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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.682/2001

New Delhi, this the 19th day of September 2001

HON'BLE MR. JUSTICE ASHOK AGARWAL, CHAIRMAN
HON'BLE MR. M.P. SINGH, MEMBER (A)

Shri I.J. Mahajan
S/o Shri Ram Saran,
R/o 769, Sector-I,
R.K. Puram, New Delhi-22.

... Applicant

(None present)

V E R S U S

1. The Union of India,
Ministry of Home Affairs,
through Joint Director,
Intelligence Bureau,
R.K. Puram, New Delhi-110022.
2. M/s. Government of India Secretariat
Cooperative Thriefft & Credit Society Ltd.,
through its Pres-ident,
IO/II, Wilson Avenue, Mandir Marg,
New Delhi.
3. Shri G.S. Pathania,
Office Secretary, M/s Government of India
Secretariat Cooperative Thriefft & Credit
Society Ltd.,
IO/II, Wilson Avenue, Mandir Marg,
New Delhi.
4. Shri A.K. Misra,
Inquiring Authority,
Assistant Director,
I.B. Hqrs., R.K. Puram,
New Delhi-110022.
5. The Station House Officer,
Police Station,
Mandir Marg, New Delhi.

... Respondents

(By Advocate: Shri Madhav Panikar for R-1,
Shri Brij Bhushan for R-2 and R-3 and
R-4 and R-5 are performa respondents)

ORDER (ORAL)

Justice Ashok Agarwal:

Applicant and his advocate were absent yesterday,
i.e., 18.9.2001. They are absent today also. We have
heard Shri Madhav Panikar, learned counsel for
Respondent No.1 and Shri Brij Bhushan, learned counsel

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for Respondent Nos.2 and 3. We proceed to dispose of the present OA on merits in terms of Rule 15 of the CAT (Procedure) Rules, 1987, in the absence of applicant and his advocate.

2. By the present OA, applicant seeks stay of disciplinary proceedings initiated against him pending trial in criminal court based on the very same ~~and~~ ^{and} similar charges as contained in the disciplinary proceedings. By the impugned order passed on 24.1.2001 at Annexure A-4, applicant's prayer for stay of disciplinary proceedings pending criminal trial has been rejected by holding that simultaneous proceedings are not barred. The aforesaid order at Annexure A-4 is impugned in the present OA.

3. The charge contained in the disciplinary proceedings is as under:-

"Article-I

That the said Shri I.J. Mahanan, Section Officer, IB Hqrs., New Delhi while functioning as one of the departmental representatives of Govt. of India, Sectt. Co-operative Thrift and Credit Society Ltd., New Delhi, unlawfully retained large sum of money out of the cash collections by forging the signatures of the members of the society belonging to IB. Shri I.J. Mahajan has also given an affidavit dated 28.4.1997 on a stamp paper admitting having made several irregularities with the members' ledger and receipts which amounts to embezzlement, thereby putting the D(i) list of the society to huge loss.

By his above misconduct, Shri I.J. Mahajan, Section Officer has failed to maintain integrity and also acted in a manner unbecoming of a Govt. servant, thereby violating the provisions of Rule 3 (1) (i) and (iii) of the CCS (Conduct) Rules, 1964."

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We will proceed on the assumption that the charge contained in the criminal prosecution is the same or in any ^{event} ~~way~~ similar to the aforesaid charge.

4. The question whether disciplinary proceedings should be stayed pending criminal trial was the subject matter of consideration of the Mumbai Bench of the Tribunal in the case of K.K. Upadhyay v. Union of India and Others (AISLJ 2000 (3) 79) wherein the aforesaid Bench had an occasion to consider various decisions of the Supreme Court on the issue. It has been observed that Supreme Court in the case of M. Paul Anthony V. Bharat Gold Mines Ltd., AIR 1999 SC 1416 has ruled that there is no legal bar in departmental enquiry and criminal case being proceeded simultaneously. If both cases are on identical facts and the charge is of a grave nature and involves complicated questions of law and fact, it would be desirable to stay the disciplinary proceedings till the conclusion of the criminal case. 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 facts and circumstances of each case. The departmental proceedings cannot be unduly delayed. When the charges are grave and serious and, further involve complicated question of fact and law, then only departmental proceedings can be stayed.

5. In the case of Depot Manager, A.P. State Road Transport Corporation v. Mohd. Yousuf Miya and Others, 1997 SCC (L and S) 548 a Larger Bench of the Supreme Court has observed as follows:-

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"We are in respectful agreement with the above view. The purpose of departmental enquiry and of prosecution are two different and distinct aspects. The criminal prosecution is launched for an offence for violation of a duty, the offender owes to the society or for branch of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not therefore, desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent officer. Each case requires to be considered in the backdrops of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental enquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law. Offence generally implies infringement of public (sic duty), as distinguished from mere private rights punishable under criminal law. When trial for criminal offence is conducted, it should be in accordance defined under the provisions of the Evidence Act. Converse is the case of departmental enquiry. The enquiry in a departmental proceedings relates to conduct or breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. That the strict standard of proof or applicability of the Evidence Act stands excluded is a settled legal position. The enquiry in the departmental proceedings relates to the conduct or breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. That the strict standard of proof or applicability of the Evidence Act stands excluded is a settled legal position. The enquiry in the departmental proceedings relates to the conduct of the delinquent officer and proof in that behalf is not as high as in an offence in criminal charge. It is seen that invariably the departmental enquiry has to be conducted expeditiously so as to effectuate efficiency in public administration and the criminal trial will take its own course. The nature of evidence in criminal trial is entirely different from the departmental proceedings. In the former, prosecution is to prove its case beyond reasonable doubt on the touchstone of human conduct. The standard of proof in the departmental proceedings is not the same as of the criminal trial. The evidence also is different from the standard point of the Evidence Act. The evidence required in the departmental enquiry is not regulated by the Evidence Act.




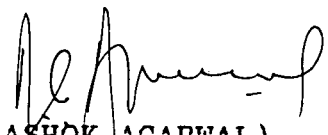
Under these circumstances, what is required to be seen is whether the departmental enquiry would seriously prejudice the delinquent in his defence at the trial in a criminal case. It is always a question of fact to be considered in each case depending on its own facts and circumstances. In this case, we have seen that the charge is failure to anticipate the accident and prevention thereof. It has nothing to do with the culpability of the offence under Section 304-A and 338, I.P.C. Under these circumstances, the High Court was not right in staying the proceedings."

6. Similarly in the case of State of Rajasthan v. B.K. Meena and Others, 1996 SCC (L and S) 1455) the Supreme Court has emphasised that not only the charges must be grave but the case must involve complicated questions of fact and law.

7. We have examined the present charge contained in the present disciplinary proceedings in the light of the observations of the Supreme Court as contained in the aforesaid judgement of the Mumbai Bench and we find that the present case does not fall in the category of cases which can justify stay of disciplinary proceedings pending criminal trial. The present ^{charge} ~~case~~ cannot be considered to be grave and the case does not involve complicated questions of fact and law.

8. In view of this, we do not find that ~~any~~ case is made out for interference in the present OA. Disciplinary proceedings, we find, can justifiably be proceeded simultaneously with the criminal trial. The present OA, in the circumstances, is dismissed. Stay earlier granted on 19.3.2001 is vacated. No order as to costs.


(M.P. SINGH)
MEMBER(A)


(ASHOK AGARWAL)
CHAIRMAN

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