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Central Administrative Tribunal
Principal Bench, New Delhi

O.A.No.2168/2001

Hon'ble Shri M.P.Singh, Member(A)
Hon'ble Shri Shanker Raju, Member(J)

Thursday, this the 18th day of July, 2002

A.K.Sharma
s/o Late Shri S.L.Sharma
r/o C-5/4, DDA SFS Flats
Saket
New Delhi - 110 017.

... Applicant

(By Advocate: Shri B.B.Rawal)

Vs.

1. The Comptroller and Auditor
General of India
10, Bahadur Shah Zafar Marg
New Delhi - 110 002.
2. The Assistant CAG (Personnel)
10, Bahadur Shah Zafar Marg
New Delhi - 110 002.

.... Respondents

(By Advocate: Shri M.K.Gupta)

ORDER (ORAL)

By Shanker Raju, M(J):

Applicant impugns holding of disciplinary proceedings simultaneously with criminal prosecution as well as orders passed by the respondents dated 17.11.2000 and 27.11.2000, wherein his request for keeping the disciplinary proceedings in abeyance has been rejected. Applicant seeks quashing of these orders and declaration of the enquiry as illegal.

2. In pursuance of death of the wife of the applicant and on the basis of a report submitted by a Sub-Divisional Magistrate FIR No.701/99 dated 30.9.1999 was registered against the applicant at Police Station, Shalimar Bagh under Section 498A/304B/306 IPC.

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3. Consequent upon, applicant was placed under suspension and thereafter a disciplinary proceedings was initiated against him through Memorandum dated 13.9.2000 on the following charges:

"State of Articles of charge framed against Shri AK Sharma, IA&AS under suspension.

Article I

That the said Shri AK Sharma, IA&AS under suspension while being married to Smt. Neelima Sharma, maintained husband-wife relationship with Ms. Sheela committing a misconduct of infidelity, and thereby acted in a manner unbecoming of a Government servant, in contravention of provisions of Rule 3(1)(iii) of CCS (Conduct) Rules 1964.

Article II

That the said Shri AK Sharma, IA&AS under suspension while being married to Smt. Neelima Sharma, maintained husband-wife relationship with Ms. Sheela Sharma, committing an act grossly immoral in character and thereby acted in a manner unbecoming of a Government servant, in contravention of provisions of Rule 3(1)(iii) of CCS (Conduct) Rules 1964.

Article III

That the said Shri AK Sharma, IA&AS under suspension while being married to Smt. Neelima, entered into immoral relationship with Ms. Sheela and indulged in behaviour amounting to her torture and finally abetting to suicide of Ms. Sheela. By his conduct the said Shri Sharma has failed to maintain a responsible and decent standard of conduct in his private life, thereby bringing discredit to his service by his misdemeanour and acting in a manner unbecoming of a Government servant, contravening the provisions of Rule 3(1)(iii) of CCS (Conduct) rules, 1964 read with GID (12) thereunder.

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Article IV

That the said Shri AK Sharma, IA&AS, under suspension while functioning as DG of Investigation and Registration, Ministry of Law, Justice and Company Affairs, was on unauthorised absence from 29.9.99 to 25.11.99 and thereafter on his repatriation to IA&AD w.e.f. 27.11.99 to 20.8.2000 and thereby acted in a manner unbecoming of a Government servant contravening provisions of Rule 3(1)(iii) of CCS (Conduct) Rules."

4. Subsequently, on completion of the investigation a Challan was filed before the competent court of criminal jurisdiction under Section 498A,, 306, 494, 495 IPC and the case is listed for framing of charge. Applicant had earlier approached this Court in OA 59/2000 and OA 157/2000 as he had been prematurely repatriated from the post of Director General of Investigation and Registration and he was relieved. Therein he had also assailed the impugned order dated 10.1.2000, whereby respondent No.2 in that OA was appointed to the post of DGI&R which was previously held by the applicant. By a common order dated 11.5.2000, OA 59/2000 was dismissed and in OA 157/2000 appointment of DGI&R was upheld.

5. Applicant made several representations to the respondents to keep the disciplinary enquiry in abeyance till the disposal of the criminal trial, but his request was turned down by the impugned order. Meanwhile, the respondents continued with the enquiry which is pending at preliminary stage of inspection of documents. By an interim order the disciplinary proceedings have been stayed.

6. Shri B.B.Raval, learned counsel appearing for the applicant, placing reliance on a decision of the Apex Court in Capt. M.Paul Anthony Vs. Bharat

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Gold Mines and Another, JT 1999(2) SC 456, contended that the disciplinary as well as criminal proceedings are based on identical and similar set of facts and charge in criminal case against the delinquent employee is of a grave nature which involves complicated question of law and fact. In that event the enquiry is to be kept in abeyance as the defence likely to be taken by the applicant in criminal case shall be disclosed, which shall prejudice him in the criminal trial. Referring to the allegations in Articles I, II and III of the Memorandum, it is stated that these charges related to infidelity, grossly immoral in character and torture and finally abetting of suicide of his wife Ms. Sheela Sharma which inter-alia constituted, the ingredients of the offence alleged against him under Sections 498-A/306/494/495 IPC. It is further stated that the disciplinary proceedings has been initiated on the basis of the report by SHO through his letter dated 28.10.99 which is a part of the list of documents. It is stated that his defence in the disciplinary as well as criminal proceedings is common and in that event he has to disclose it by producing the defence witnesses as the prosecution has not cited any witnesses through his prosecution, which he shall take up in the criminal trial.

7. It is further stated that the allegations of charge in the criminal trial is grave, involving complicated question of facts and law, it is advisable in the peculiar facts and circumstances of the case to keep the disciplinary proceedings in abeyance till the conclusion of the criminal trial.

8. It is further stated by Shri B.B.Raval that delay in proceedings of the criminal case is not at all attributable to the applicant rather it is attributable to investigation agency.

9. As regards Article of charge No.4 pertaining to his absence, it is contended that by resorting to several documents of the respondents that applicant was shown to have accorded casual leave in the register for the relevant period, which clearly indicates that period of absence has already been regularised and condoned, barring any proceedings on the same.

10. On the other hand, respondents' counsel Shri M.K.Gupta, vehemently denied the allegations and by referring to the decision of the Apex Court in Capt. M.Paul Anthony's case supra, contended that the charge against the applicant in both the proceedings is not common and the charge of absence is not connected to the criminal proceedings. It is further stated that the criminal trial has already prolonged and unduly delayed the departmental proceedings should be allowed to proceed further, and for this he places reliance on a decision of the Apex Court in State of Rajasthan Vs. B.K.Meena & Others, JT 1996(8) SC 684 where an observation is made as to delay in proceedings which is as under:

"14. One of the contending consideration 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 holding high public offices are involved. They

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get bogged down on one or the other ground. They hardly ever reach a prompt conclusion. That is the reality inspite 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 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 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. It is not in the interest of administration. It only serves the interest of the guilty and dishonest."

In this background, it is stated that the proceedings should be expeditiously concluded to weed out certain persons from the service.

11. Shri M.K.Gupta has also placed reliance on a decision of the Apex Court in Ministry of Finance Vs. S.B.Ramesh, 1998(3) SCC 227 to contend that living together of a male Government servant with a lady having extra-martial relationship amounts to misconduct and further stated that in the disciplinary proceedings what has been enquired is a departmental misconduct which is different from criminal offence and the pre-pondrance of probability is a rule in the disciplinary proceedings whereas in the criminal trial strict rules of evidence are to be followed.

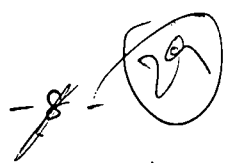
12. Shri M.K.Gupta also places OA 682/2001, I.J.Mahajan Vs. Union of India & Others (decided on 19.9.2001) to contend that in view of the Larger Bench decision of the Apex Court in Depot Manager A.P. State Road Transport Corporation Vs. Mohd, Yousuf Miya & Others, 1997 SCC (L&S) 548 as there no prejudice has been caused to the applicant in his defence, and moreover the charge is neither grave nor involve complicated questions of fact and law, the enquiry cannot be kept in abeyance indefinitely. It is stated that the respondents have initiated the enquiry by issuing a Memorandum on 13.9.2000 and almost two years have lapsed, the enquiry could not be proceeded beyond the preliminary stage.

13. Applicant in his rejoinder has reiterated his contentions raised in the OA.

14. We have carefully considered the rival contentions of both the parties and perused the material on record. In Capt. M.Paul Anthony's case supra, Apex Court has deduced the following conclusions from various decision of the Court pertaining to the issue of stay of the disciplinary proceedings taken up simultaneously with a criminal case.

"The conclusions which are deducible from various decisions of this Court are:

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

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(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 chargesheet.

(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."

15. If one has regard to the above rulings, in order to decide whether the simultaneous proceedings are to be kept in abeyance, it is to be established that the proceedings are based on identical and similar set of facts, and the charge in criminal case is grave, involving complicated question of fact and law. In such cases also it is always a question of fact to be considered depending on its own facts and circumstances.

16. Keeping in view of the aforesaid dictum, we have carefully considered and perused the allegations in the disciplinary proceedings, as well

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as offence alleged against the applicant and the charge sheet filed in Court. In our considered view, the charge in the criminal case where the applicant has been alleged to have abetted the suicide of his wife and was found to have committed bigamy and cruelly treated his wife and the offence under Sections 498A, 306, 494 and 495 has been alleged against him. Facts leading to the offences and the charge there upon is undoubtedly a grave charge, which involved complicated question of fact and law.

17. In so far as the question whether the charges in both the proceedings are identical and based on similar set of facts, we find that the allegations in the disciplinary proceedings are for committed a misconduct of infidelity and maintaining husband and wife relations with another woman, which is also as an offence under Section 494 IPC against the applicant in the criminal trial, which inter-alia envisages an offence on account of marrying again during life time of husband or wife and also concealing the facts from the former marriage from person with whom subsequent marriages contacted.

18. The charge of abetting, torture and abetment of suicide clearly falls within the definition of the offence under Section 498-A/306/494/495 IPC. The evidence used against the applicant by way of documents, also show that the letter written by the SHO, Police Station as well as suicide notes and other material which had been part of the criminal proceedings forms part of disciplinary

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proceedings to establish that the charges alleged against the applicant in both the proceedings is common based on same set of facts.

19. As far as allegations contained in Article No.4 in the Memorandum is concerned, the same is not alleged against the applicant in the criminal trial, the allegation and misconduct of remaining unauthorizedly absent from duty is different and shall not prejudice the defence of the applicant in criminal trial.

20. Contention of the respondents that the trial has already unduly prolonged and to weed out a corrupt officer, the expeditious disposal of the proceedings is warranted and his resort to the decision of the Apex Court in B.K.Meena's case supra, cannot be countenanced as the FIR was registered against the applicant on 30.9.1999 and the chargesheet was finalised on 6.1.2001 and thereafter it was filed before the criminal court of competent jurisdiction. The proceedings are at the stage of framing of charge, there is no delay attributable to the applicant. Keeping in view of the evidence and the gravity of the charge alleged against the applicant involving complicated question of fact and law, we are of the considered view that the criminal case has not been unduly or indefinitely prolonged.

21. The object behind stay of the disciplinary proceedings simultaneously with a criminal trial founded on same set of facts and evidence is basically to ensure that the defence of

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delinquent official is not disclosed and he is not compelled to disclose it in a disciplinary proceedings, as this would prejudice him in the criminal trial. This finding is fortified by the decision of the Larger Bench in Mohd. Yousuf Miya's case supra wherein, the Apex Court has observed as follows:

"What is required to be seen is whether the departmental enquiry would seriously prejudice the delinquent in his defence at the trial in a criminal case. It is always a question of fact to be considered in each case depending on its own facts and circumstances."

22. Having regard to the aforesaid ratio, we are convinced that by a definite charge of infidelity, immoral in character, abetment of suicide and torture, alleged against the applicant in disciplinary proceedings, he shall be compelled to disclose his defence which is common to the criminal case where he has been charged of an offence, constituting almost the same ingredients and material relied upon. By facing the disciplinary proceedings, the defence of the applicant shall be disclosed which can be used by the prosecution to his detriment in the criminal trial subsequently.

23. In so far as the charge of absent is concerned as the same has nothing to do with the criminal trial, the respondents are at liberty to proceed the applicant on this charge alone in the disciplinary proceedings.

24. In the result and having regard to the reasons recorded above, we partly allow this OA. Impugned orders dated 17.11.2000, 27.11.2000 are quashed and set-aside. Respondents are directed to keep the disciplinary proceedings, in so far as it relates to Articles of Charge No.I, II and III of Memorandum, in abeyance till the conclusion of the criminal trial in FIR No.701/99. However, they are at liberty to proceed against the applicant in disciplinary proceedings on Article of Charge No.IV of the Memorandum pertaining to the allegation of unauthorised absence against the applicant. However, in view of the B.K.Meena's case supra if the criminal trial proceedings are unduly protracted, it shall be open for the respondents to take appropriate proceedings in accordance with law. No costs.

S. Raju

(Shanker Raju)
Member(J)

M.P. Singh

(M.P.Singh)
Member(A)

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