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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA NO. 2193/2001

New Delhi, this the 18th day of December, 2001

HON'BLE SH. V.K.MAJOTRA, MEMBER (A)
HON'BLE SH. KULDIP SINGH, MEMBER (J)

Sh. B.N.Gupta
EC-172, Maya Enclave,
Hari Nagar, New Delhi-64. Applicant

(By Advocate: Sh. G.Lal)

Versus

1. Union of India
through the Secretary,
Ministry of Urban Development and
Poverty Alleviation,
Nirman Bhavan, New Delhi.
2. Director General (Works)
CPWD, Nirman Bhavan,
New Delhi.
3. Sh. P.K.Majumdar
Superintending Engineer (Inquiry)
CPWD, Nirman Bhawan,
New Delhi. Respondents

(By Advocate: Sh. R.N.Singh)

O R D E R (ORAL)

By Sh. Kuldip Singh, Member (J)

Applicant has filed this OA under Section 19 of the AT
Act seeking following reliefs:

- (i) Struck down the impugned rejection office memo
No. C-15011/1/2000 A VIII(pt) dated 24.7.2001,
vide which the respondents have refused to
postpone the departmental enquiry.
- (ii) Direct the Respondents to postpone the
department enquiry till the completion of the
criminal trials in the Court of Special Judge,
Tis Hazari, Delhi.

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(iii) Any other relief as this Hon'ble Tribunal deems fit and reasonable. The cost of Petition may be awarded to the applicant.

2. Facts, as alleged by the applicant in the OA are, that the applicant has been issued the chargesheet vide memo dated 29.6.2000 Annexure-B to be proceeded departmentally under Section 14 of the CCS Rules. The allegations against the applicant are that he had committed various misconducts in acceptance of the tender as he has not examined the tender documents and failed to detect that the two tenders of M/s. Fire Control Corporation and M/s. Prominent Engineers which were in the same handwriting and resulted in pooling of tenders. That the applicant had also not assessed the reasonability of the tender before awarding the work to M/s. Fire Control Corporation. The applicant says that on the identical facts the criminal case has also been registered against the applicant along with other persons and chargesheet had already been filed before the Special Judge, Delhi, where the allegations and the chargesheet are also identical for the acceptance of the same tender and the CBI has alleged that the applicant alongwith co-accused persons have committed the offence under Section 420, 468, 471 read and 120-B IPC and also read with Section 13(2) to be read with Section 13(1)(d) of Prevention of Corruption Act, 1988. The learned counsel appearing for the applicant submitted that the perusal of the chargesheet would show that the facts in the criminal case as well as before the departmental enquiry are identical and not only they are identical but are also based on same evidence as all the witnesses who have been cited and listed in the list of witnesses in the departmental enquiry are also the



witnesses as their name find mention in the list of witnesses annexed to the chargesheet filed before the Criminal Court. We had also compared the names of the list of witnesses barring 2 or 3 witnesses all other witnesses are the same who are to depose before the departmental enquiry as well as before the criminal court.

3. Now the question arises if the applicant is compelled to cross-examine the witnesses before the departmental enquiry whether any prejudice would be caused to the applicant or not. The applicant has submitted that if he is compelled to cross-examine the witnesses before the departmental enquiry serious prejudice would be caused and he may not be able to defend himself before the Court. Counsel for applicant has also referred two judgments AIR 1988 SC 2118 and AIR 1960 SC 806 and based on this in case of Kusheshwar Dubey Vs. M/s. Bharat Coking Coal Ltd. and others wherein it is observed by Hon'ble Supreme court that criminal action and the disciplinary proceedings are grounded upon the same set of facts then the disciplinary proceeding should have been stayed and the High Court was not right in intergering with the trial court's order of injunction which had been affirmed in appeal.

4. In AIR 1960 SC 806 it has also been observed that 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 Sh. Bimal Kanta Mukherjee vs. Messrs. Newsman's Printing Works, 1956 Lab AC 188, this was the view taken by the Labour Appellate Tribunal.

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5. Learned counsel for applicant submitted that in this case also since the proceedings with the department are grounded on the same facts which are identical to the facts which are also in issue before the criminal court so the proceedings before the departmental authority should also be stayed. Sh. Sinha appearing for the respondents submitted that the judgment cited by the applicant has also been referred by Hon'ble Supreme Court in AIR 1997 SC 13 where in the Hon'ble Supreme Court observed that simultaneous proceedings of the departmental proceedings as well as the proceedings before the criminal court is permissible and there is no bar in holding simultaneous proceedings before the departmental authority as well. It is further mentioned that latest judgment on this aspect is that of Captain M.Paul Anthony vs. Bharat Gold Mines Ltd. and another reported in 1993 SC 679 whereby Hon'ble Supreme Court after discussing earlier judgments has concluded as under:

"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

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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, the administration may get rid of him at the earliest."

6. In view of the conclusions arrived at by the Hon'ble Supreme Court in case of M.Paul Anthony, we have to examine whether the proceedings in the present case can also be proceeded simultaneously or not. As for the purpose of holding departmental enquiry as mentioned in sub para (v) of para 22 (supra) the purpose for holding the departmental enquiry expeditiously so as to get rid of the employee who is found guilty. But in this case the employee has already retired, so that purpose no more survives. As regards the facts whether the same are identical or not we have already observed that the facts in the departmental proceedings as well as before the Criminal Court are identical in nature and not only the facts even the witnesses who are to prove the case before the departmental authority and as well as the before the Criminal Court are the same witnesses so in the case the applicant is called upon to cross examine the witnesses before the departmental authority when the stage for cross examination has not reached at before the criminal court that would definitely prejudice the case of applicant before the Criminal Court. So in these circumstances, we find that

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OA deserves to be allowed. Accordingly, we allow the OA. However, in view of the observations made by the Hon'ble Supreme Court in Anthony's case that if the criminal proceedings are unduly delayed then department would be at liberty to seek permission of the Tribunal to proceed with Departmental Enquiry.

K.S.
(KULDIP SINGH)
Member (J)
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V.K. Majotra
(V.K. MAJOTRA)
Member (A)