaid Rule would have any impact so far as the present case is concerned as the same Rule has been construed by this Court in B.V. Gopinath [Union of India v. B.V. Gopinath, (2014) 1 SCC 351 : (2014) 1 SCC (L&S) 161] and it has been held that charge-sheet/charge memorandum not having approval of the disciplinary authority would be non est in the eye of the law. Same interpretation has been given to a similar Rule, All India Services (Discipline and Appeal) Rules, 1969 by another Coordinate Bench of this Court in State of T.N. v. Promod Kumar [State of T.N. v. Promod Kumar, (2018) 17 SCC 677 : (2019) 2 SCC (L&S) 127] (authored by one of us, L. Nageswara Rao, J.). Now the question arises as to whether concluded proceeding (as in B.V. Gopinath [Union of India v. B.V.*

Gopinath, (2014) 1 SCC 351 : (2014) 1 SCC (L&S) 161]) and pending proceeding against the appellant is capable of giving different interpretations to the said Rule. The High Court's reasoning, referring to the notes on which approval for initiation of proceeding was granted, is that the disciplinary authority had taken into consideration the specific charges. The ratio of the judgments in Ashok Kumar Das [Ashok Kumar Das v. University of Burdwan, (2010) 3 SCC 616 : (2010) 1 SCC (L&S) 886] and Bajaj Hindustan [Bajaj Hindustan Ltd. v. State of U.P., (2016) 12 SCC 613] , in our opinion, do not apply in the facts of the present case. We hold so because these authorities primarily deal with the question as to whether the legal requirement of granting approval could extend to ex post facto approval, particularly in a case where the statutory instrument does not specify taking of prior or previous approval. It is a fact that in the Rules with which we are concerned, there is no stipulation of taking "prior" approval. But since this very Rule has been construed by a Coordinate Bench to the effect that the approval of the disciplinary authority should be there before issuing the charge memorandum, the principles of law enunciated in the aforesaid two cases, that is, Ashok Kumar Das [Ashok Kumar Das v. University of Burdwan, (2010) 3 SCC 616 : (2010) 1 SCC (L&S) 886] and Bajaj Hindustan [Bajaj Hindustan Ltd. v. State of U.P., (2016) 12 SCC 613] would not aid the respondents. The distinction between the prior approval and approval simpliciter does not have much impact so far as the status of the subject charge memorandum is concerned.

***15.** The next question we shall address is as to whether there would be any difference in the position of law in this case vis-à-vis B.V. Gopinath [Union of India v. B.V. Gopinath, (2014) 1 SCC 351 : (2014) 1 SCC (L&S) 161]. In the latter authority, the charge memorandum without approval of the*

disciplinary authority was held to be non est in a concluded proceeding. The High Court has referred to the variants of the expression non est used in two legal phrases in the judgment under appeal. In the context of our jurisprudence, the term non est conveys the meaning of something treated to be not in existence because of some legal lacuna in the process of creation of the subject-instrument. It goes beyond a remediable irregularity. That is how the Coordinate Bench has construed the impact of not having approval of the disciplinary authority in issuing the charge memorandum. In the event a legal instrument is deemed to be not in existence, because of certain fundamental defect in its issuance, subsequent approval cannot revive its existence and ratify acts done in pursuance of such instrument, treating the same to be valid. The fact that initiation of proceeding received approval of the disciplinary authority could not lighten the obligation on the part of the employer (in this case the Union of India) in complying with the requirement of sub-clause (3) of Rule 14 of CCS (CCA), 1965. We have quoted the two relevant sub-clauses earlier in this judgment. Sub-clauses (2) and (3) of Rule 14 contemplates independent approval of the disciplinary authority at both stages — for initiation of enquiry and also for drawing up or to cause to be drawn up the charge memorandum. In the event the requirement of sub-clause (2) is complied with, not having the approval at the time of issue of charge memorandum under sub-clause (3) would render the charge memorandum fundamentally defective, not capable of being validated retrospectively. What is non-existent in the eye of the law cannot be revived retrospectively. Life cannot be breathed into the stillborn charge memorandum. In our opinion, the approval for initiating disciplinary proceeding and approval to a charge memorandum are two divisible acts, each one requiring independent application of mind on the part of

> *the disciplinary authority. If there is any default in the process of application of mind independently at the time of issue of charge memorandum by the disciplinary authority, the same would not get cured by the fact that such approval was there at the initial stage. This was the argument on behalf of the authorities in B.V. Gopinath [Union of India v. B.V. Gopinath, (2014) 1 SCC 351 : (2014) 1 SCC (L&S) 161] , as would be evident from para 8 of the Report which we reproduce below : ..."*

36. From a reading of the above, it would be apparent that the chargesheet having been issued without the approval of the Hon'ble Raksha Rajya Mantri, would be *non est* and cannot be validated by subsequent actions. As explained in ***Sunny Abraham*** (supra), 'life cannot be breathed into the stillborn charge memorandum.'

37. The reliance of the petitioners on the Authentication (Orders and other Instrument) Rules, 2002, issued on 16.02.2002 to breathe life into the chargesheet, can also not be accepted. The said rules merely prescribe the authorities who can authenticate the orders and other instruments made and executed in the name of the President. The same, therefore, have no bearing as far as compliance with Rule 14(3) of the CCS (CCA) Rules, 1965 is concerned.

38. Similarly, the reliance of the petitioners on the MHA Memo dated 16.04.1969, cannot be accepted. The said memo in fact excludes Rule 14(3) of the CCS (CCA) Rules, 1965 when it answers the query whether it is necessary to show the file to the Minister every time before formal orders are issued in the name of the President '*under Rules 14(2), 14(4), 14(5), etc. of CCS (CCA) Rules*'. In any case, instructions issued by way of a memorandum cannot override the

statutory Rules and the requirement prescribed thereunder.

39. The submission of the learned counsel for the petitioners that the Judgment in ***B.V. Gopinath*** (supra), can have only prospective application also does not impress us. In ***B.V. Gopinath*** (supra), the Supreme Court interpreted the mandate of Rule 14(3) of the CCS (CCA) Rules, 1965. Such interpretation, unless declared by the Supreme Court itself to be prospective in nature, shall apply to all cases, including those which may have been initiated prior to the said Judgment. It is only the Supreme Court which could have saved the pending Disciplinary proceedings initiated in breach of the protection granted by Rule 14(3) of the CCS (CCA) Rules, 1965, however, it did not do so.

40. It is pertinent to mention that while dictating the Judgment, we came across the Judgment of the Supreme Court in ***State of Jharkhand & Ors. v. Rukma Kesh Mishra***, 2025 SCC OnLine SC 676, and put it to the notice of the learned counsels of the parties. After hearing the learned counsel for the parties, we find that the same although critical of ***B.V. Gopinath*** (supra), has been passed in the context of the Civil Services (Classification, Control and Appeal) Rules, 1930, and in a situation where the draft chargesheet had the approval of the competent authority. Though it doubts the Judgment in ***B.V. Gopinath*** (supra), as far as Rule 14 of the CCS(CCA) Rules, 1965 is concerned, ***B.V. Gopinath*** (supra) continues to govern the field. We quote from the Judgment as under:

> ***"37.*** *Lest confusion continues to prevail, thereby obfuscating the course of justice, we also consider it expedient to clarify as regards*

the efficacy of the decisions in B.V. Gopinath (supra) and Promod Kumar (supra) as binding precedents. Both these decisions by coordinate Benches of two Hon'ble Judges of this Court. All other decisions on the topic are also by Benches of coordinate strength. Before the Bench in B.V. Gopinath (supra), out of the 6 (six) decisions referred to by us in paragraphs 21 to 25 (supra), only the decision in Thavasippan (supra) was placed by counsel wherein one would find reference to the earlier decision in P.V. Srinivasa Sastry(supra). Though Thavasippan (supra) had considered all the earlier decisions, it was not even distinguished in B.V. Gopinath (supra). Importantly, the Bench after noting the law laid down in P.V. Srinivasa Sastry (supra), extracted two sentences from paragraph '4', quoted above, to support the conclusion which the Bench intended to record. Having read what P.V. Srinivasa Sastry (supra) in paragraph '4' laid down and our agreement therewith, we see good reason to opine that there could be a healthy debate on the correctness of the ratio decidendi of the decision in B.V. Gopinath (supra), or for that matter, Promod Kumar (supra), in the light of the precedents which were binding on the Benches deciding the same. However, for the purpose of deciding this appeal, we need not venture that far to declare the decisions in B.V. Gopinath (supra) and Promod Kumar (supra) as not laying down good law or that its efficacy as binding precedents stands eroded for not considering the law declared in Shardul Singh (supra) on Article 311(1) of the Constitution, as well as the other decisions that we have referred to above, speaking in a different voice. Nonetheless, we are of the undoubted view that whatever be the ratio decidendi of B.V. Gopinath (supra) and Promod Kumar (supra), for its application in future cases, the same have to be read and understood as confined to interpretation of the rules governing the disciplinary proceedings

> *in each of the two cases, the facts and law presented before the coordinate Benches, and the exposition of law by this Court for over half a century till this date."*

41. Hence, being bound by the Judgment of the Supreme Court in ***B.V. Gopinath*** (supra), we find that the chargesheet having been issued without the approval of the Hon'ble Raksha Rajya Mantri is *non est* and cannot be validated by subsequent actions.

42. Coming to the issues of estoppel, *res judicata,* and public interest prohibiting the respondent from raising the challenge in the fourth O.A., we are of the opinion that once the chargesheet itself is found to be *non est* and without the authority of law, the entire structure built thereon has to crumble. Principles of estoppel and *res judicata* would not apply to breathe life into a stillborn proceeding, as explained by the Supreme Court in ***Sunny Abraham*** (supra). In ***Ashok Leyland*** (supra), the Supreme Court held that when an order is passed without jurisdiction, the same becomes a nullity and cannot be supported by invoking procedural principles like estoppel, waiver or *res judicata*.

43. We would also herein note the submission of the learned counsel for the respondent that the respondent came to know of the fact that the chargesheet had not been put up to the Hon'ble Raksha Rajya Mantri for approval, only with the reply dated 13.08.2019 to the RTI application received by him only in September 2019. The learned counsel for the respondent has submitted that till then the respondent had no reason to doubt that the chargesheet had been issued after approval from the Hon'ble Raksha Rajya Mantri, as the chargesheet

had proclaimed to have been issued '*By order and in the name of the President*'.

44. Be that as it may, we are of the opinion that once the chargesheet is found to have been issued without the authority and is to be declared *non est* in terms of the Judgments of the Supreme Court, the same can be challenged at any stage and the principle of *res judicata* will not apply.

45. For the above reasons, we find no infirmity in the orders passed by the learned Tribunal. The Writ Petition is accordingly dismissed.

NAVIN CHAWLA, J

MADHU JAIN, J

OCTOBER 10, 2025/*rv*/ik