

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.3137/2002

New Delhi, this the 4th day of September, 2003

Hon'ble Shri Justice V.S. Aggarwal, Chairman  
Hon'ble Shri S.K. Naik, Member(A)

Shri Yogesh  
s/o Shri kishan Lal  
Sales Tax Officer (under suspension)  
under Commissioner of Sales Tax  
Bikrikar Bhawan, I.P.Estate,  
New Delhi. ....Applicant

(Shri B.S.Mainee, Advocate)

versus

The Lt. Governor through

1. Chief Secretary,  
Govt. of NCT of Delhi  
Delhi Secretariat,  
I.P.Estate,  
New Delhi.
2. The Joint Secretary (Vig.)  
Directorate of Vigilance,  
Govt. of NCT of Delhi,  
Old Secretariat,  
Delhi. .... Respondents

(Shri Mohit Madan, Advocate)

ORDER(oral)

Justice V.S.Agarwal

The applicant (Yogesh) is a Sales Tax Officer presently under suspension. Following Article of charge has been served on the applicant:-

"While functioning as Sales Tax Officer, Ward-63, Sh. Yogesh has committed misconduct in as much as that on 2.2.2001 he demanded, accepted and obtained Rs. 1500/- as illegal gratification from the complainant Shri Chatter Singh s/o Shri Prabhu Ram r/o D-569, Ph.TI, Nangloi, Delhi-41 in consideration for issue of Sales Tax number to the complainant. Shri Yogesh was arrested red handed and a case FIR No. 8/2001 dated 2.2.2001 u/s 7/13

*l Ag*

POC Act No. 49 of 1988 PS A.C. Branch, Govt. of NCT of Delhi was registered at P.S. A.C. Branch, Delhi.

The above act on the part of Shri Yogesh, STO amounts to grave misconduct, negligence, dereliction in the discharge of official duties and an act unbecoming of a Govt. Servant and thereby violated the provisions of rule 3 of the CCS (Conduct) Rules, 1964."

2. By virtue of the present application he seeks quashing of the impugned orders and directing the respondents to stay the disciplinary proceedings against him till the conclusion of the criminal trial pending against the applicant.

3. It is not in dispute that a criminal case punishable under the Prevention of Corruption Act, 1988 has also been registered against the applicant. Report under Section 7 & 13 of criminal procedure has been filed. But the proceedings are still pending before the Special Judge at Delhi.

4. The application has been contested.

5. The sole argument advanced was that keeping in view the pendency of the matter before the Special Judge, Delhi, the present departmental proceedings should be stayed. According to the applicant's learned counsel, the applicant in the departmental proceedings cannot be required to disclose his defence which would prejudice his claim before the ~~Spcl~~ Judge, Delhi. It was further urged that the facts and the controversy before the disciplinary authority/inquiry officer and the Special

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Judge, Delhi are identical and it is on these facts that the relief seeking stay of the departmental proceedings is being prayed.

6. Both the learned counsel relied upon the decision in the case of Capt. M.Paul Anthony vs. Bharat Gold Mines Ltd. & Anr., JT 1999(2) SC 456. In the cited decision, the Supreme Court scanned through various decisions of the court and ultimately had drawn the following conclusion:

"**21.** The conclusions which are deducible from various decisions of this Court referred to above are:

(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately,

(ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.

(iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge sheet.

(iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the Departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, administration may get rid of him at the earliest."

*MS Ag*

As one reads the conclusions arrived by the Supreme Court, it is obvious that one paragraph cannot be read in isolation of the other. The facts and circumstances of each case have to be taken note of and on appreciation of the same, necessary conclusions have to be drawn.

7. Even when the criminal proceedings are based on identical and similar set of facts, necessarily it does not imply that the departmental proceedings would be stayed. This is for the reason that after the criminal case ~~is~~ physically proceeded or there is undue delay in the said proceedings, the departmental proceedings can be revived even if they were earlier stayed as has been held in the case of Capt. M.Paul Anthony (supra).

8. We are aware of the fact that the departmental proceedings against the applicant and the criminal case are based on identical and same set of facts. In this situation, we are informed, on our query, that as yet even charge has not been framed against the applicant by the Special Judge, Delhi. When such are the facts, necessarily keeping in view the same departmental proceedings cannot be stayed indefinitely. It would be appropriate in the fitness of things that the proceedings are stayed only for a temporary period. If the proceedings before the Sub Judge, Delhi do not culminate in conviction or acquittal, as the case may be, the respondents-department would be competent to revive the proceedings.

*MS Ag* —

(15)

Resultantly, we direct:

- a) As for present, department proceedings would be stayed.
- b) If the proceedings before the ~~SPB~~ Judge, Delhi are not completed within six months from today, the respondents would be competent to revive the departmental proceedings without any further direction from this Tribunal.

Subject to aforesaid, OA is disposed of.

Naik  
(S.K.Naik)

Member (A)

/na/

Aggarwal  
(V.S.Agarwal)  
Chairman

Chairman