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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

O. A. NO. 3299/2002

New Delhi this the 19th day of ~~November~~<sup>December</sup>, 2002.

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN

HON'BLE SHRI S.A.T. RIZVI, MEMBER (A)

Shri Jag Pravesh Chandra Kaushal  
S/O Shri M.L. Kaushal  
R/o 206, Police Colony  
Hauz Khas  
New Delhi.

... Applicant

( By Shri Shyam Babu, Advocate)

-versus-

1. Lt. Governor  
Govt. of NCT of Delhi  
Raj Niwas  
Delhi-110054.

2. Commissioner of Departmental  
Enquiries and Enquiring Authority  
Central Vigilance Commission  
Govt. of India  
Satarkta Bhawan  
Block-A, GPO Complex  
INA  
New Delhi-110023.

... Respondents

O R D E R (ORAL)

Justice V.S. Aggarwal:-

By virtue of the present application, the applicant seeks that he should not be compelled to disclose his defence in the departmental enquiry till he discloses this defence in the criminal case pending against him.

2. Some of the relevant facts are that the applicant was working as Assistant Commissioner of



3

Police, FRRO, Ministry of Home Affairs. In March 1997, a case was registered by the Central Bureau of Investigation under the Prevention of Corruption Act. A departmental enquiry had been initiated against him.

3. The applicant contends that the subject matter of charge-sheet dated 26.3.1997 in the criminal case and the allegations made in the departmental enquiry are based on the same set of facts. They are closely inter-linked. If the departmental enquiry continues, the applicant will have to disclose his defence which he may take in the criminal case. Therefore, he will be greatly prejudiced. On this count, the applicant seeks the abovesaid relief.

4. During the course of submissions, the arguments advanced were on the same lines.

5. Perusal of the record reveals that the Central Bureau of Investigation had registered a case against the applicant for an offence punishable under Section 13 of the Prevention of Corruption Act, 1988. This pertains to having assets disproportionate to the known sources of his income as on 18.2.1997 regarding which on the merits of the matter, we are not expressing any opinion. As already referred to above, he is also being dealt with departmentally. <sup>also</sup> The statement of articles of charge framed against the

LS Ag

applicant reads:-

"That the said Shri Jag Pravesh Chandra Kaushal while functioning as Assistant Commissioner of Police in Delhi Police during the period 1993 to 1998 committed gross misconduct in as much as he purchased a residential plot at Dehradun (UP) in the name of his wife on 1.7.94 for Rs.70,000/- but failed to give an intimation to this effect to the competent authority as required u/r 18(2) of the CCS (Conduct) Rules, 1964.

ARTICLE-II

That the said Shri Jag Pravesh Chandra Kaushal while functioning in the aforesaid capacity during the relevant period committed gross misconduct in as much as he obtained a cash gift of Rs.20,000/- from Shri S.D.Narula on 21.4.96 in the name of his daughter Ms.Ritu Kaushal at the time of her marriage in total disregard of the provisions of Rule 13(2)(ii) of the CCS (Conduct) Rules, 1964.

ARTICLE-III

That the said Shri Jag Pravesh Chandra Kaushal while functioning in the aforesaid capacity during the relevant period committed gross misconduct in as much as he failed to intimate about the purchase of Indira Vikas Patra valuing Rs.95,000/- and this violated the provisions of Rule 18(3) of the CCS (Conduct) Rules, 1964.

ARTICLE-IV

That the said Shri Jag Pravesh Chandra Kaushal while functioning in the aforesaid capacity during the relevant period committed gross misconduct in as much as he made an investment of Rs.14,000/- with M/s.Instalment Supply Ltd., New Delhi on 13.9.93 and an investment of Rs.26,000/- with M/s India Lease Development Ltd., New Delhi on 13.9.93, but failed to furnish an intimation to this effect to the competent authority as required u/r 16(2) of the CCS (Conduct) Rules, 1964.

The above acts on the part of Shri Kaushal, ACP reflect that he failed to maintain absolute integrity and exhibited conduct unbecoming of a Govt. servant thereby violating the provisions of Rule 3 of the CCS (Conduct) Rules, 1964."

The learned counsel for the applicant taking cue from



(5)

the aforesaid urged that it is being stated that he purchased a residential plot at Dehradun in the name of his wife. Similar assertions are in the criminal charge-sheet that has been filed and if he discloses his defence in the departmental enquiry, it will cause prejudice.

6. Thus the question as to whether when disciplinary proceedings and criminal trial involving identical question are pending, disciplinary proceedings could be stayed or not has been alive and agitating the minds of the courts on more than one occasions. The Supreme Court in the case of Delhi Cloth and General Mills Ltd. v. Kushal Bhan, AIR 1960 SC 806 held that if the case is of a grave nature or involves questions of fact or law, which are not simple, it would be advisable to stay the departmental proceedings. It was observed:-

"(3) It is true that very often employers stay enquiries pending the decision of the criminal trial courts and that is fair; but we cannot say that principles of natural justice require that an employer must wait for the decision at least of the criminal trial court before taking action against an employee. In Shri Bimal Kanta Mukherjee v. Messers. Newsman's Printing Works, 1956 Lab AC 188, this was the view taken by the Labour Appellate Tribunal. We may, however, add that if the case is of a grave nature or involves questions of fact or law, which are not simple, it would be advisable for the employer to await the decision of the trial court, so that the defence of the employee in the criminal case may not be prejudiced."

Similarly, in the case of Kusheshwar Dubey v. Bharat

LS Ag

Coking Coal Ltd., (1988) 4 SCC 319, the Supreme Court held that there is no legal bar for simultaneous proceedings being taken, yet there may be cases where it would be appropriate to defer disciplinary proceedings awaiting disposal of the criminal case. The principle in this regard, referred to above, has been put in the following words:-

"7. The view expressed in the three cases of this Court seem to support the position that while there could be no legal bar for simultaneous proceedings being taken, yet, there may be cases where it would be appropriate to defer disciplinary proceedings awaiting disposal of the criminal case. In the latter class of cases it would be open to the delinquent employee to seek such an order of stay or injunction from the court. Whether in the facts and circumstances of a particular case there should or should not be such simultaneity of the proceedings would then receive judicial consideration and the court will decide in the given circumstances of a particular case as to whether the disciplinary proceedings should be interdicted, pending criminal trial. As we have already stated that it is neither possible nor advisable to evolve a hard and fast, strait-jacket formula valid for all cases and of general application without regard to the particularities of the individual situation. For the disposal of the present case, we do not think it necessary to say anything more, particularly when we do not intend to lay down any general guide-line."

Identical was the view point expressed few years later in the case of Food Corporation of India v. George Varghese and Anr., 1991 Supp.(2) SCC 143 in the following words by the Supreme Court:-

"After the conviction the order of dismissal was passed but immediately on the respondents being acquitted the appellant fairly set aside that order and reinstated the

LS Ag

respondent and initiated departmental proceedings by suspending him and serving him with the charge-sheet and the statement of allegations, etc. It cannot, therefore, be said that the appellant was guilty of delay. It is true that between setting aside the order of dismissal and the service of the charge-sheet, there was a time gap of about eight months but we do not think that that can prove fatal.

3. In the result, we allow this appeal, set aside the order of the High Court and direct that the appellant will proceed with the inquiry expeditiously and complete the same as far as possible within a period of six months or thereabout provided the respondent co-operates in the inquiry and does not delay the proceedings. If the respondent has not filed his written statement to the charges levelled against him, he may do so within two weeks from today. The appeal is allowed accordingly with no order as to costs."

7. Entire case law had been considered by the Supreme Court in the case of **State of Rajasthan v. B.K.Meena and Others**, (1996) 6 SCC 417. In the cited case, the Central Administrative Tribunal had stayed the departmental proceedings till the conclusion of the criminal trial. The same question had come up for consideration and the Supreme Court noted that proceedings in criminal trial were going to take a long time and conclusion of the same was nowhere in sight. The Supreme Court noted in this regard:-

"16. Now, let us examine the facts of the present case. The memo of charges against the respondent was served on him, along with the articles of charges, on 13.10.1992. On 9.2.1993, he submitted a detailed reply/defence statement, running into 90 pages, controverting the allegations levelled against him. The challan against him was filed on 15.5.1993 in the criminal court. The respondent promptly applied to the Tribunal and got the disciplinary proceedings stayed. They remain stayed till today. The irregularities alleged against the respondent are of the year 1989. The conclusion of the criminal proceedings is nowhere in sight. (Each party blames the other

As Ag e

for the said delay and we cannot pronounce upon it in the absence of proper material before us.) More than six years have passed by. The charges were served upon the respondent about 4 years back. The respondent has already disclosed his defence in his elaborate and detailed statement filed on 9.2.1993. There is no question of his being compelled to disclose his defence in the disciplinary proceedings which would prejudice him in a criminal case. The charges against the respondent are very serious. They pertain to misappropriation of public funds to the tune of more than rupees one crore. The observation of the Tribunal that in the course of examination of evidence, new material may emerge against the respondent and he may be compelled to disclose his defence is, at best, a surmise- a speculative reason."

Thereupon the conclusions drawn were that the disciplinary proceedings and criminal trial would proceed simultaneously. The stay of the disciplinary proceedings should not be matter of course but a considered decision. Even if the disciplinary proceedings are stayed, the same could be reconsidered, if criminal trial gets unduly delayed. The finding in this regard reads:-

"17. There is yet another reason. The approach and the objective in the criminal proceedings and the disciplinary proceedings is altogether distinct and different. In the disciplinary proceedings, the question is whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be, whereas in the criminal proceedings the question is whether the offences registered against him under the Prevention of Corruption Act (and the Indian Penal Code, if any) are established and, if established, what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are entirely distinct and different. Staying of disciplinary proceedings pending criminal proceedings, to repeat, should not be a matter of course but a considered decision. Even if stayed at one stage the decision may require reconsideration if the criminal case gets unduly delayed."

LS Ag e

Thereafter the Supreme Court had allowed the appeal and set aside the order of the Central Administrative Tribunal.

8. Similarly, in the case of Depot Manager, A.P.State Road Transport Corporation v. Mohd.Yousuf Miya and Others, (1997) 2 SCC 699, the Supreme Court held that it would be expedient that disciplinary proceedings are conducted and completed expeditiously and the pendency of criminal trial is no ground to stay the disciplinary proceedings. The finding of the Supreme Court read:-

"8. We are in respectful agreement with the above view. The purpose of departmental enquiry and of prosecution are two different and distinct aspects. The criminal prosecution is launched for an offence for violation of a duty, the offender owes to the society or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to lay down any guide-lines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental enquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law. Offence generally implies infringement of public (sic duty), as distinguished from mere private rights punishable under criminal law. When trial for criminal offence is conducted it should be in accordance with proof of the offence as per the evidence defined under the provisions of the Evidence Act. Converse is the case of departmental enquiry. The enquiry in a departmental proceedings relates to conduct or breach of duty of the delinquent officer to punish him for his misconduct

*LS Ag*



defined under the relevant statutory rules or law."

9. Lastly our attention was drawn towards a decision rendered by the Supreme Court in the case of Capt.M.Paul Anthony v. Bharat Gold Mines Ltd. & Anr., in Civil Appeal No.1906 of 1999 on 30.3.1999. Same question had come up for consideration. The Supreme Court after scanning through the various precedents some of which have been referred to above, had drawn the conclusion:-

"22. 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

Ag

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."

10. It is on the touch-stone of the authoritative pronouncements referred to above that the facts of the present case have to be examined. The conclusions of the Apex decisions have already been reproduced above. Suffice to say as relevant for the purpose of the present case that there is no hard and fast rule that has been prescribed. Facts of each case take predominance. The departmental proceedings cannot be allowed to be unduly delayed. As a general rule, the departmental proceedings and criminal case could proceed simultaneously but if they involve complicated questions of law and fact, there is desirability of staying the departmental proceedings till the conclusion of the criminal case. As already referred to above, undue delay in proceedings pending before the criminal court is an important factor.

11. This being the legal position, we can conveniently revert back to the facts of the present case. As already referred to above, in the criminal

LS Ag e

case pending against the applicant under the Prevention of Corruption Act, the assertions with respect to certain assets are that they are disproportionate to the known sources of his income. While in the departmental enquiry, the assertions are non-disclosure/intimation of certain transactions to be in violation of Central Civil Services (Conduct) Rules, 1964 which has already been reproduced above. Therefore, the same cannot be stated to be inter-linked. If there is undue delay in the proceedings pending before the criminal court, it cannot be termed that the defence will be disclosed or prejudice would be caused.

12. Not only that as already pointed above, the Supreme Court had taken note of an important fact that if the criminal trial is not proceeding or is unduly delayed, departmental proceedings need not be stayed or even if they are stayed, they can be resumed. We have pointedly asked the learned counsel for the applicant and he fairly conceded that challan had been filed in 1997<sup>2</sup> and till date formal charge in the criminal case has not been framed. This leads us to conclude that the criminal trial is not proceeding and in any case is being delayed. When such is the situation, the departmental proceedings following the ratio of decisions of the Supreme Court in the cases of B.K.Meena & Ors. and Capt.M.Paul Anthony (supra)

As Ag e

need not be stayed.

13. Resultantly, we do not find any merit in the original application. It fails and is dismissed in limine.

Announced.



(S.A.T. Rizvi)  
Member (A)



(V.S. Aggarwal)  
Chairman

/sns/