

(2021) 12 GAU CK 0008

Gauhati High Court

Case No: Writ Appeal No. 29 Of 2020

Dr. Brijesh Kumar Rai

APPELLANT

Vs

Indian Institute Of
Technology, Guwahati
And 2 Ors

RESPONDENT

Date of Decision: Dec. 2, 2021

Acts Referred:

- Constitution Of India, 1950 - Article 311, 311(1), 311(2)
- Central Civil Services (Classification, Control And Appeal) Rules, 1965 - Rule 2(g), 11, 13, 14, 14(1), 14(3)
- All India Service (Discipline And Appeal) Rules, 1969 - Rule 8, 8(4)
- Institutes of Technology Act, 1961 - Section 2, 17, 27, 38

Citation: (2021) 12 GAU CK 0008

Hon'ble Judges: Sudhanshu Dhulia, J; Soumitra Saikia, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Sudhanshu Dhulia, CJ

1. Heard Mr. K.N. Chowdhury, learned senior counsel for the appellant. Also heard Mr. A.B. Dey, learned Standing Counsel, IIT for the respondents.

2. This is a writ appeal filed by the appellant/writ petitioner challenging the order dated 01.11.2019 passed by the learned Single Judge in WP(C) No.

7478/2019.

3. The material facts for our consideration are that the appellant/writ petitioner before this Court is an Assistant Professor in the Indian Institute of

Technology Guwahati (for short hereinafter referred to as "IIT", Guwahati, who is presently facing a disciplinary proceeding. The reason for him

to approach this Court by means of the writ petition was that he had questioned the authority of the Director of the IIT for initiating the disciplinary

proceedings. His case was that only the appointing authority, which admittedly in his case was the Board of Governors of the Institute, was authorized

to initiate the disciplinary proceedings against him and since the admitted position is that the disciplinary proceedings have been initiated by an authority

which is subordinate to the Board of Governors, which in this case is the Director of the Institute, it is in violation of the law and this procedure

adopted by the Institute also deprives the appellant/writ petitioner from the protection given to him under Clause (1) and (2) of Article 311 of the

Constitution of India. The Rules which the appellant/writ petitioner had invoked in his favour are the Central Civil Services (Classification, Control and

Appeal) Rules, 1965 [for short, hereinafter referred to as the "CCS(CCA) Rules"] and he would argue that initiation of the disciplinary

proceedings against him is in violation of the same.

4. Before we come down to the procedure adopted by the Institute against the appellant/writ petitioner and the procedural and substantive law which

is presently applicable in this case, we would refer to the facts which are material for our consideration.

5. The appellant/writ petitioner, as already referred above, is an Assistant Professor in IIT, Guwahati. IIT, Guwahati is an institute of national

importance. The first such institute came into existence by virtue of an Act of Parliament known as the Institutes of Technology Act, 1961, which is

an Act to declare certain institutions of technology to be institutions of national importance. This was the Indian Institute of Technology Kharagpur.

Other IITs joined in the process later. These are all institutes of national importance.

6. In the Institute i.e., IIT, Guwahati an incident took place on 02.08.2019 which involves the present writ appellant. It is alleged by the authorities that

on the said date i.e., 02.08.2019, while the appellant/writ petitioner, who is an Assistant Professor in the Department of Electronics & Electrical

Engineering, was taking a class in Classroom No.2002 and had overshoot the period of time allotted to him, Dr. Gaurav Trivedi, Associate Professor,

who was supposed to take the next class, came inside the classroom and thereafter an altercation took place between the two. It is further alleged

that there was a scuffle and fight between the two which was somehow stopped due to the intervention of the students of the class. Subsequent to the

said incident, cross FIRs were lodged in the nearest police station, which were registered as North Guwahati P.S. Case No. 105/2019 u/s

294/323/506 IPC and North Guwahati P.S. Case No. 106/2019 u/s 341/294/506 IPC. On the same day i.e., 02.08.2019, a preliminary inquiry

committee consisting of Prof. Chitralekha Mahanta as Chairman and Prof. S. V. Rao as Member, was constituted to investigate the matter. This was

also communicated by the interim Registrar to the concerned parties, namely, the appellant/writ petitioner and Dr. Gaurav Trivedi. The preliminary

inquiry committee submitted its report on 05.08.2019.

7. Based on the report of the preliminary inquiry committee, the Director of the Institute vide Memorandum dated 13.08.2019 issued a show cause

notice to the appellant/writ petitioner (It is also an admitted position that similar show cause notice was also served on the other Professor involved in

the incident i.e., Dr. Gaurav Trivedi). The show cause notice issued to the appellant/writ petitioner also contained the charges levelled against him,

which read as under:

“Charge No.1 :- That on 02.08.2019 at around 10.55 A.M. you were taking a class in classroom no. 2002. The next class period from

11.00 A.M. To 11.55 A.M., Dr. Gaurav Trivedi, Associate Professor, Dept. of EEE was supposed to conduct a class in classroom no. 2002.

At around 10.55 A.M., Dr. Trivedi, went inside the classroom while you were taking class and requested you to finish your lecture so that he

can start his lecture on time. After few minutes, you came out of the class and entered into a heated altercation with Dr. Gaurav Trivedi and

verbally abused him in front of the students. By verbally abusing a fellow colleague you have violated Rule 3(b) of the Conduct Rules of

IITG.

You are therefore charged with committing Misconduct violating the mandate of the Rule 3(b) of the above Conduct Rules of IITG and

unbecoming of a faculty of IITG.

Charge No.2:- That, in the heat of the moment, you grabbed the shirt collar of Dr. Gaurav Trivedi and pushed him in front of some

onlookers including students, present there at the moment. That, at one point of time, you grappled the neck of Dr. Trivedi. By physically

assaulting a fellow colleague you have violated Rule 3(b) of the Conduct Rules of IITG.

You are therefore charged with committing misconduct violating the mandate of the Rule 3(b) of the above Conduct Rules of IITG and

committing an offence of causing grievous hurt punishable under Indian Penal Code, committing a serious misconduct which is prejudicial

to the interest and reputation of a premier institute like IIT Guwahati and with a further misconduct of disturbing the peace within the

campus of IIT Guwahati which is unbecoming of a faculty member of IITG.

8. The appellant/writ petitioner was asked to submit his Written Statement within 10 days from the date of receipt of the show cause notice. The

appellant/writ petitioner gave his reply to the show cause on 02.09.2019. Thereafter, upon consideration of the reply given the appellant/writ petitioner,

a decision was taken by the Director on 05.09.2019 for instituting a disciplinary proceeding against the appellant/writ petitioner. On the same day i.e.,

05.09.2019, the appellant/writ petitioner was also suspended from service with immediate effect pending finalization of the disciplinary proceedings.

Both these orders were challenged by the appellant/writ petitioner before the learned Single Judge of this Court.

9. The argument of the appellant/writ petitioner before the learned Single Judge was that his appointing authority is the Board of Governors of the IIT,

whereas the disciplinary proceedings have been initiated against him not by the Board of Governors but by the Director. Secondly, his appointing

authority being the Board of Governors, he can only be suspended by an order passed by the Board of Governors and presently the suspension order

has been passed by the Director, which is again without jurisdiction.

10. Before the learned Single Judge, the defence of the Institute was that although the Director is not the appointing authority of the appellant/writ

petitioner, but under Clause 7(4) of the Statutes governing the Institute known as "the Indian Institute of Technology Guwahati Statutes", which

have been framed by the IIT Council under the powers given to the Council under Section 27 read with Section 38 of the Institutes of Technology

Act, 1961, in emergent cases the Chairman has been empowered to exercise the powers of the Board. Clause 7(4) of the aforesaid Statutes reads as

under:

"7(4) In emergent cases the Chairman may exercise the powers of the Board and inform the Board of the action taken by him for its

approval."

It was also argued before the learned Single Judge that in a situation where the Institute does not have a Chairman or in the absence of a Chairman,

the Director can exercise the powers of a Chairman and in that capacity, the emergent powers were invoked by the Director of initiating the present

disciplinary proceedings.

11. After hearing the learned counsel for both the parties and on perusal of the materials available on record, the learned Single Judge was of the view

that although in emergent situations the Director can exercise the powers of the Board of Governors, but at the same time, it was considered

appropriate by the learned Single Judge that approval of the Board of Governors be obtained and to that extent interference was called for. Ultimately,

in Paragraph Nos. 17,18 and 19, the learned Single Judge held as under:-

“17. Considering the circumstances, as mentioned above, this Court is of the view that since the learned senior counsel for the

respondent has submitted that the departmental proceedings had been initiated against the petitioner and the petitioner was also placed

under suspension because the matter was considered to be an emergent case, this Court considers it appropriate to direct the Chairman of

the BoG to obtain approval of the BoG, IIT, Guwahati, before proceeding further with the departmental proceeding as, admittedly, approval

of the BoG has not been obtained yet with regard to the departmental proceeding initiated against the petitioner, as provided under Clause

7(4) of the Statute and, therefore, the same cannot be allowed to continue further without the approval of the BoG.

18. As regards the issuance of the suspension order, the Director certainly has the authority to place an employee of the IIT, Guwahati,

under suspension if there be any departmental proceeding pending against him. In the present case, the petitioner has been placed under

suspension vide order dated 05.08.2019 purely for the reason that there is a departmental proceeding pending against him. However, since

the departmental proceeding, which is the basis for placing the petitioner under suspension, has been put on hold by this Court for the time

being, as mentioned above, consequently, the impugned order of suspension also is put on hold till appropriate approval is granted by the

BoG of the IIT, Guwahati, to the departmental proceeding initiated against the petitioner as provided under Clause 7(4) of the Statute.

19. In view of the above, it is directed that the impugned disciplinary proceeding initiated against the petitioner and the suspension order

dated 05.08.2019 shall remain suspended until approval is granted by the Board of Governors, IIT, Guwahati, to proceed with the

disciplinary proceeding against the petitioner. In the event the Board of Governors, IIT, Guwahati, approves the action taken by the

Chairman/Director against the petitioner, the disciplinary proceeding initiated against the petitioner as well as the suspension order will

stand activated. On the other hand, if the Board of Governors, IIT, Guwahati, does not approve the actions initiated against the petitioner

by the Chairman/Director, as per Clause 7(4) of the Statute, obviously, the departmental proceeding initiated against the petitioner and the

consequential suspension order dated 05.09.2019 will have no validity without the approval of the BoG and shall stand revoked.

As of now, this approval has been taken and the present disciplinary proceeding is on against the appellant/writ petitioner. Aggrieved by the order of

the learned Single Judge, the present writ appeal has been filed by the appellant/writ petitioner.

12. Mr. K.N. Chowdhury, learned senior counsel for the appellant/writ petitioner has made a heavy reliance on a judgment of the Hon'ble

Supreme Court in the case of B.V. Gopinath vs- Union of India, reported in (2014) 1 SCC 351. The decision on which such a heavy reliance has

been placed by the learned senior counsel for the appellant/writ petitioner relates inter alia to initiation of disciplinary proceedings against an officer of

Indian Revenue Service where admittedly CCS (CCA) Rules are applicable. In the said case, the facts are that approval for initiation of the

disciplinary proceedings was not granted by the Finance Minister at the time of framing of charges but it was done subsequently. The CCS (CCA)

Rules clearly defines the disciplinary authority under Rule 2(g), which reads as under:

"2(g) Disciplinary authority means the authority competent under these rules to impose on a Government servant any of the

penalties specified in Rule 11.

13. Rule 14 (1) and (3) of the CCS (CCA) Rules read as under:

"14. Procedure for imposing major penalties

(1) No order imposing any of the penalties specified in Clauses (v) to (ix) of Rule 11 shall be made except after an inquiry held, as far as

may be, in the manner provided in this Rule and Rule 15, or in the manner provided by the Public Servants (Inquiries) Act, 1850 (37 of

1850), where such inquiry is held under that Act.

(2)

(3) Where it is proposed to hold an inquiry against a Government servant under this rule and Rule 15, the Disciplinary Authority shall draw

up or cause to be drawn up –

(i) the substance of the imputations of misconduct or misbehaviour into definite and distinct articles of charge;

(ii) a statement of the imputations of misconduct or misbehaviour in support of each article of charge, which shall contain –

(a) a statement of all relevant facts including any admission or confession made by the Government servant;

(b) a list of documents by which, and a list of witnesses by whom the articles of charge are proposed to be sustained. –

14. Although the argument of the Union of India before the Hon'ble Apex Court was that sub-Rule (3) of Rule 14 permits the disciplinary

authority to cause the charge memo to be drawn up by a subordinate authority, this argument was negated by the Hon'ble Apex Court in Para 52

and 53 of the judgment in B.V. Gopinath, which is reproduced below:

–“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, nonest

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. SrinivasaSastry 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)

"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)

"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."

53. Further, it appears that during the pendency of these proceedings, the appellants have, after 2009, amended the procedure which

provides that the charge memo shall be issued only after the approval is granted by the Finance Minister.

15. The learned senior counsel for the appellant/writ petitioner would argue that although initiation of a disciplinary proceedings and ultimate award of

punishment are two different aspects of the matter, but both have to be done by one authority which is the appointing authority. He would further

argue that since the CCS (CCA) Rules are also applicable in the case of an employee of an IIT and since the admitted position here is that prior to

initiation of the disciplinary proceedings against the appellant/writ petitioner such an approval was not taken from the appointing authority, which is the

power of the Board of Governors, the entire proceedings are vitiated. The same argument has been raised while challenging the validity of the

suspension order dated 05.09.2019.

16. The learned senior counsel would further argue that the judgment in B.V. Gopinath was subsequently followed by the Hon'ble Apex Court in

the case of State of Tamil Nadu vs- Promod Kumar, IPS &Ors., reported in (2018) 17 SCC 677 where the Apex Court was again dealing with a

service matter relating to a member of All India Service i.e., the Indian Police Service who was allotted the Tamil Nadu cadre. In the said case also

disciplinary proceedings were initiated against an officer of the Indian Police Service without approval from the disciplinary authority at the relevant

time, although such an approval was taken subsequently. The argument of the concerned officer was that this is in violation of Rule 8(4) of the all

India Service (Discipline and Appeal) Rules, 1969, which mandates that it is the disciplinary authority which shall "draw up or cause to be drawn

up the charge memo and since this has not been done, the entire proceedings are vitiated. In Paragraph 22, it was held as under:

"22. Rule 8(4) of the All India Services (Discipline and Appeal) Rules, 1969 also mandates that the disciplinary authority shall "draw

up or cause to be drawn up the charge memo. We see no reason to take a view different from the one taken by this Court in B.V.

Gopinath [Union of India v. B.V. Gopinath, (2014) 1 SCC 351 : (2014) 1 SCC (L&S) 161] . We also see no substance in the submission

made by the Senior Counsel for the State that the said judgment needs reconsideration. Assuming that Mr Giri is right in his submission that

the initiation of disciplinary proceedings and issuance of charge memo are at the same stage, the mandatory requirement of Rule 8 which

provides for the charge memo to be drawn by the disciplinary authority cannot be ignored. We reject the submission on behalf of the

appellant that Gopinath case [Union of India v. B.V. Gopinath, (2014) 1 SCC 351 : (2014) 1 SCC (L&S) 161] can be distinguished on

facts. We are not in agreement with the contention of the appellant that the business rules and standing orders of the State of Tamil Nadu

are quite different from the office orders and circulars issued by the Union of India which formed the basis of the judgment in Gopinath

case [Union of India v. B.V. Gopinath, (2014) 1 SCC 351 : (2014) 1 SCC (L&S) 161] . A close reading of the said judgment would disclose

that reliance on the office note was only in addition to the interpretation of the Rule.Ã¢â¬â¢

17. Mr. A.B. Dey, learned counsel for the IIT, Guwahati, on the other hand, would argue that the different Indian Institutes of Technology are created

by way of amendment in the parent Act i.e., the Institutes of Technology Act, 1961. These are institutes of national importance. The IIT, Guwahati,

Assam was created in the year 1994 by the Institutes of Technology (Amendment) Act, 1994 by way of amendment to the Institutes of Technology

Act, 1961, where in Section 2 after the words Ã¢â¬â¢the College of Engineering and Technology, DelhiÃ¢â¬â¢, the words Ã¢â¬â¢the Indian Institute of

Technology Guwahati, AssamÃ¢â¬â¢ were inserted. There is a Council which governs the affairs of the Institute known as Indian Institute of Technology

Council which inter alia has got powers to frame Rules under Section 27. Under Clause 9 of the Indian Institute of Technology Guwahati Statutes, the

Director has been given wide powers. As far as the power of suspension of an employee is concerned, the same is given under sub-Clause (9) of

Clause 15, which reads as under:

Ã¢â¬â¢(9) The Director may place a member of the staff appointed at the Institute under suspension:

(a) Where a disciplinary proceeding against him is contemplated or is pending, or

(b) Where a case against him in respect of any criminal offence is under investigation or trial.

Provided that where a member of the staff is detained in custody for a period exceeding forty eight hours, whether in connection with a

criminal offence or under any law for time being in force providing for preventive detention, such member of the staff shall be deemed to

have been placed by the Director under suspension with effect from the date on which he was so detained.

18. As far as the disciplinary procedure is concerned, the learned counsel for the Institute

has relied upon a resolution of the Board of Governors

which was adopted in the meeting held on 26.12.2015, where broad guidelines were given by the Board of Governors as to how disciplinary

proceedings are to be conducted. In Paragraph-2 of the said resolution, as far as initiation of a disciplinary proceedings is concerned, it was stated as

under:

2. Initiation of Disciplinary Proceedings:

In consideration of the Report of the concerned Head of the Department, Head of the Section and/or Head of the Centre; or a complaint

received directly from a member of staff or student (s); and the Preliminary Report of the Committee, the Director shall decide whether

formal Disciplinary Proceedings should be instituted against the employee as provided under Clause 15(9) of the Statute for imposing major

or minor penalty. It has to be borne in mind that the nature of disciplinary action and the quantum of punishment are to commensurate with

the gravity of the offence alleged to have been committed.

At this stage, the seriousness of the misconduct and the character of the charged employee shall come into consideration.

(emphasis provided)

19. In the present case, there cannot be any room for confusion as to whether the Director can exercise the powers of the appointing authority or not.

There are certain emergent situations where these powers can be exercised, which has already been referred above. Although these powers have

been given to the Chairman and not to the Director, but the admitted position is that at the relevant time there was no Chairman and therefore, by

reason of Clause 9(16), the Director has these powers. Clause 9(16) reads as under:

“9.(16). In the event of the occurrence of any vacancy in the office of the Chairman by reason of his death, resignation or otherwise or

in the event of the Chairman being unable to discharge his functions owing to absence, illness or any other cause the Director may

discharge the functions assigned to the Chairman under Statute 7.”

20. Admittedly, in exercise of these powers the Director had initiated the disciplinary proceeding against the appellant/writ petitioner. As far as the

suspension order dated 05.09.2019 passed against the appellant/writ petitioner is concerned, there should be no room for doubt inasmuch as that the

Statutes [15(9)] gives this power to the Director.

21. Learned counsel for the appellant/writ petitioner at this stage would also argue that the procedural safeguard given to the appellant/writ petitioner,

if not followed in its letter and spirit, would amount to violation of Clause 1 and 2 of Article 311 of the Constitution of India. Article 311 of Constitution

of India reads as under:-

“311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State .”(1) 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 a civil post under the Union or a State

shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of

the charges against him and given a reasonable opportunity of being heard in respect of those charges.

22. A bare reading of the aforesaid provisions clearly shows that Clause (1) of Article 311 protects a member of a civil service as he cannot be

dismissed or removed by an authority subordinate to that by which he was appointed. As far as Clause (1) is concerned, this event we have not

reached so far. There is no order as yet of removal or dismissal of the appellant/writ petitioner from service. Therefore, there can be no question of

any challenge to such an order. As far as Clause (2) of Article 311 of the Constitution of India is concerned, the protection is to the extent that no

member of civil service or who holds a civil post shall be dismissed or removed or reduced in rank without an inquiry in which he has been informed of

the charge and has been given a reasonable opportunity of hearing. Clause (2) nowhere states that the disciplinary proceedings have to be initiated by

the appointing authority himself. To the contrary, the settled position of law is that a disciplinary proceeding can be initiated by an authority/officer who

is subordinate to the appointing authority but who is superior to the concerned officer against whom such proceeding is to be initiated. We would refer

to the observation of the Apex Court in the case of P.V. SrinivasaSastry v. Comptroller and Auditor General, reported in(1993) 1 SCC 419, wherein

negating this argument, it was stated in Para 4,5,6 and 7 as under:-

“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 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.

5. In the case of *State of M.P. v. Shardul Singh* [(1970) 1 SCC 108] the departmental enquiry had been initiated against the Sub-Inspector

of Police by the Superintendent of Police, who sent his enquiry report to the Inspector-General, who was the appointing authority. The

Inspector-General of Police dismissed the officer concerned from the service of the State Government. That order was challenged on the

ground that the initiation of the departmental enquiry by the Superintendent of Police was against the mandate of Article 311(1) of the

Constitution. This contention was accepted by the High Court. But this Court said: (SCC p. 112, para 10)

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.

6. Reliance was placed on behalf of the appellants on the judgment of this Court in the case of Scientific Adviser to the Ministry of Defence

v. S. Daniel [1990 Supp SCC 374 : 1991 SCC (L&S) 355 : (1990) 2 SCR 440 : (1991) 15 ATC 799] . From the aforesaid judgment it shall

appear that Rule 13 of the Central Civil Services (Classification, Control and Appeal) Rules, which was under consideration specifically

provided:

“13. Authority to institute proceedings.” (1) The President or any other authority empowered by him by general or special order

may

(a) institute disciplinary proceedings against any Government servant;

Although Article 311 of the Constitution does not speak as to who shall initiate the disciplinary proceedings but, as already stated above,

that can be provided and prescribed by the rules. But if no rules have been framed, saying as to who shall initiate the departmental

proceedings, then on the basis of Article 311 of the Constitution it cannot be urged that it is only the appointing authority and no officer

subordinate to such authority can initiate the departmental proceeding. In the present case, it was not brought to our notice that any rule

prescribes that the Accountant General, who is the appointing authority, alone could have initiated a departmental proceeding.

7. It was then urged that even if it is held that the departmental proceeding could have been initiated by the Senior Deputy Accountant

General, the Accountant General while imposing the punishment of reduction in rank could not have reverted the appellants from the posts

of Auditors to the posts of Lower Division Clerks. According to appellants, P.V. SrinivasaSastry and M. MahadevaSetty, they had been

appointed against the posts of Upper Division Clerks by process of direct recruitment, as such they cannot be reverted to the posts of Lower

Division Clerks i.e. below the rank of the posts to which they had been appointed initially by process of direct recruitment.

23. We have also noticed that in B.V. Gopinath's case on which very heavy reliance has been placed by the learned senior counsel for the

appellant/writ petitioner, the above case (i.e., P.V. SrinivasaSastry) has been noticed by the Apex Court but then the Apex Court has referred to the

peculiar facts of the case before it where there was an observation of the Apex court in Paragraph No. 4 that if such a provision is made in the Rule

itself where a disciplinary proceeding can only be initiated by the appointing authority, such a provision in no way goes against the protection given to

the civil servant under Clause (1) and (2) of Article 311 of the Constitution of India.

24. We have already stated above that such a provision exists in the CCS (CCA) Rules, not in the Statutes of IIT. Moreover, what is more important

is that the Hon'ble Apex Court in B.V. Gopinath had also observed that now in 2009 an amendment has been made to the effect that a charge

memo can be issued only after approval of the Finance Minister is granted. However, such are not the facts in the present case. An IIT is governed

by the Institutes of Technology Act, 1961 including the amendments made therein and the Statutes as well as the resolutions of the Board of

Governors which govern the field from time to time. A detail procedure has already been laid down in the resolution of the Board of Governors dated

26.12.2015, which we have already referred which presently governs the field. None of the provisions mandate that only the appointing authority can

initiate disciplinary proceeding.

25. Learned counsel for the appellant/writ petitioner would argue that in the show cause notice dated 13.08.2019 itself a reference has been made to

the CCS (CCA) Rules i.e. Central Civil Service (Classification, Control and Appeal) Rules, 1965. What has precisely been stated is as under:

“In exercise of the powers conferred by under Clause 15(9) of the Statute of Indian Institute Technology Guwahati read with Rule 14 of the

Central Civil Services (Class, Control and Appeal) Rules 1965, the undersigned hereby asks you to show cause as to why any of the penalties as

provided in the statute of the IIT Guwahati under clause 15(9) read with Rule 11 of the Central Civil Services (Class, Control and Appeal) Rules 1965

should not be inflicted upon you on the following charges based on the statement of imputations attached herewith.

26. What is, however, clear is that both the Statutes as well as the CCS Rules are applicable in the present case. The learned counsel for the IIT

would rely upon the resolution of the Board of Governors dated 31.10.2019, which has not been placed before this Court, but this Court has been

verbally informed that as per the said resolution, wherever there is any ambiguity or conflict in these matters, the CCS (CCA) Rules would prevail.

Even if we presume for the sake of argument that the CCS (CCA) Rules would be applicable in the present case, its application would be very

limited.

27. Special will always override the general. IIT Statutes is special and CCS (CCA) Rules are the general rules here. In the present case, the Rules

governing the disciplinary proceedings and punishment are given in the Statutes and the resolution of the Board of Governors. There is no ambiguity

here which may compel us to fall back upon the CCS (CCA) Rules. We see no ambiguity. As far as suspension of an employee is concerned, which

includes the teaching members, the powers have been given to the Director, as would be apparent not only from a bare reading of the Statutes but

also from the resolution of the Board of Governors. Moreover, right there in the parent Act i.e. the Institutes of Technology Act, 1961, it is the

Director who has been visualised to be the main authority for the institute. The power of the Director has been given in Section 17 of the Act, which

reads as under :

“17.(1) The Director of each Institute shall be appointed by the Council with the prior approval of the Visitor.

(2) The Director shall be the principal academic and executive officer of the Institute and shall be responsible for the proper administration

of the Institute and for the imparting of instruction and maintenance of discipline therein.

(3) The Director shall submit annual reports and accounts to the Board.

(4) The Director shall exercise such other powers and perform such other duties as may be assigned to him by this Act or the Statutes or

Ordinances.

28. In any case, there is absolutely no ambiguity regarding the fact that in an emergent situation, the Chairman and, in his absence, the Director can

exercise the powers of the Board of Governors. On this there is no dispute. Whether there is any emergent situation or not is again a matter which will

depend upon the facts of the case. The present facts of the case, in our opinion, were such where an immediate and emergent action was required.

Two professors of the Institute had allegedly indulged in a fist fight in broad daylight in front of the students and other members of the staff, which

resulted in filing of FIR and cross FIR against each other. An immediate action was needed to be taken by the Director, which has been done.

Therefore, looking from all angles, we find absolutely no anomaly in the exercise of powers by the Director of the Institute. Hence, we find no merit in

the present writ appeal.

29. The writ appeal is dismissed.