

Central Administrative Tribunal
Principal Bench

O.A. No. 2037 of 2001

New Delhi, this the 4th February, 2003

HON'BLE MR. JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE MR. S.K. MALHOTRA, MEMBER (A)

Har Govind,
L.R. Office Asstt. Divisional Officer,
Agra.
R/o 246 West Arjun Nagar,
Agra
(By Advocate: Shri D.P. Sharma) ... Applicant.

Versus
Union of India
through

1. Secretary,
Ministry of Communication,
Department of Posts,
New Delhi.
2. The Director Postal Services,
Agra Region,
Office of the Postmaster General,
Agra Region,
Agra.
3. The Sr. Supdt. Post Offices,
Agra Division,
Agra.
(By Advocate: Shri S.M. Arif) ... Respondents.

ORDER (Oral)

Justice V.S. Aggarwal

By virtue of the present application, the applicant seeks that the departmental proceeding which has been initiated against him be stayed till final disposal of Criminal Case No. 1062/97.

2. The applicant Har Govind was working as LR PA and thereafter he was officiating as SPM, Idgah Colony, P.O. Agra. He was placed under suspension vide order dated 27.3.96 which was in respect of double payment of NSCs/KVPs of Idgah Colony, P.O. Agra involving an amount of Rs. 5,96,270/-. The applicant was called upon to give his written statement to the

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respondents. Thereafter, when the department found that the attitude of the applicant was not cooperative, a charge sheet was served on 17.2.2000.

3. Admittedly an FIR No.365/96 has also been registered at P.S.Sadar Bazar, Agra against the applicant. The learned counsel for the applicant contended that when similar question is before the criminal court and the trial has commenced, the departmental proceeding may be stayed.

4. We need not dwell into the arena of the instances in that regard. In the celebrated decision in the case of State of Rajasthan Vs. B.K.Meena 1996 (5) SLR 713 (SC) the Supreme Court has scanned through the entire record and held

"It would be evident from the above decisions that each of them starts with the indisputable proposition that there is no legal bar for both proceedings to go on simultaneously and then say that in certain situation, it may not be 'desirable' 'advisable' or 'appropriate' to proceed with the disciplinary enquiry when a criminal case is pending on identical charge. The staying of disciplinary proceedings, it is emphasised, is a matter to be determined having regard to the facts and circumstances of a given case and that no hard and fast rules can be enunciated in that behalf. The only ground suggested in the above decisions as constituting a valid ground for staying the disciplinary proceedings is that 'the defence of the employee in the criminal case may not be prejudiced.' This ground has, however, been hedged in by providing further that this may be done in cases of grave nature involving questions of fact and law. In our respectful opinion, it means that not only the charges must be grave but that the case must involve complicated

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questions of law and fact. Moreover, 'advisability', 'desirability' or 'propriety' as the case may be, has to be "determined in each case taking into consideration all the facts and circumstances of the case." The ground indicated in D.C.M. (AIR 1960 SC 806) and Tata Oil Mills (AIR 1965 SC 155) is also not an invariable rule. It is only a factor which will go into the scales while judging the advisability or desirability of staying the disciplinary proceedings. One of the contending considerations is that the disciplinary enquiry cannot be and should not be delayed unduly. So far as criminal cases are concerned, it is well known that they drag on endlessly where high officials or persons are involved. They get bogged down on one or the other ground. They hardly ever reach a prompt conclusion. That is the reality in spite of repeated advice and admonitions from this Court and the High Courts. If a criminal case is unduly delayed that may itself be a good ground for going ahead with the disciplinary enquiry even where the disciplinary proceedings are held over at an earlier stage. The interests of administration and good government demand that these proceedings are concluded expeditiously. It must be remembered that interests of administration demand that undesirable elements are thrown out and any charge of misdemeanour is inquired 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 period awaiting the result of criminal proceedings. It is not in the interest of administration. It only serves the interest of the guilty and dishonest. While it is not possible to enumerate the various factors, for and against the stay of disciplinary proceedings, we found it necessary to emphasise some of the important

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considerations in view of the fact that very often the disciplinary proceedings are being stayed for long periods pending criminal proceedings. Stay of disciplinary proceedings cannot be, and should not be, a matter of course. All the relevant factors, for and against, should be weighed and a decision taken keeping in view of the various principles laid down in the decisions referred to above."

5. The said decision was relied on in the subsequent decision rendered by the Supreme Court in Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. & Anr. 1999(2)SLR 338 holding

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

(i) Department 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 question 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

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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."

6. The learned counsel for the applicant relied on Sub-para (ii) conclusions drawn in Paul Anthony's case (supra). However, one paragraph cannot be read in the isolation of the others.

7. What is the position in this case?

8. The FIR was recorded against the applicant in the year 1996. Chargesheet u/s 409 IPC had been submitted in 1997. We are informed that as yet the evidence of the prosecution has not started. Waiting for some time, department in the year 2000 went to proceed departmentally.

9. In Paul Anthony's case (supra), it has been held in unambiguous terms 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 applicant is of a grave nature, the departmental proceedings can be stayed but if there is undue delay in the disposal of the criminal case, the departmental proceedings, even if they are stayed on account of the pendency of the criminal case, can be resumed and proceeded with. This is what exactly done by the department. The departmental proceedings, after seeing the the undue delay in the criminal case,

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were initiated. The decision rendered by the Supreme Court in Paul Anthony's case (supra) does not help help the applicant.

10. Resultantly, in the peculiar facts of the present case, there is no ground to stay the departmental proceedings. The application must fail and is dismissed.

Omey
(S. K. Malhotra)

Member (A)

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(V. S. Aggarwal)
Chairman

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