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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 973/1995

New Delhi this the 12th day of December, 1995.

HON'BLE SHRI N. V. KRISHNAN, ACTING CHAIRMAN
HON'BLE SMT. LAKSHMI SWAMINATHAN, MEMBER (J)

Kalicharan Premi S/O Ramji Lal,
Posted at Sector 37,
NOIDA, Distt. Ghaziabad(UP). ... Applicant

(By Shri D. N. Kaushal, Advocate)

-Versus-

1. Senior Superintendent of
Post Offices,
Ghaziabad Division,
Ghaziabad (UP).
2. Sr. Post Master,
Head Post Office,
Distt. Ghaziabad. ... Respondents

(By Shri M. K. Gupta, Advocate)

O R D E R (ORAL)

Shri N. V. Krishnan, Act. Chairman —

The applicant, a Postal Assistant under the second respondent, was issued a memorandum of charge-sheet on 27.3.1995, Annexure-A. That contains five articles of charges. The first four articles of charges are more or less similar in nature but pertain to transactions which took place on different dates and the parties affected are also different. In summary form, the allegation against the applicant is that he received in the Post Office certain registered articles containing valuable documents, like demand drafts, dividend warrants, etc. to be delivered to the specified addressees. Instead of delivering those articles to them, the applicant is alleged to have taken those valuable documents and got them deposited in different accounts in Meerut which he

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could operate. These accounts were open, in the names of the addressees to whom the valuable articles were to be delivered. Thereafter, he operated those accounts and he had been able to realize monetary benefit therefrom. He is, therefore, charged with violation of various provisions of the departmental rules and with lack of integrity.

2. The applicant states that in so far as the article of charge No.4 is concerned, it relates to non-delivery of registered articles to Shri J. M. Agarwal. A complaint had been made by that person in the Sinhani Gate Police Station, Ghaziabad. A copy of the FIR dated 27.1.1994 has been filed by the applicant along with M.A. No. 2796/95 in connection with his request for early hearing of the O.A. That M.A. has been dismissed. However, we direct that this document, the FIR, be taken on the record of the main file. It is stated that a perusal of the FIR will reveal that the crime ^{alleges} against the applicant is the same as the matter being enquired into under article 4 of the memorandum of chargesheet. It is stated that if the enquiry is proceeded with against the applicant, he would be required to disclose his defence and that would prejudice him in his defence in the criminal case. It is pointed out that all the articles of charges reveal that the same pattern or a similar modus operandi has been alleged against the applicant; therefore, if he is required to defend himself even in respect of those articles in respect of which no FIR has been filed, he would be compelled to disclose his defence which will give undue advantage to the prosecuting authorities and will at the same time be to his detriment in the conduct of criminal case.

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3. It is in these circumstances that this O.A. has been filed for a direction to the respondents to stay the departmental enquiry initiated in pursuance of the Annexure-A memorandum till the disposal of the criminal case against the applicant.

4. The respondents have filed a reply in which the facts mentioned above are not disputed. It is contended that there is no ban on commencement of parallel proceedings in respect of the same transaction. Reliance is placed upon the Annexure R-1 circular of the Department of Posts dated 16.1.1989.

5. When the matter came up today for final hearing, the learned counsel for the parties submitted that in the departmental enquiry proceedings, the department has examined all the departmental witnesses to establish the charges against the applicant and that these witnesses have been cross examined by the applicant. What now remains is for the applicant to enter his defence and to examine his defence witnesses. In so far as the criminal case is concerned, it is stated that chargesheet has been filed in the concerned court but the trial has not yet started.

6. Learned counsel for the applicant forcefully submitted that if the applicant were to enter upon his defence in respect of the transaction which is not covered by the FIR, he would still be revealing quite a lot of information which could be utilised by the prosecution against him in the criminal trial. He, therefore, submitted that in the interest of justice these proceedings may be stayed till the criminal case is concluded. The learned counsel

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strongly relied upon the decision of the Supreme Court in the case of Kusheshwar Dube vs. M/s Bharat Coking Coal Ltd., AIR 1988 SC 2118. We wanted to know from him as to how such a request is justified when the articles of charges 1, 2 and 3 are those in respect of which no criminal proceedings have been initiated, the transaction having taken place on different dates; the beneficiaries alleged to have been deprived of their legitimate rights being different. He submitted that nonetheless, a perusal of the four articles of charges would show that, apparently, a common modus operandi has been alleged. Therefore, if he were to disclose his defence even in one case, it would prejudice his defence in the criminal case.

7. Learned counsel for the respondents submitted that, at best, the applicant could make a submission only in respect of article 4 of the charges in respect of which he admits that the allegations contained in the memorandum of chargesheet relating to article 4 are exactly the same as the FIR filed by the complainant before the Police Station. He, therefore, submitted that at best, the charge of parallel enquiry could be stayed in respect of this article of charge only.

8. We have carefully considered the matter. It may be that there are allegations against a Government employee of a number of acts of misconduct including those of dishonesty or misappropriation or whatever may be the allegation. It is also possible that the acts of misconduct may be repetitive in nature and be even similar in respect of the modus operandi employed. If, however, a criminal complaint is made

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only in respect of one such transaction, the question is whether the delinquent employee can come up with the plea that all proceedings in respect of the other charges should be stayed, only on the ground that in respect of one of them, a criminal complaint has also been filed.

9. We are of the view that for several reasons this may not be permitted. In the first place, as mentioned above, the transactions are different from each other and, therefore, every detail has to be proved in the departmental proceedings separately in respect of each transaction.

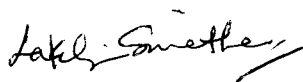
10. In our view, what is more important, is that in a criminal trial, the basic document is the FIR. The apprehension of the applicant that the prosecution would be able to utilise the information gathered from the departmental proceedings in respect of other charges to strengthen their case in the criminal trial against the applicant, which relates to only article 4 of the charges, seems to be a far fetched argument. In our view, no prejudice would be caused to the applicant on this ground. It is quite clear that the trial court will not permit padding the charges made in the FIR by other allegations about which the complainant has no personal knowledge. Further, even if the other charges are proved, they are not binding on the trial court. What weight the trial court gives to the findings in the departmental enquiry, is anybody's guess. Therefore, the claim that the D.E. in respect of other charges will prejudice the applicant's defence in the criminal case is not well founded.

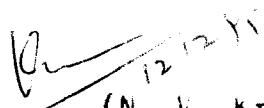
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11. However, in so far as article 4 is concerned, the charge against the applicant is a serious one. The offences of which he has been charged in the FIR are under Sections 403, 465, 419, 470, 474, 468, 109 and 179(b) of I.P.C. all of which are serious in nature. The applicant should not be compelled to compromise his defence in the criminal case by compelling him to enter his defence stage in respect of article 4 of the memorandum of chargesheet. In this view of the matter, we are satisfied that the only appropriate direction that need be given to the respondents would be with a view to ensure that the applicant's rights are protected in respect of the criminal case which is similar to article 4 of the memorandum of chargesheet. We, therefore, dispose of this application with a direction to the respondents not to proceed further in the D.E. against the applicant in respect of article 4. We make it clear that it will be open to the respondents to complete the departmental proceedings in respect of the other articles of charges. We also make it clear that, as and when the criminal case against the applicant is concluded, it is open to the department to consider whether the proceedings in respect of article 4 of the memorandum of chargesheet should be resumed and if they come to a conclusion it is so necessary, they are ^{at} liberty to resume the proceedings in respect of article 4 from the stage at which it has been stayed by us by the present order.

12. O.A. is disposed of accordingly. No costs.


(Smt. Lakshmi Swaminathan)
Member(J)


(N. V. Krishnan)
Acting Chairman

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