

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 291/622/2019
with
MISC. APPLICATION NO. 291/974/2019

ORDER RESERVED ON: 11.02.2020

DATE OF ORDER: 29.05.2020

CORAM

HON'BLE MR. SURESH KUMAR MONGA, JUDICIAL MEMBER
HON'BLE MR. A. MUKHOPADHAYA, ADMINISTRATIVE MEMBER

Sayar Singh S/o Shri Hanuman Singh Shekhawat, aged about 27 years, R/o Plot No. 122, Karni Nagar, Tara Nagar-B, Khirni Phatak, Jhotwara, Jaipur.

Presently working on the post of Inspector, CGST Division-E, Behror, Alwar, Rajasthan. Group-B Service, Mobile No. 8107881044.

....Applicant

Shri C.P. Sharma, counsel for applicant.

VERSUS

1. Union of India through the Secretary, Ministry of Finance, Department of Revenue, North Block, New Delhi – 110001.
2. The Principal Commissioner, Office of Commissioner, Central Goods and Service Tax Commissionerate, A-Block, Surya Nagar, Alwar, Rajasthan – 301001.

....Respondents

Shri Kinshuk Jain, counsel for respondents.

ORDER

Per: Suresh Kumar Monga, Judicial Member

Pleaded case of the applicant herein is that he had been working as an Inspector, CGST Commissionerate, Alwar from 13.05.2018 to 23.10.2018. An FIR bearing No. 301/2018 was registered against him on 24.10.2018 by the Anti Corruption

Bureau Alwar-II, Alwar on certain false allegations of demand of illegal gratification from Kanhaiya Sweets and Snacks and Kanhaiya Industries. It has further been averred that the Anti Corruption Bureau has filed a charge-sheet No. 266/2018 before the Court of Special Judge, Sessions Court, Prevention of Corruption Act, Alwar on 06.12.2018. On the basis of the FIR and the charge-sheet filed by the Anti Corruption Bureau, the respondent No. 2 has served a memorandum of charge-sheet dated 12.06.2019 upon the applicant under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 with the same subject matter. After issuance of the said charge memorandum, the Disciplinary Authority has appointed the Inquiry Officer as well as the Presenting Officer on 18.07.2019. It has further been stated by the applicant that the witnesses and the documents before the criminal court and the departmental enquiry proceedings, are the same and if during enquiry proceedings, the applicant is asked to disclose his defence, then his rights in the criminal proceedings will be seriously prejudiced. It has still further been stated that the complicated questions of law and facts are involved inasmuch as about 20 witnesses are to be examined and 25 documents are to be relied upon by the prosecution. The charges are based on the same set of evidence. By making all these assertions, the applicant, while invoking the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, has prayed for restraining the respondents to conduct the disciplinary proceedings during pendency of the criminal trial.

2. The respondents by way of filing a joint reply have joined the defence and opposed the prayer made in the Original Application. It has been submitted that the respondent-department has initiated the enquiry proceedings rightly in accordance with the guidelines issued by the Department of Personnel and Training, Government of India vide Office Memorandum dated 21.07.2016 wherein it has been clarified that there is no bar in law for initiation of simultaneous criminal and departmental proceedings on the same set of allegations. It has further been averred that the departmental enquiry is separate one and it will not have any impact on any other proceedings initiated by any other agencies. The criminal prosecution for an offence is launched for violation of a duty that the offender owes towards the society. Whereas, the departmental enquiry is to maintain discipline in the service and efficiency of public service. With all these pleadings, the respondents have prayed for dismissal of the Original Application.

3. Heard learned counsels for the parties.

4. Shri C.P. Sharma, learned counsel for the applicant submitted that the enquiry proceedings initiated by the respondent-department are based on the same set of facts and circumstances, which are cited in the criminal case. Learned counsel for the applicant further submitted that while filing the charge-sheet, the Anti Corruption Bureau has cited 20 witnesses, apart from placing reliance upon 25 documents. He still further

submitted that in the departmental proceedings, the same witnesses and documents have been relied upon by the respondents and the applicant's defence will be exposed if the cross examination of witnesses before the Inquiry Officer takes place prior to the examination of witnesses in the criminal trial. Learned counsel for the applicant submitted that the charge-sheet in both the proceedings i.e. in criminal trial as well as in the departmental proceedings are the same. It is the contention of learned counsel for the applicant that the applicant's right to defend himself before the criminal court shall be seriously prejudiced if the enquiry proceedings are not stayed during pendency of the criminal trial. Learned counsel further submitted that the complicated questions of law and facts are involved in the case in hand and, therefore, it will not be in the interest of justice to allow the disciplinary proceedings to continue during pendency of the criminal trial as the same is contrary to the principles laid down by the Hon'ble Supreme Court. In order to support his aforesaid contentions, learned counsel for the applicant has placed reliance upon the following judgments:

- (i) **Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd. and Another** 1999 Supreme Court Cases (L&S) 810 : (1999) 3 SCC 679
- (ii) **P.J. Sunderrajan and Anr. vs. Unit Trust of India and Anr.,** 1993 I LLJ 168 SC
- (iii) **State of Rajasthan vs. B.K. Meena and others** 1996 (6) SCC 417 : AIR 1997 SC 13,
- (iv) **State Bank of India and Others vs. Neelam Nag and Another** (2016) 9 Supreme Court Cases 491.

5. On the other hand, Shri Kinshuk Jain, learned counsel for the respondents, while referring to para 18 of **State Bank of India and Others vs. Neelam Nag and Another** (2016) 9 Supreme Court Cases 491, submitted that pendency of criminal case, cannot be the sole ground to stay the disciplinary proceedings. Further, Shri Jain, while referring to a judgment of the Hon'ble Supreme Court in the case of **Stanzen Toyotetsu India Private Limited vs. Girish V. and Others** (2014) 3 Supreme Court Cases 636, submitted that there is no straightjacket formula that in every case wherever the disciplinary proceedings are initiated simultaneously, those should be stayed during pendency of the criminal trial.

6. Considered the rival contentions of learned counsels for the parties and perused the record.

7. FIR No. 301/2018 was registered against the applicant on 24.10.2018 by Anti Corruption Bureau, Alwar-II. Challan in the said FIR case was presented by the Investigating Agency before the court of Special Judge (Prevention of Corruption Act), Alwar on 06.12.2018. Admittedly, the charges are yet to be framed by the court. In such a situation, we do not see any reason to accept the argument of learned counsel for the applicant that charges in both the proceedings are similar and, therefore, the departmental proceedings should be kept in abeyance during pendency of the criminal trial as admittedly the challan was presented before the criminal court by the Anti Corruption Bureau on 06.12.2018 and the charges are yet to be framed by the court. As the charges by criminal court are yet to be

framed, therefore, it does not lie in the mouth of the applicant to say that the charges in both the proceedings are same.

8. So far as the argument of learned counsel for the applicant that the witnesses and the documents relied upon against the applicant are same in both the proceedings, we do not find any merit in the said argument as well in view of the observations made by the Hon'ble Supreme Court in paragraph 8 to 15 in the case of **Stanzen** (supra) holding therein that the enquiry proceedings can continue simultaneously and no fetters can be laid on the said proceedings because of the pendency of criminal trial.

9. In the case of **B.K. Meena** (supra) though the Hon'ble Supreme Court in paragraph 14 of the report has observed that the defence of the employee in the criminal case may not be prejudiced, but at the same time it has been stated that if a criminal case is unduly delayed, that may itself be a good ground for going ahead with the disciplinary proceedings. It has further been ruled that it must be remembered that interests of administration demand that undesirable elements are thrown out and any charge of misdemeanour is enquired into promptly. The disciplinary proceedings are meant not really to punish the guilty but to keep the administrative machinery unsullied by getting rid of bad elements. The interest of the delinquent officer also lies in a prompt conclusion of the disciplinary proceedings. If he is not guilty of the charges, his honour should be vindicated at the earliest possible moment and if he is guilty, he should be dealt with promptly according to law. It is not also in the interest of

administration that persons accused of serious misdemeanour should be continued in office indefinitely, i.e., for long periods awaiting the result of criminal proceedings. Since in the case in hand, charges in the criminal case are yet to be framed by the court, therefore, we are of the opinion that it will not be in the interest of administration to keep the departmental proceedings in abeyance awaiting the result of said criminal proceedings.

10. In the case of **Depot Manager, A.P. State Road Transport Corporation vs. Mohd. Yousuf Miya and Ors.**

1997 Supreme Court Cases (L&S) 548 : (1997) 2 SCC 699 it has again been held by the Hon'ble Supreme Court that there is no bar to proceed simultaneously with the departmental enquiry unless the charge in the criminal trial is of a grave nature involving complicated questions of fact and law. Though Shri C.P. Sharma, learned counsel for the applicant has stated that in the case in hand, the complicated questions of facts and law are involved but he remained unable to point out any single instance citing such a complexity in the facts and law involved in the case in hand.

11. The Hon'ble Supreme Court while relying upon earlier precedents including the case of **Mohd. Yousuf Miya** (supra), has further drawn the conclusions to the following effect in the case of **Capt. M. Paul Anthony** (supra): -

"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 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."

12. Though the Hon'ble Supreme Court in the case of **Capt. M. Paul Anthony** (supra) has evolved a principle that 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 is desirable to stay the departmental proceedings till the conclusion of the criminal case, but still an exception has been created that the said principle cannot be considered in isolation to stay the departmental proceedings and due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed. Here in the case in hand, the applicant is facing the charges of demand of illegal gratification. The charge-sheet was

presented by the Anti Corruption Bureau before the criminal court on 06.12.2018 and upto today, the charges in the said case have not been framed by the court; what to say about the commencement of the trial.

13. In our considered view, in the facts and circumstances of the present case, the departmental proceedings shall be unduly delayed if those proceedings are stayed to await the decision of the criminal court as the charges in the criminal court are yet to be framed against the applicant.

14. In the case of **Stanzen** (supra), the Hon'ble Supreme Court, while relying upon its earlier judgments including the cases of **Capt. M. Paul Anthony** (supra), **B.K. Meena** (supra) and **Mohd. Yousuf Miya** (supra), has further summarised the law on the subject by making the following observations:-

"13. It is unnecessary to multiply decisions on the subject for the legal position as emerging from the above pronouncements and the earlier pronouncements of this Court in a large number of similar cases is well settled that disciplinary proceedings and proceedings in a criminal case can proceed simultaneously in the absence of any legal bar to such simultaneity. It is also evident that while seriousness of the charge levelled against the employees is a consideration, the same is not by itself sufficient unless the case also involves complicated questions of law and fact. Even when the charge is found to be serious and complicated questions of fact and law that arise for consideration, the court will have to keep in mind the fact that departmental proceedings cannot be suspended indefinitely or delayed unduly.

14. In *Capt. M. Paul Anthony v. Bharat Gold Mines Ltd.*, (1999) 3 SCC 679 : 1999 SCC (L&S) 810 this Court went a step further to hold that departmental proceedings can be resumed and proceeded even when they may have been stayed earlier in cases where the criminal trial does not make any headway.

15. To the same effect is the decision of this Court in *State of Rajasthan v. B.K.Meena* (1996) 6 SCC 417 : 1996 SCC (L&S) 1455, where this Court reiterated that there was no legal bar for both proceedings to go on simultaneously unless there is a likelihood of

the employee suffering prejudice in the criminal trial. What is significant is that the likelihood of prejudice itself is hedged by providing that not only should the charge be grave but even the case must involve complicated questions of law and fact. Stay of proceedings at any rate cannot and should not be a matter of course. xxxxx (emphasis supplied)

15. In view of the principle enunciated by the Hon'ble Supreme Court that stay of disciplinary proceedings cannot and should not be a matter of course; we are not inclined to accept the applicant's plea to stay the departmental proceedings during pendency of the criminal trial. Thus, the Original Application, being devoid of merit, deserves to be dismissed.

16. Accordingly, the Original Application is hereby dismissed. However, there shall be no order as to costs.

17. Since the Original Application itself has been dismissed, therefore, M.A. No. 974/2019 for interim relief is also disposed of having been rendered infructuous.

(A. MUKHOPADHAYA)
ADMINISTRATIVE MEMBER

(SURESH KUMAR MONGA)
JUDICIAL MEMBER