

Central Administrative Tribunal
Principal Bench

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O.A. No. 252 of 2001
M.A. No. 1472 of 2001
New Delhi, dated this the 3rd May, 2002

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE MR. KULDIP SINGH, MEMBER (J)

Ms. Runu Ghosh
W/O Shri B.K. Ghosh
Deputy Director General
(Under suspension) Department of
Telecom, New Delhi,
R/O 1/3, Mall Road, Delhi. Applicant
(By Advocate : Shri Arun Bhardwaj)

VERSUS

1. Union of India Through
Its Secretary, Ministry of Tele-
Communications, Sanchar Bhawan,
New Delhi.
2. Additional Director General-III
Vigilance-II, West Block,
Wing-2, R.K. Puram,
New Delhi-110066. Respondents
(By Advocate : Shri R.N. Singh)

ORDER

S.R. ADIGE, VC (A)

Applicant had initially filed this OA seeking a direction restraining respondents from conducting disciplinary proceedings against her as per Memo dated. 21.9.2000 (Annexure A-1) and dated 20.12.2000 (Annexure A-II) during the pendency of criminal prosecution in FIR No. RC 5(A)/96 ACU IV dated 13.9.96.

2. Upon completion of pleadings this OA was heard on 1.5.2001, and after noticing that applicant had separately filed a representation to respondents dated 7.12.2000 which was still under their consideration and had not been disposed of, respondents' preliminary objection that this OA was premature, was sustained, and without going into the

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by order dated 18.5.2001,

merits of the case, the OA was disposed of with a direction to respondents to dispose of the aforesaid representation dated 7.12.2000 by a detailed, speaking and reasoned order in accordance with rules, instructions and judicial pronouncements under intimation to applicant within 2 months from the date of receipt of a copy of this order. Till the disposal of applicant's representation dated 7.12.2000, respondents were directed not to compel applicant to participate in the proceedings. Liberty was given to applicant that if any grievance still survives thereafter it would be open to him to seek revival of the present OA through an MA after also impugning respondents' order passed on his representation dated 7.12.2000, if so advised.

3. Respondents thereupon passed a detailed and speaking order on 4.7.2001 declining to stay the disciplinary proceedings initiated against applicant vide Memo. dated 21/22.9.2001 which applicant has now impugned vide MA No.1472/2001.

4. We have heard both sides on the matter and have perused the materials on record.

5. We note that vide Memo dated 21.9.2000 applicant is being proceeded against on two articles of charge. The first article of charge relates to applicant obtaining undue favour by procuring air tickets for herself and her family members for undertaking private journeys from Delhi to Calcutta and back without making any payment in May, 1996 from a firm having business dealings with the department

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of Telecom where applicant was working as DDG (Licensing Finance) during the period 1.11.92 to 16.8.96. The second article of charge relates to applicant acquiring/purchasing movable and immovable assets in her name and/or in the name of her husband, but neither reporting the transactions relating to the assets acquired nor taking permission from the competent authority, as required under the relevant provisions of the CCS(Conduct) Rules.

6. The main ground on the basis of which applicant prays for restraining respondents from conducting the disciplinary proceedings is that the criminal prosecution based on FIR No. RC 5(A)/96 ACU IV dated 13.9.96 under the Prevention of Corruption Act, 1988 also relates to accumulation of immovable/movable assets. It is contended that edifice of both proceedings is based on the same events, and same alleged acts of omissions and commissions, and unless the disciplinary proceedings are stayed, applicant will be compelled to disclose her defence in the disciplinary proceedings which will prejudice her in the criminal proceedings.

7. We have considered these contentions carefully.

8. As pointed above, applicant is being proceeded against on two Articles of charges. The first article of charge relates to acceptance of undue favour by procuring air line tickets for herself and her family members for journeys from Delhi to Calcutta and back in May, 1996 without

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making payment for the same. This article of charge has nothing to do with the second Article of charge namely acquisition/purchase of immovable/movable assets which is the subject matter of the criminal proceedings. Under the circumstances applicant disclosing her defence in the disciplinary proceedings with respect to the procuring of Airline ticket in May, 1996 can by no means be said to prejudice her defence in the criminal case which relates to the acquisition of immovable/movable assets.

9. When this was pointed by us to applicant's counsel during hearing, he challenged respondents' action in initiating disciplinary proceedings in respect of Article 1 of the charge, on grounds of delay. He contended that while the Airline tickets were alleged to have procured in May, 1996, the charge Memo was issued over four years later on 21.9.2000 and as the delay was unexplained, Article 1 of the charge was fit to be struck down. Reliance in this connection was placed on the Hon'ble Supreme Court's rulings in State of MP Vs. Bani Singh AIR 1990 SC 1308 and State of MP Vs. Syed Qamar Ali.

10. We note that in the OA itself, the prayer is not for quashing of Article 1 of the charges relating to the procuring of Airline tickets, but only to keep the disciplinary proceedings in abeyance during the pendency of the criminal proceedings against her. That apart, respondents cannot be faulted, if, while probing into applicant's conduct in allegedly acquiring/purchasing

immovable/movable assets far beyond her known sources of income and not informing/taking permission of the authorities as required under the CCS(Conduct) Rules, they came upon materials ^{relating to Article 1 of the charge} and therefore decided to include this alleged misconduct also, as one of the charges in the charge Memo dated 21.9.2000. In this connection, the Hon'ble Supreme Court's ruling in Secretary to Govt. Prohibition and Excise Department Vs. L.Srinivasan (1996) 3 SCC 157 is extremely relevant, where the Apex Court came down heavily on the Tamil Nadu Administrative Tribunal for quashing the charge Memo at the threshold stage merely on grounds of delay vide its order dated 12.11.93. The Apex Court held that the nature of the charges were such that it would take a long time to detect embezzlement and fabrication of records and the charge memo should therefore not have been quashed on grounds of delay alone. In our view, the aforesaid ruling in L. Srinivasan's case (supra) is squarely applicable to the facts and circumstances of the present case. Here also applicant allegedly procuring Airline tickets in May, 1996 from a private company with which her department had official dealings without making payment, may not have been immediately known to respondents and may have come to light only when her alleged misconduct in acquiring/purchasing immovable/movable assets wholly disproportionate to her known sources of income and without informing/seeking permission of the competent authorities as required under the provision of the CCS(Conduct) Rules became known.

11. Hence neither Bani Singh's case (Supra) - 6 -

nor Qamar Ali's case (Supra) assists applicant, and manifestly no good reasons have been advanced on behalf of applicant to interdict Article 1 of the Charge at this stage, or indeed even keep the disciplinary proceedings in abeyance in respect of Article 1 of the charge till the disposal of the criminal proceedings, as those criminal proceedings have no concern with Article 1 of the charge.

12. Coming to Article 2 of the charge, the conclusions which are deducible from various decisions of the Hon'ble Supreme Court in cases where a disciplinary enquiry is proceeding simultaneously with a criminal case, for the purpose of deciding whether the disciplinary proceedings should or should not be kept in abeyance, have been summarised by the Hon'ble Supreme Court in para 22 of its judgement in Caption M. Paul Anthony Vs Bharat Gold Mines and Anr. (1999) 3 SCC 679 and are reproduced below:

"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 in 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, cannot 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."

13. In the present case, respondents have stated in the impugned order dated 4.7.2001 that the criminal case and the disciplinary proceedings are altogether different in nature and aspect. The criminal case relates to accumulation of assets disproportionate to the known sources of income which is a criminal offence under the prevention of Corruption Act, 1958 whereas the departmental proceeding relates to alleged obtaining of undue favour from a firm having official dealings and non-intimation of the movable and immovable assets acquired/purchased by her, to the department. As per provisions of the CCS(Conduct) Rules, she was required to intimate/take prior permission in respect of movable/immovable property. By not complying with the provisions of the CCS (Conduct) Rules applicant has committed misconduct for which appropriate departmental action is to be taken under CCS (CCA) Conduct Rules.

14. Furthermore respondents in aforesaid order dated 4.7.2001 state that the number of documents and oral evidence in the criminal case are different from that in the disciplinary proceedings, and the degree and standard of appreciation of the same is also quite different and though there are a few documentary/oral evidence which find place in both the criminal case and the disciplinary proceeding by and large they are materially independent and different.

15. There is considerable merit in these statements of respondents as contained in their impugned order dated 4.7.2001. As held by Hon'ble Supreme Court in State of Rajasthan Vs. B.K.Meena AIR 1997 SC 13

"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, 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."

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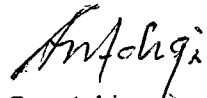
16. In the background of the aforesaid ruling in Meena's case (Supra) there are no good grounds to warrant keeping the disciplinary proceedings in abeyance.

17. Applicant might have had a case for keeping the disciplinary proceeding in abeyance, if she could have succeeded in establishing that the charge in the criminal case involved complicated question of law and fact, to attract para 22 (ii) of the Apex Court's ruling in Capt. Paul Anthony's case (Supra), but even on that ground the OA warrants no interference, because in our considered opinion the charge against applicant in the criminal case does not involve complicated question of law and fact. During the course of hearing applicant's counsel hinted that in the criminal case, applicant would endeavour to establish that the moveable and immovable assets she was alleged to have procured/acquired did not belong to her, but such a line of defence in our view cannot be said to constitute complicated question[?] of law and fact.

18. In the result the OA warrants no interference and is dismissed^{along with ITA No 1472/2001.} The interim orders are vacated. No costs.


(Kuldip Singh)

Member (J)


(S.R. Adige)

Vice Chairman (A)

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