

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.2496/2002

New Delhi this the 29th day of January, 2003

Hon'ble Shri Justice V.S.Agarwal, Chairman
Hon'ble Shri Shankar Prasad, Member (A)

Shri Shyam Sunder Balani,
329, Double Storey,
New Rajinder Nagar,
New Delhi.

(By Advocate Ms.Tamali Wad)

..Applicant

VERSUS

1. Department of Company Affairs, through Secretary Ministry of Law, Justice and Company Affairs, Shastry Bhawan, N/Delhi
2. The Central Vigilance Commission, through Commission for Departmental Inquiries, Satarkata Bhawan, GPO Complex, INA, N/Delhi.
3. Central Bureau Investigation through Superintendent of Police, SPE Division, Gandhinagar, Gujarat

(By Advocate Shri S.M.Arif,
Learned counsel for Respondents 1-2)

(By Advocate Shri J.S.Sharma for R-3)

..Respondents

O R D E R (ORAL)

(Shri Justice V.S.Agarwal, Chairman)

The applicant, Shri Shyam Sunder Balani, had been transferred to Ahmedabad to function as the Registrar of Companies, Gujarat. It is stated that while working as such he was appointed suo-moto as a Nominee Director on the Ahmedabad Stock Exchange Board. A trap was on the applicant on the basis of a complaint by one Satish Pancharia, Director of M/s Alka Spinner Ltd. In

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pursuance of the complaint, a raid had been conducted. A case under the Prevention of Corruption Act, 1988 had been registered against the applicant. CBI had taken up ~~for his offence punishable under~~ the investigation and the report ~~under~~ Sections 7 & 13(2) of the Prevention of Corruption Act had been submitted to the Special Judge, Ahmedabad on 26.9.2000. Simultaneously Departmental proceedings have also been initiated in this regard.

2. By virtue of the present application, the applicant seeks a direction to hold in abeyance the disciplinary proceedings initiated against him till the conclusion of the trial at Ahmedabad.

3. Needless to say, in the separate reply filed by the respective respondents, the application has been contested.

4. It is not disputed by either side that departmental proceedings and criminal trial can proceed simultaneously. It is also not in dispute that the basic controversy in the departmental proceedings and the matter in which the applicant is facing proceedings before the Special Judge at Ahmedabad is the same.

5. The short question, therefore, that arises for answer is when such is the situation, whether the departmental proceedings should be stayed or not.

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6. In the case of Capt.M.Paul Anthony Vs. Bharat Gold Mines Ltd. and Another (1999(3) SCC 679), after scanning through the various precedents and also an earlier decision in the case of State of Rajasthan Vs. B.K.Meena (1996(6) SCC 417), the Apex Court had basically drawn the following conclusion:-

"(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 reflect[d 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, the administration may get rid of him at the earliest".

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7. Once the matter has been considered by the Supreme Court, there is no necessity to reiterate the same position.

8. A report under Section 173, Code of Criminal Procedure has been submitted as mentioned above and re-mentioned asback as in September, 2000. Till date, no charge has been framed against the applicant. Learned counsel for the CBI has drawn our attention to the fact that there are large number of cases before the Special Judge, Ahmedabad. This question was obviously taken care of because as held in Capt. M.Paul Anthony case (supra), 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 pendency of criminal case, can be resumed.

9. Taking stock of the above findings and also the controversy in the departmental proceedings and in the criminal trial which pertains basically to the same fact, we direct that Departmental proceedings initiated against the applicant be stayed for a period of six months. In the event trial before Special Judge, Ahmedabad is not concluded, after the expiry of six months, the department would be at liberty to re-start the said proceedings without waiting for any directions of this Tribunal.

Shankar Prasad
(Shankar Prasad)

Member(A)

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(V.S. Aggarwal)
Chairman

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