

Central Administrative Tribunal
Principal Bench: New Delhi

O.A. No. 744/99

New Delhi this the 2nd day of November 1999

Hon'ble Mr. Justice V. Rajagopala Reddy, VC (J)
Hon'ble Mrs. Shanta Shastry, Member (A)

B.S. Saxena,
L.D.C. Central Ordnance Depot,
Delhi Cantt.,
New Delhi.

...Applicant

(By Advocate: Ms. S. Janani)

Versus

1. Union of India Through
Secretary,
Ministry of Defence,
New Delhi.
2. The Director General,
Ordnance Services,
Master General of Ordnance Branch,
Army Headquarters, DHQ P.O.,
New Delhi-110 001.
3. The Army Ordnance Corps Record,
P.B. NO. 3, Trimulgherry P.O.,
Secunderabad-500 015.
4. The Commandant,
Central Ordnance Depot,
Delhi Cantt.,
New Delhi.

...Respondents

(By Advocate: Shri D.S. Jagotra)

ORDER (Oral)

By Reddy, J. -

Heard the counsel for the applicant and
the respondents.

2. The applicant is a Lower Division Clerk in the Central Ordnance Depot, Delhi Cantt. New Delhi. Though he was promoted as Assistant Cashier, as it is now stated that he has been subsequently reverted to the post of LDC. He was arrested by the Delhi Police alleging that a complaint has been lodged against him by the A.P.O.

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(F) of the Unit. He was thereafter placed under suspension but suspension was, however, subsequently revoked. A charge sheet was issued on 22.10.96 and the criminal proceedings have been initiated against the applicant before the court of Metropolitan Magistrate. Two allegations were levelled against the applicant. While he was working as an Assistant Cashier, he fraudulently converted and misappropriated the amount in two cheques of Rs. 21,426/- and Rs. 22,037.00 each. He was thus alleged to have violated the CCS Conduct Rules, 1964. Meanwhile the charge in the criminal proceedings has been framed before the Metropolitan Magistrate against him on 13.7.95, on the identical charges of misappropriation, forgery and cheating and he was said to have committed the offences punishable under the relevant sections of IPC.

3. The present OA is filed to stay the departmental proceedings pending the criminal proceedings as they are on identical charges. It is the contention of the learned counsel for the applicant that the simultaneous proceedings being on the identical charges and the enquiry before the department has not yet been commenced whereas the enquiry in the criminal case has almost been completed, the enquiry before the departmental proceedings should be stayed until the completion of the proceedings before the criminal court. Learned counsel for respondents, however, strenuously contends that though the departmental proceedings have been initiated in 1996 in view of the delatory

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tactics adopted by the applicant in not participating in the enquiry, the proceedings could not be completed. It is also contended that in view of the judgment of the Supreme Court in State of Rajasthan Vs. B.K. Meena & Others, JT 1996 (8) SC 684 holding that there is no bar for proceeding with the departmental proceedings pending the criminal proceedings no stay can be granted. We have given careful consideration to the arguments advanced and perused the records. There is no dispute that the allegations against the applicant are identical in both the proceedings. It is also not in dispute that the charge memo has been issued to the applicant as early as in October 1996. It is the case of the applicant that the Enquiry Officer who has been appointed in 1996 did not commence the enquiry and again the E.O. is changed in 1999 and even he did not commence the enquiry so far. It is clearly stated in the OA that before the criminal court several prosecution witnesses have already been examined and only a few witnesses are left. It is contended that the proceedings before the criminal court are likely to take an inordinately long time for finalisation. Normally it may be correct but in the present case as the prosecution witnesses have almost been examined it may not take much time for conclusion of the criminal case. On the other hand the disciplinary proceedings have not yet commenced though the charge memo was issued in 1996 Enquiry Officer has not yet examined any prosecution witnesses. If the applicant is not co-operating with the proceedings it was open to the respondents to complete the proceedings ex parte

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and disposed of the disciplinary proceedings. It, therefore, appears appropriate that the proceedings be stayed till the criminal proceedings are concluded.

4. In State of Rajasthan Vs. B.K. Meena & Ors. the Supreme Court, however, has taken the view that the pendency of the criminal proceedings is not a bar for proceeding with the departmental proceedings. The said view was taken on the premise that the criminal proceedings will normally take long time for conclusion. But in the present case as stated supra since the proceedings of the criminal case are almost coming to the conclusion and the proceedings of the departmental enquiry has not yet commenced, we are of the view that the proceedings of the departmental enquiry should be stayed until the conclusion of the criminal trial before the Metropolitan Magistrate, Patiala House, New Delhi.

5. Needless to say that it is open to the respondents to move this court if the proceedings before the criminal court are not completed by the end of the March 2000. The O.A. is accordingly allowed subject to the above observations.

Shanta
(Mrs. Shanta Shastry)
Member (A)

Rajagopala Reddy
(V. Rajagopala Reddy)
Vice-Chairman (J)