The State Of Jharkhand vs Rukma Kesh Mishra on 28 March, 2025

Author: Dipankar Datta

Bench: Dipankar Datta

2025 INSC 412 Repo

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.…… OF 2025
[ARISING OUT OF SLP (C) NO. 19223 OF 2024]

THE STATE OF JHARKHAND & ORS. APPELLANTS

VS.

RUKMA KESH MISHRA RESPONDENT

JUDGMENT

DIPANKAR DATTA, J.

1. Leave granted.

THE APPEAL

2. Appellants - the State of Jharkhand and three of its officers – assail the judgment and order dated 24th November, 20231 of a Division Bench of the High Court of Jharkhand at Ranchi2 in this civil appeal. By the impugned order High Court impugned order, the Division Bench dismissed an intra-court appeal3 carried by the appellants from the judgment and order dated 20 th April, 2023 of a Single Judge, allowing a writ petition4 instituted by the respondent - Rukma Kesh Mishra.

THE QUESTION

3. We are tasked to decide a solitary legal question: whether the order by which the respondent was dismissed from service, following disciplinary proceedings, should have been interdicted by the

High Court on the specious ground that the charge-sheet had not been approved by the Chief Minister of Jharkhand5?

BRIEF RESUME OF FACTS

4. Facts giving rise to this appeal are not too complicated. While the respondent had been functioning as a civil service officer, it came to light that he had indulged in diverse activities of dishonesty, financial irregularities, forgery of documents, etc. constituting misconduct. It was proposed to proceed against him departmentally. Along with the proposal dated 13th January, 2014, which was initiated by the appellant no. 3 – the Deputy Commissioner, Koderma – seeking approval of initiation of disciplinary proceedings, the draft charge-sheet containing 9 (nine) charges proposed to be levelled against the respondent (contained in form 'K') was placed before the Chief Minister together with proposals Chief Minister that the respondent be suspended from service with immediate effect and that in the inquiry to be initiated against the respondent, the officers named therein be appointed as the inquiry officer and the presenting officer. The Chief Minister approved all the proposals on 21st March, 2014. On 31st March, 2014, the appellant no.2 – Deputy Secretary to the Government of Jharkhand (Personnel, Administrative and Rajbhasha Department)6 – suspended the respondent from service. Appellant no.2 thereafter issued charge-sheet dated 4th April, 2014 under Rule 55 of the Civil Services (Classification, Control and Appeal) Rules, 19307 for the purpose of an inquiry to be conducted into the respondent's conduct vis- à-vis the 9 (nine) articles of charges drawn up against him. Respondent having denied and disputed the material allegations in the charge-sheet, an inquiry came to be conducted with the appellant no.4 – described in the array of appellants as the Departmental Enquiry-cum-Conducting Officer – as the inquiry officer. Respondent duly participated in such inquiry whereafter a report of inquiry was submitted by the appellant no.4 on 31st July, 2015. Appellant no.4 held the respondent guilty of all but 3 (three) of the charges. A second show cause notice was issued to the respondent on 11th April, 2016, followed by a reminder. Respondent replied to the second show cause notice on 24th September, 2016. Apropos a proposal containing detailed reasons why the report of the appellant no.4 called for acceptance and the respondent dismissed from service on proof of majority of the charges of misconduct levelled against relevant department 1930 Rules him, the same was placed before the Cabinet of the State Government8 in its meeting held on 13th June, 2017. The Cabinet having approved such proposal, the respondent was dismissed from service vide an order of the Governor contained in memo dated 16th June, 2017 issued by the Joint Secretary of the relevant department. The order of dismissal recorded that the Government had taken the decision to dismiss the respondent based on proof of the charges against him in terms of Rule 14(xi) of the Jharkhand Government Servants (Classification, Control and Appeal) Rules 20169 and that under Rule 18(7) thereof, due consent of the Jharkhand Public Service Commission for imposing such punishment had been obtained.

5. After obtaining information through the machinery provided by the Right to Information Act, 2005 that approval of the Chief Minister being the competent authority has not been "accorded at the time of issuing/signing of the memo of charge", the respondent challenged the order of dismissal from service before the High Court by invoking its writ jurisdiction primarily on the ground of absence of approval by the Chief Minister at or about the time of issuance of the charge-sheet. He

also challenged the disciplinary proceedings on the grounds that there was no application of mind and the appellants had failed to take into consideration the entire facts and circumstances of the case; also, that the punishment imposed was excessive and disproportionate to the Cabinet 2016 Rules allegations levelled and gravity of the misconduct found proved. Accordingly, the respondent prayed that by issuing a writ of certiorari, the order of dismissal dated 16th June, 2017 be quashed and a mandamus be issued directing the appellants to reinstate him in service. THE JUDGMENTS OF THE HIGH COURT

6. Perusal of the writ petition (Annexure P22 of the paper book) does not reveal reference to any provision of law premised whereon the respondent contended that the charge-sheet could not have been issued without the approval of the Chief Minister, being the competent authority in case of the respondent.

7. Be that as it may, it is only on this ground that the writ petition of the respondent succeeded. The Single Judge, who heard the writ petition, unequivocally recorded that initiation of disciplinary proceedings against the respondent was duly approved by the competent authority but "nowhere from the counter affidavit it appears that Chargesheet was ever approved by the competent authority". Placing reliance on the decisions of this Court in Union of India v. B.V. Gopinath10 and State of Tamil Nadu v. Promod Kumar, IAS11, the Single Judge held that it is the "requirement of law that charge has to be approved by the competent authority and the same was not done here, which is dehorse (sic, dehors) the Rule". Based on such findings, while quashing the order of dismissal 2014 (1) SCC 351 2018 (17) SCC 677 the Single Judge directed reinstatement of the respondent in service with all consequential benefits. The writ petition, thus, stood allowed.

8. The Division Bench, while dismissing the intra-court appeal of the appellants, proceeded to record the following findings:

> "12. *** However, on scrutiny of the materials on record, we find that before a decision was taken to start a departmental proceeding against the respondent and Resolution dated 4th April 2014 was issued thereof, charge memo was already prepared on 13th January 2014. Not only that, the competent authority had accorded his approval to the charge memo on 21st March 2014. That is, before a decision was taken to start the departmental proceeding against the respondent and approval thereon of the competent authority was taken. Apparently, the charge memo was incompetent and therefore the subsequent proceedings taken in the departmental inquiry against the respondent were also rendered illegal.
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> 13. In view of this procedural error which is not a curable irregularity, the writ Court rightly interfered with the termination order dated 16th June 2017".

After extracting paragraph 41 of the decision in B. V. Gopinath (supra) and paragraph 21 of the decision in Promod Kumar (supra), the Division Bench held the writ court's interference with the order dated 6th June, 2017 to be perfectly valid and, accordingly, dismissed the intra-court appeal.

ANALYSIS AND REASONS

9. We have heard Mr. Rajiv Shankar Dvivedi, learned counsel for the appellants and Dr. Manish Singhvi, learned senior counsel for the respondent, at some length.

10. Respondent, without exhausting the alternative remedy of appeal/revision challenging the order of dismissal from service, had invoked the writ jurisdiction before the High Court. For reasons assigned hereafter, we find that the writ petition could have been entertained by the High Court having regard to the jurisdictional issue raised by the respondent.

11. A coordinate bench of this Court in Union of India v. Kunisetty Satyanarayana12 has held that ordinarily no writ lies against a show cause notice or charge-sheet. The reason is that a mere show-cause notice or charge-sheet does not give rise to any cause of action, because it does not amount to an adverse order affecting the rights of any party unless the same has been issued by a person having no jurisdiction to do so (emphasis supplied). Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge-sheet. No doubt, in some very rare and exceptional cases the High Court can quash a show cause notice or charge-sheet if it is found to be wholly without jurisdiction or for some other reason it is wholly illegal (emphasis supplied). However, ordinarily the High Court should not interfere in such a matter.

12. Having read the decision in Kunisetty Satyanarayana (supra), we are of the view that it was open to the High Court to examine the question of jurisdiction to issue the charge-sheet to the respondent since he had invoked the writ jurisdiction after suffering the order of dismissal (2006) 12 SCC 28 from service and not at an initial stage of the inquiry. The writ petition, therefore, could not have been thrown out at the threshold.

13. Now, while addressing the question arising for decision, it would be worthwhile to notice paragraphs '41' and '21' of the decisions in B. V. Gopinath (supra) and Promod Kumar (supra), respectively.

14. In B.V. Gopinath (supra), this Court intervened and quashed the charge-sheet on the ground of want of the Finance Minister's approval. Paragraph '41' reads as follows:

> "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".
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> (italics in original)

15. B.V. Gopinath (supra) was followed in Promod Kumar (supra). Paragraph '21' of the latter decision being relevant, is quoted below:

> "21. 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. 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".

16. Having read excerpts from the decisions in B. V. Gopinath (supra) and Promod Kumar (supra), heavily relied on by the High Court for allowing the writ petition of the respondent, we propose to first examine whether the law laid down therein had any application to the facts pleaded in the writ petition and how far the same is relevant for deciding this appeal. Next, we propose to consider whether, on facts, initiation of disciplinary proceedings against the respondent suffered from any infirmity warranting interference. Finally, we propose to consider the contours of Article 311 of the Constitution and the legal requirements of who should 'draw up' or 'cause to draw up' the charge-sheet signifying initiation of disciplinary proceedings against an officer/employee prima facie found to be delinquent.

APPLICABILITY OF B. V. Gopinath (supra) AND Promod Kumar (supra)

17. It is not in dispute that at the time the appellants resolved to initiate disciplinary proceedings against the respondent, the 1930 Rules were in force. The Single Judge noticed this fact, although the Division Bench has not adverted to it. Under the 1930 Rules, disciplinary proceedings could be initiated in terms of Rule 5513 thereof. The effect that Rule 55 would have on the merits of the plea raised by the respondent, in the ultimate analysis, is what appears to be clinching.

18. Bare perusal of Rule 55 reveals that it does not expressly specify the authority, who is competent to issue the charge-sheet. On the contrary, the decisions of this Court in B.V. Gopinath (supra) and Promod Kumar (supra) dealt with different rules which expressly specified who could issue the charge-sheet. We have noted with some measure of disappointment that long-standing precedents of this Court,

55. Without prejudice to the provisions of the Public Servants Inquiries Act, 1850, no order of dismissal, removal, compulsory retirement Vide Notification no.13213-A, dated the 17th October, 1957 (or reduction) shall be passed on a member of a Service (other than an order based on facts which have led to his conviction in a criminal court or by a Court-Martial) unless he has been informed in writing of the grounds on which it is proposed to take action and has been afforded an adequate opportunity of defending himself. The grounds on which it is proposed to take action shall be reduced to the form of a definite charge or charges which shall be communicated to the person charged together with a statement of the allegations on which each charge is based and on any other circumstances which it is proposed to take into consideration in passing orders on the case. He shall be required, within a reasonable time, to put in a written statement of his defence and to state whether he desires to be heard in person. If he so desires or if the authority concerned so direct an oral inquiry shall be held. At that inquiry oral evidence shall be heard as to such of the allegations as are not admitted, and the person charged shall be entitled to cross-examine the witnesses, to give evidence in person and to have such witnesses called, as he may wish, provided that the officer, conducting the inquiry may, for special and sufficient reasons to be recorded in writing, refuse to call a witness. The proceedings shall contain a sufficient record of the evidence and a statement of the findings and the grounds thereof.

*** which did lend sustenance to the impugned charge-sheet, were neither placed before the Division Bench nor the Single Judge for consideration. This is one reason why we are persuaded to interfere.

19. Respondent was a member of the civil service of the State. Thus, he could legitimately claim that the safeguards enshrined in Article 311 of the Constitution be scrupulously followed prior to ordering his dismissal including drawing up a charge-sheet in the manner required by the relevant law.

20. It would, therefore, be profitable to note what is the law declared by this Court on the point as to who can issue the charge-sheet.

21. As far back as in 1970, this Court in State of Madhya Pradesh v. Shardul Singh14 held that Article 311(1) does not in terms require that the authority empowered by that provision to dismiss or remove an officer should initiate or conduct the inquiry. This decision could count as the parent decision on the topic, declaring the law in paragraphs '6' and '10'. The said paragraphs are quoted below for ease of understanding as to how Article 311(1) was construed:

> "6. Article 311(1) provides that no person who is a member of Civil Service of the Union or of an All-India Service or Civil Service of a State or holds civil post under the Union or State shall be dismissed or removed by an authority subordinate to that by which he was appointed. This Article does not in terms require that the authority empowered under that provision to dismiss or remove an official, should itself initiate or conduct the enquiry preceding the dismissal or removal of the officer or even that that enquiry should be done at its instance. The only right guaranteed to a civil servant under that provision is that he shall not be dismissed or removed by an authority subordinate to that by which he was appointed.
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> (1970) 1 SCC 108 But it is said on behalf of the respondent that that guarantee includes within itself the guarantee that the relevant disciplinary inquiry should be initiated and conducted by the authorities mentioned in the Article. The High Court has accepted this contention. We have now to see whether the view taken by the High Court is correct.

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10. But for the incorporation of Article 311 in the Constitution even in respect of matters provided therein, rules could have been framed under Article 309. The provisions in Article 311 confer additional rights on the civil servants. Hence we are unable to agree with the High Court that the guarantee given under Article 311(1) includes within itself a further guarantee that the disciplinary proceedings resulting in dismissal or removal of a civil servant should also be initiated and conducted by the authorities mentioned in that Article".

(emphasis supplied)

22. Then came the decision in P. V. Srinivasa Sastry v. Comptroller and Auditor General15, where this Court reiterated that a departmental proceeding need not be initiated only by the appointing authority and that initiation by a subordinate authority, in the absence of rules, is not vitiated. We consider it appropriate to extract paragraph '4' hereunder:

> "4. Article 311(1) says that no person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds civil post under the Union or a State "shall be dismissed or removed by an authority subordinate to that by which he was appointed". Whether this guarantee includes within itself the guarantee that even the disciplinary proceeding should be initiated only by the appointing authority? It is well known that departmental proceeding consists of several stages:

> the initiation of the proceeding, the inquiry in respect of the charges levelled against that delinquent officer and the final order which is passed after the conclusion of the inquiry. Article 311(1) guarantees that no person who is a member of a civil service of the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed. But Article 311(1) does not say that even the departmental proceeding must be initiated only by the appointing authority. However, it is open to Union of India or a State Government to make any rule prescribing that even the proceeding against any delinquent officer shall be initiated by an officer not subordinate to the appointing authority. 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 holder of a civil 1993 (1) SCC 419 post. But in absence of any such rule, this right or guarantee does not flow from Article 311 of the Constitution. It need not be pointed out that initiation of a departmental proceeding per se does not visit the officer concerned with any evil consequences, and the framers of the Constitution did not consider it necessary to guarantee even that to holders of civil posts under the Union of India or under the State Government. At the same time this will not give right to authorities having the same rank as that of the officer against whom proceeding is to be initiated to take a decision whether any such proceeding should be initiated. In absence of a rule, any superior authority who can be held to be the controlling authority, can initiate such proceeding".
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> (emphasis supplied)

23. Yet again, in Transport Commissioner v. A. Radhakrishna Moorthy16, this Court clearly declared the law as follows:

> "8. Insofar as initiation of enquiry by an officer subordinate to the appointing authority is concerned, it is well settled now that it is unobjectionable. The initiation can be by an officer subordinate to the appointing authority. Only the dismissal/removal shall not be by an authority subordinate to the appointing authority. Accordingly it is held that this was not a permissible ground for quashing the charges by the Tribunal".
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> (emphasis supplied)

24. All these decisions were considered by this Court in Inspector General of Police v. Thavasippan17, and it was ruled as follows:

> "9. ... Generally speaking, it is not necessary that the charges should be framed by the authority competent to award the proposed penalty or that the enquiry should be conducted by such authority. We do not find anything in the rules which would induce us to read in Rule 3(b)(i) such a requirement. In our opinion, the view taken by the Tribunal that in a case falling under Rule 3(b) the charge memo should be issued by the disciplinary authority empowered to impose the penalties referred to

> therein and if the charge memo is issued by any lower authority then only that penalty can be imposed which that lower authority is competent to award, is clearly erroneous. We, therefore, allow this appeal". ... (emphasis supplied) (1995) 1 SCC 332 (1996) 2 SCC 145

25. Later decisions of this Court in Government of Tamil Nadu v. S. Vel Raj18 and Commissioner of Police v. Jayasurian19 also declare the law in the same vein, albeit in respect of different discipline and appeal rules, that a charge-sheet need not be issued by the appointing authority; any other authority, who is the controlling authority, can initiate departmental proceedings by issuing a chargesheet.

26. At this stage, we are reminded of the Latin phrase stare decisis et non queta movere meaning, stand by what has been decided and do not disturb what has been settled. While it is true that courts are not restrained by any principle of law from expressing a different view on a point of law or to distinguish precedents (a topic we wish to advert to briefly a little later), stare decisis need not be disregarded to unsettle settled positions. We would read these precedents (referred to in paragraphs 21 to 25, supra) as settling the law that unless the relevant discipline and appeal rules applicable to an officer/employee of an authority within the meaning of Article 12 of the Constitution so require, disciplinary proceedings by issuance of a charge-sheet cannot be faulted solely on the ground that either the Appointing Authority or the Disciplinary Authority has not issued the same or approved it. These precedents have stood the test of time and having full application to the case at hand, could not have been lightly overlooked. A holistic consideration of all these precedents by the High Court was certainly the (1997) 2 SCC 708 (1997) 6 SCC 75 need of the hour. Thavasippan (supra) had considered the precedents in Shardul Singh (supra), P. V. Srinivasa Sastry (supra) and A. Radhakrishna Moorthy (supra) and P. V. Srinivasa Sastry (supra) was placed before the coordinate Bench in B.V. Gopinath (supra). We are anchored in a belief that had the High Court looked into these precedents, the conclusion would have certainly been otherwise.

27. Be that as it may, the governing rules in B.V. Gopinath (supra) and Promod Kumar (supra) being different, notwithstanding the similarity in language of Rule 14(3) of the Central Civil Services (Classification, Control and Appeal) Rules, 196520 and Rule 17(3) of the 2016 Rules, reliance placed by the Division Bench on the ratio of the said two decisions seems to be wholly inapt. An erroneous conclusion was arrived at contrary to the settled position of law and we have no hesitation to conclude that the impugned order is manifestly flawed and hence, unsustainable.

ON FACTS, WAS THERE ANY INFIRMITY IN INITIATION OF DISCIPLINARY PROCEEDINGS?

28. The second reason for which we propose to hold the impugned order to be indefensible turns on the facts.

29. It is found that during the pendency of the disciplinary proceedings against the respondent, the 2016 Rules came into force with effect from 1965 Rules 3rd February, 2016. Sub-rule (3)21 of rule 32 on 'Repeal and Savings' saved actions taken under the 1930 Rules. In the light thereof, although the disciplinary authority of the respondent had initiated disciplinary proceedings against him under

the 1930 Rules, there was no obligation to take such proceedings to a logical conclusion in terms of the 2016 Rules. If the 2016 Rules contemplated additional safeguards over and above what were provided by the 1930 Rules, it is debatable whether the charged officer could, as of right, claim such safeguards to be extended though nothing prevents the disciplinary authority in its discretion to extend the same. Even otherwise, the Division Bench referred to Rule 17(3)22 laying down the 'Procedure for imposing major penalties' for the purpose of invalidating the order of the respondent's dismissal from service but, in the process, completely overlooked Rule 1623 (which dealt with 'Authority to institute proceedings' and inter alia empowered 'any 32(3) Anything done or any action taken in exercise of the powers under the Civil Service (Classification, Control and Appeal) Rules, 1930 and The Bihar and Orissa Subordinate Services (Discipline and Appeal) Rules, 1935 shall be deemed to have been done or taken in exercise of the powers conferred by or under those Rule (sic, Rules), as if those Rules were in force on the day on which such thing or action was done or taken. 17(3). Where it is proposed to hold an inquiry against a Government servant under this rule, the Disciplinary Authority shall draw up or cause to be drawn up:

> i) The substance of the imputations of misconduct or misbehaviour as a definite and distinct article of charge.
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> ii) A statement of the imputations of misconduct or misbehaviour in support of each article of charge, which shall contain:-
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> ***
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> 16. The Government or Appointing Authority or any authority to which the Appointing Authority is subordinate or any other authority empowered by general or special order of the Government may – (a) institute disciplinary proceedings against any Government servant; (b) direct a Disciplinary Authority to institute disciplinary proceedings against any Government servant on whom that Disciplinary Authority is competent to impose any of the penalties specified in rule 14 under these Rules.

other authority' to institute disciplinary proceedings), Rule 2(k)24 defining Disciplinary Authority as well as Rule 32(3) (supra) of the 2016 Rules. In the first place, the complaint of the respondent that the charge-sheet had not been issued by the competent authority could not have been decided looking at the 2016 Rules. Secondly, even if such Rules had any application, still the procedure for imposing major penalties in Rule 17 could not have prevailed over the provision in rule 16 laying down the particulars of authorities competent to institute proceedings. As per the scheme of the 2016 Rules and in terms of Rule 16(1) thereof, notwithstanding that the Disciplinary Authority could be subordinate to an Appointing Authority in a given case, any authority empowered by general or special order of the Government could have instituted disciplinary proceedings against the respondent. In any event, assuming that Rule 17(3) was applicable, the Chief Minister himself having approved initiation of disciplinary proceedings against the respondent, question of absence of approval of the charge-sheet by the Chief Minister separately was a non- issue.

30. Reverting to Rule 55 of the 1930 Rules, it is observed that the same did not specify any particular authority to be under an obligation to issue the charge-sheet against a civil servant. In such view of the matter and having regard to the law settled by this Court, it is axiomatic that any 2(ka) Save as otherwise expressly provided in the rules of a particular cadre, 'Disciplinary Authority' means Appointing Authority or any other Authority authorised by it who shall be competent under these Rules to impose on a Government Servant any of the penalties specified in rule 14 of these Rules.

officer holding a rank subordinate to the respondent's appointing authority but superior in rank than the respondent could have issued the charge-sheet. Admittedly, the facts do reveal initiation of disciplinary proceedings against the respondent having the approval of the Chief Minister dated 21st March, 2014. The draft charge-sheet was part of the proposal dated 13th January, 2014. Once the draft charge-sheet was on record before the Chief Minister, approval of the proposal to initiate disciplinary proceedings should have been read as including the Chief Minister's assent not only to the draft charge-sheet, as drawn up, but also to the other proposals to suspend the respondent as well as appointment of an inquiry officer and presenting officer. In such circumstances, reference by the Division Bench to Rule 17(3) of the 2016 Rules appears to be wholly misplaced since the charge-sheet was not issued under such sub-Rule.

31. In a parliamentary democracy like India where the Constitution permits each of the Governments – Central as well as the States – to have their own Rules of Business framed, it was incumbent for the respondent to prove to the satisfaction of the High Court with reference to the rules prevalent in the State of Jharkhand that the procedure prescribed thereunder for the file to be placed before the Chief Minister was observed in the breach. Also, by referring to any other relevant law, it ought to have been shown that the draft charge-sheet should not have been prepared prior to the date of approval of the proposal to initiate disciplinary proceedings and also that, such preparation should not have been left to be undertaken by the departmental officers; instead, the charge-sheet should have been drafted after the proposal were approved and that the competent authority to initiate disciplinary proceedings should have himself proceeded to draft and issue the same. No law in this behalf has been shown to have been breached. Therefore, no issue could have legitimately been urged in relation to the departmental officers entrusted with the work of preparing papers for seeking approval to initiate disciplinary proceedings against an officer prima facie found to be delinquent and in drafting the charge-sheet to be issued to him as part of the requisite groundwork for the Chief Minister to signify his approval to such proposal.

32. We, thus, find an erroneous approach having been adopted by the High Court while dealing with the writ petition as well as the intra-court appeal rendering its decision liable to interdiction in appeal. WHAT IS THE REQUIREMENT OF ARTICLE 311 OF THE CONSTITUTION AND WHO SHOULD 'DRAW UP' OR 'CAUSE TO DRAW UP' THE CHARGE-SHEET?

33. The final reason for interdicting the impugned order stems from non-consideration of Article 311(1) of the Constitution of India in its correct perspective by the Division Bench. If one looks at Article 311(1), the sole safeguard that it provides to any member, inter alia, of a civil service of a State or the holder of a civil post under the State is that he shall not be dismissed or removed by an authority subordinate to that by which he was appointed (emphasis supplied). Clause (1) does not

on its own terms require that the disciplinary proceedings should also be initiated by the appointing authority. This is what Shardul Singh (supra) and P.V. Srinivasa Sastry (supra) have articulated, with which we wholeheartedly agree.

34. The Division Bench noticed that Rule 17(3) of the 2016 Rules were pari materia Rule 14(3) of the 1965 Rules and, therefore, what was held in paragraph '41' of the decision in B.V. Gopinath (supra) would clearly be applicable to resolve the controversy at hand. In B.V. Gopinath (supra), certain office memoranda were under consideration apart from Rule 14(3) of the 1965 Rules. Submissions advanced on behalf of the charged officers, recorded in paragraphs '20' and '21', would reveal that the Court was addressed with regard to the fact situation where approval to initiate disciplinary proceedings had been obtained but subsequent thereto, the charge-sheet that was drawn up had not been approved by the Finance Minister. This is where the Division Bench again committed a clear error in failing to appreciate the facts, which bear vital importance. As noted above, in the present case, the draft charge-sheet was there on record when the Chief Minister accorded his approval and there appears to be no valid reason as to why approval of the proposal to initiate disciplinary proceedings against the respondent would not be regarded as grant of approval to the draft charge-sheet too. We are unhesitatingly of the view that according approval to initiate the disciplinary proceedings against the respondent, in this case, did amount to approval of the draft charge-sheet.

35. It has been observed by this Court in several decisions that each decision is an authority for what it decides and not what could logically be deduced therefrom. Mechanical reliance on precedents, as if they are statutes, has been deprecated. Whenever a precedent is cited laying down a principle of law having application to the facts of the case in hand and having binding effect, it is customary and expected of courts to be bound by the law declared by this Court under Article 141 of the Constitution. However, the courts are free not to place blind reliance on whatever precedent is cited by the parties since facts of two cases are not seldom alike. It is the duty of the court, if it considers the precedent not to be applicable, to refer to factual dissimilarities that are found and thereafter to distinguish the precedent cited before it by assigning brief but cogent reasons. It is always well to remember in this context the dictum of this Court in Regional Manager, Food Corporation of India v. Pawan Kumar Dubey25:

> "7. ... It is the rule deducible from the application of law to the facts and circumstances of a case which constitutes its ratio decidendi and not some conclusion based upon facts which may appear to be similar. One additional or different fact can make a world of difference between conclusions in two cases even when the same principles are applied in each case to similar facts".

36. Since invocation of the provisions in Discipline and Appeal Rules similar to Rule 14(3) of the 1965 Rules or Rule 17(3) of the 2016 Rules and citing failure to adhere to the same to invalidate orders terminating services of officers/employees is not too infrequent, we consider it proper (1976) 3 SCC 334 to briefly touch upon the requirement thereof. The Disciplinary Authority is mandated by the law to 'draw up' or 'cause to be drawn up' the substance of the imputations of misconduct or misbehavior as a definite and distinct article of charge together with the statement of such

imputations. The phrases 'draw up' and 'cause to be drawn up' do have different meanings in the context of disciplinary proceedings, though both relate to drawing up of a charge-sheet. By 'draw up', what is express is that the Disciplinary Authority itself is responsible for preparing the substance of imputation and the statement of allegations in support thereof, whereas 'cause to be drawn up' would enable the Disciplinary Authority to instruct or direct someone else to prepare the substance and statement. The effect of it is that the Disciplinary Authority itself may not prepare the document but rather delegate the task to someone else. If the delegation is proved to have been made in favour of an authority holding an office superior to that of the officer/employee proposed to be proceeded against, nothing much is required to be done and the courts ought to exercise restraint.

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.

38. Turning focus once again to the factual narrative, it is worthy of being noted that it was the Cabinet which approved the proposal to dismiss the respondent. Respondent's service having been terminated based on such approval, the Single Judge as well as the Division Bench should have been loath to hold the dismissal illegal on acceptance of the specious plea raised by the respondent by its misplaced reliance on B.V. Gopinath (supra) and Promod Kumar (supra).

39. Viewed from whichever angle, we are unable to support the finding returned by the Single Judge, since affirmed by the Division Bench, that the charge-sheet did not have the approval of the

competent authority though both the Benches indubitably agreed that the proposal to initiate disciplinary proceedings did have such approval. We repeat, the entire proposal of initiating disciplinary proceedings inclusive of the draft charge-sheet, to suspend the respondent pending such proceedings and the names of the officers who would conduct the inquiry and present the case of the department in such inquiry having been approved by the Chief Minister, the Single Judge seems to have occasioned a grave miscarriage of justice in interfering with the order of dismissal on the wholly untenable ground of lack of approval of the charge-sheet by the Chief Minister; and the Division Bench, by failing to right the wrong, equally contributed to the failure of justice.

40. For the foregoing reasons, there can be and is little hesitation for us to hold that the impugned order of the Division Bench upholding the judgment and order of the Single Judge of allowing the writ petition as well as the latter is fundamentally incorrect and patently illegal. The judgments of the High Court under challenge, thus, cannot be sustained in law, with the result that the writ petition of the respondent must be and has to be dismissed.

41. Realizing the difficulty in having the impugned order sustained, as a last-ditch effort, Dr. Singhvi contended that the respondent has been out of service for nearly 8 (eight) years, which is sufficient punishment for him, and that the direction of the High Court ordering his reinstatement need not be disturbed upon recording that the respondent would not claim any arrears of salary.

42. We are not impressed, to say the least. Prima facie, at this stage, we see no reason to hold the order of dismissal to have been vitiated on any count. Directing the respondent's reinstatement despite finding no error in the proceedings drawn up against him would render such valid dismissal order ineffective and inoperative.

RELIEF

43. The impugned order of the Division Bench as well as the judgment and order of the Single Judge are set aside, resulting in the respondent's writ petition on the file of the High Court being dismissed.

44. However, considering the fact that the charge-sheet was interdicted by the High Court, at both tiers, on the ground of jurisdictional error and the respondent might not have pursued the appellate/revisional remedy provided under the 1930 Rules/2016 Rules labouring under a misconception that he was forced to face proceedings and answer a charge-sheet which did not have the approval of the competent authority, we grant him liberty to appeal against the impugned order of dismissal or to seek a revision thereof by filing an appeal/memorial, whichever is permissible under the relevant Rules, within a period of one month from the date of pronouncement of this judgment. If an appeal/revision is presented by the respondent before the competent appellate/revisional authority within such period, the same shall be decided on merits and in accordance with law, as early as possible, waiving the bar of limitation. All points except the point of validity of the charge-sheet, decided by us, are kept open.

CONCLUSION

45. The appeal, accordingly, stands allowed. Parties shall, however, bear their own costs.

.....J. (DIPANKAR DATTA) .....J. (MANMOHAN) NEW DELHI;

MARCH 28, 2025.