

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI.

(10)

Regn. No. 758/90 with 1015/89 Date of decision 21.9.92.

M.M. Haldar

Applicant

Shri D.K. Kapoor

Counsel for the applicant

vs.

Union of India

Respondents

Shri P.P. Khurana with Shri J.C. Madan, Counsel for the respondents

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The Hon'ble Mr. Justice Ram Pal Singh, Vice-Chairman(J).

The Hon'ble Mr. P.C. Jain, Member (A).

1. Whether Reporters of local papers may be allowed to see the judgment?

✓ 2. To be referred to the Reporter or not? Yes.

3. Whether their Lordships wish to see the fair copy of the judgment?

4. Whether it needs to be circulated to other Benches of the Tribunal?

(Judgment of the Bench delivered by Hon'ble Shri Justice Ram Pal Singh, Vice-Chairman (J).)

JUDGMENT

This judgment shall also govern the disposal of O.A. No. 1015/89. Both the OAs are filed by the applicant and both the OAs were clubbed together for being heard together. Hence, they were heard together.

2. The applicant was working as Deputy Chief Controller of Imports and Exports in the office of the Chief Controller of Imports & Exports, Ministry of Commerce, New Delhi, upto the year 1985. He belongs to a Scheduled Caste community. He filed O.A. No. 249/96 in this Tribunal which was decided on 28.5.87. As the promotion of the applicant was withheld due to a criminal

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case pending against him in the court of law, under the provisions of the Prevention of Corruption Act and there was also a departmental proceeding pending against him, he was not given the promotion. Hence, he filed O.A. No. 249/86 for revocation of his suspension. By this judgment, this Tribunal revoked the suspension of the applicant and the respondents were directed to restore the applicant to the duty forthwith. The respondents filed an SLP against this judgment in the Supreme Court which was dismissed on 22.7.87.

Thus, the applicant retired as Joint Chief Controller of Imports and Exports on 31.7.87 on attaining the age of superannuation.

On his retirement, the respondents granted the applicant his full

pension provisionally, but no orders were passed with regard to the payment of gratuity and the commuted value of the pension. The applicant represented, but his representation was rejected with regard to the prayer for payment of commuted value of pension. No order was passed with regard to the release of gratuity. Before the applicant retired, the respondents by a Memorandum of Charge dated

24.7.87 initiated disciplinary proceedings against him under Rule 14 of the CCS (CCA) Rules of 1965. The disciplinary authority appointed the Inquiry Officer by order dated 17.8.87. Presenting

Officer was also appointed by order dated 13.10.87. The counsel

for the applicant conceded at the time of arguments that after he

filed his written statement, the Inquiry Officer was appointed by

the disciplinary authority and it is before this Inquiry Officer that

the applicant filed an application on 15.2.89 requesting for the inspection of certain documents available in two files - (i) F. No. 6/850/68-

Admn (G) and (ii) F. No. 40/49/62-Vig. The Inquiry Officer on this

application passed an order and allowed the inspection to the applicant

directing the Presenting Officer on 22.2.89 to give the inspection

of the above files to the applicant within two weeks. According

to the applicant, the Inquiry Officer had ordered the Presenting

Officer for inspection of files within two weeks, but it was after

four months that the Presenting Officer allowed the inspection of

File No. 6/850/68-Admn (G) on 20.6.89. The applicant found that

the file did not contain the document which he desired to inspect

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because pages of that file from 91 to 139 appear to have been removed from the file. According to the applicant, the inspection of the second file was never allowed. He also contends that not providing the inspection of the second file and removal of the relevant documents from the first file has resulted in prejudice to him. Hence, the entire inquiry is vitiated. On 26.10.89, the Inquiry Officer made orders to the Presenting Officer for the presentation of the second file. The Presenting Officer on 20.11.89 informed the Inquiry Officer under intimation to the applicant that the file was not made available to him by the respondents. Thus, he contends in this O.A. that this has resulted in prejudice to him. Hence, the inquiry pending against him should be quashed.

3. The second contention of the applicant is that before his retirement, the chargesheet was filed before the Special Judge, Delhi, by the CBI under Section 5(2) and 5(1) (e) of the Prevention of Corruption Act. During the pendency of this prosecution, before the Special Judge, the prosecutor filed an application under Section 321 of the Code of Criminal Procedure (C.P.C.) that the sanction under Section 6 of the Corruption Act was not proper. Hence, permission be granted by the court for withdrawal of the chargesheet. This request was allowed by the Special Judge by order dated 10.2.89 (Annex 11) giving the reasons that as the sanction granted under Section 6 of the Corruption Act appears to be defective, the prayer of the prosecution is allowed and the accused (applicant) is discharged. Thus, the applicant argues that no prosecution was pending against the applicant when he retired and in the alternative he contends that even if the prosecution was pending, it was subsequently withdrawn. But the counsel for the applicant admitted at the Bar that the CBI has again filed the chargesheet, though after the retirement of the applicant, in the court of the Special Judge Delhi, which is still pending. Thus, the applicant argues that after the withdrawal of the prosecution from the court of the Special Judge, no prosecution of the prosecution from the court of the Special Judge, no prosecution

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was pending when he retired from service. Hence, this Tribunal should quash the disciplinary proceedings against the applicant and grant the consequential benefits with a direction to the respondents to release his gratuity with interest payable under the rules.

4. In O.A. 1015/89, the applicant prays for the reliefs that:

(i) commuted value of the pension with interest be directed

to be paid to the applicant;

(ii) the gratuity amount payable to the applicant which

has been withheld be released to him with interest;

(iii) respondents be directed not to withhold the commuted value of the pension and the gratuity payable to the applicant;

(iv) direct the respondents to convert the provisional pension paid to him as regular and final pension.

5. In both the OAs, notices were issued and the respondents

appeared and filed their counter. They have opposed the prayer

contained in the OAs and contended in great detail that the applicant

was found by the Vigilance Department to be having property

movable and immovable disproportionate to the income and on

this point an investigation was carried out and the CBI filed the

chargesheet against him when he was in service. They also contend

that though the chargesheet was withdrawn by the permission of the

Special Judge under Section 321 of the C.P.C. ~~as~~ it was for removal

of the technical defect of the sanction. They contend that after

the removal of the defect, it was again filed with necessary

correction and the prosecution is still pending against the applicant.

Hence, the retiral benefits have been withheld and these OAs

have no force.

6. We have heard the learned counsel for the applicant, Shri

D.K. Kapoor, and the learned counsel for the respondents, Shri P.P.

Khurana with Shri J.C. Madan, in great detail. The respondents

in spite of our directions have not produced the documents/files

for the inspection of the Bench. The counsel for the applicant

has also failed to place on record the relevant documents for which

he sought adjournment. In the absence of these documents, we pro-

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ceed to adjudicate both these OAs.

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On 37th page of 7. 1. 1989 We shall first deal with the contention of the applicant that though the chargesheet was filed before the Special Judge against the applicant, when he was in service, but as it was withdrawn under Section 321 of the Cr.PC, it should be deemed that there was no chargesheet pending against him when he retired. He has also assailed that filing of the same chargesheet on withdrawal will not amount

to pending prosecution in a criminal court. We have perused the order of the Special Judge by which he has permitted the prosecution to withdraw the chargesheet from his court. The learned Special Judge has mentioned in the said order that the chargesheet filed is desired to be withdrawn with the permission of the court on the ground that sanction accorded under Section 6 of the Prevention of Corruption Act was not proper and was defective. Hence, a proper

sanction has to be obtained and it is on this ground that the learned Special Judge allowed the withdrawal. Under Section 321 of the Cr.PC, it is the right of the Public Prosecutor or Assistant Public Prosecutor to withdraw a particular prosecution on the grounds given therein subject to the judicial control of the Judge. In the case of M.N.S. Nair v. P.V. Balakrishnan, AIR 1972 S.C. 496 the apex court has observed:

"Nonetheless, it is a duty of the Court to see that the permission is not sought on grounds extraneous to the interest of justice or that offences which are offences against the State go unpunished merely because the Government as a matter of general policy or expediency unconnected with its duty to prosecute offenders under the law directs the Public Prosecutor or Assistant Public Prosecutor to withdraw from the prosecution."

Thus, a duty is cast upon the Judge to permit the said withdrawal under the said provision of the law and the order passed by the

Special Judge are required to be judicial. As the charges were

not framed against the applicant, he was discharged by the Special Judge by that order dated 20.2.89. The applicant retired on 31.7.87

and before this date, the chargesheet was filed by the CBI before the Special Judge under the Prevention of Corruption Act. Thus, the chargeheet was pending against him when he retired and on 20.2.89 when the chargesheet was withdrawn on technical grounds,

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... it was filed again before the Special Judge. From these circumstances, it cannot be said that there was no chargesheet pending when the applicant retired from service.

8. In such a situation, the arguments of the applicant cannot be sustained that no chargesheet was pending against him and that the respondents had no power under the rules to withhold his gratuity, the commuted value of the pension and other dues. Thus, the respondents have power to withhold the gratuity and pay the provisional pension and other dues when a prosecution is pending against a Government servant before a court of law.

9. The second contention of the applicant is that the simultaneous proceedings in a criminal court and also proceedings before the disciplinary authority under Rule 14 of the C.C.S. (C.C.A.) Rules of 1965 cannot be permitted to continue. His contention is that simultaneous / two proceedings against the delinquent is likely to compel him to disclose his defence and he would be prejudiced in his trial subsequently. Law is well settled on the point that there is no bar for holding disciplinary proceedings during the pendency of the criminal trial even though the basis of the criminal case and the subject matter of the charge in both the proceedings is one and the same. However, there may be cases where it would be appropriate to defer disciplinary proceedings awaiting disposal of the criminal case. In the case of *Kusheshwar Dubey vs. M/s Bharat Coking Coal Ltd.* (AIR 1988 2118 S.C.), the apex court has in great detail laid down the law on the subject in the following words:

"The view expressed in the three cases of the Court seem to support the position that while there could be no legal bar for simultaneous proceedings being taken, yet, there may be cases where it would be appropriate to defer disciplinary proceedings awaiting disposal of the criminal case. In the latter class of cases it would be open to the delinquent-employee to seek such an order of stay or injunction from the Court. Whether in the facts and circumstances of a particular case there should or should not be such simultaneity of the proceedings would then receive judicial consideration and the Court will decide in the given circumstances of a particular case as to whether the disciplinary proceedings should be interdicted, pending criminal trial. As we have already stated that it is neither possible nor advisable to evolve a hard and fast, straight-jacket formula valid for all cases and of general application, without regard to the particularities of the individual-situation. For the disposal of the present

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case, we do not think it necessary to say anything more, particularly when we do not intend to lay down any general guideline."

In the case S.K. Bahadur vs. Union of India (1987 (4) (CAT) (PB-New Delhi p. 51) decided on 12.3.87), the same view has been

taken by the Bench. As far back as in the year 1960, in the case of Delhi Cloth & General Mills Ltd. vs. Kushal Bhan (AIR 1960 S.C. 806), the apex court observed that it cannot be said 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 the employee. Thus, the fact and the circumstance of each case have to be gone through and it has to be looked into whether the simultaneous continuing of a criminal trial and the disciplinary proceedings

against the delinquent are likely to result in prejudice to the applicant. In this case, the documents which were being desired by the applicant are described in Annexure 'C', which is a copy of the application filed by the applicant before the Inquiry Officer dated 11.12.90.

This application shows the nature of the documents which were in the files for whose inspection the applicant prayed. In this application, he has mentioned that the plot of land S-164, GK-II, New Delhi, was gifted to his sons by their maternal great-grand father and his sons constructed a house on this plot of land by raising a loan from the LIC of India and in this loan, he was the guarantor. Therefore, the gift deed which was executed in favour of his sons is such a document whose original copy will have to be presumed in the possession of the applicant and the said document of gift, according to law, is required to be registered under the Indian Registration Act if the value of the property exceeds Rs. 99.00. Gift deed is thus a public document. In the second file, i.e. in File No. 6/850/68-Admn (G), he has filed an application before his employer for permitting him to be a guarantor of his sons who desired to raise a loan from the LIC of India for the construction of the house at S-164, G.K. II, New Delhi. This application is a document which can be presumed to be in the possession of the applicant and he can very easily produce these documents even if some of the documents are missing from those files. Whatever material has been made available in the records of both the files, therefrom we can conclude that the entire case

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of the prosecution in the criminal prosecution and in the disciplinary proceedings depends upon the documents by which the property is

said to have been acquired by the applicant and there appears to be not much of other oral evidence which may be subjected subsequently to cross-examination. The applicant has already disclosed this to his defence in the departmental proceedings by filing his written statement. Thus, it cannot be said that the applicant will be prejudiced if the departmental inquiry is permitted to be continued while simultaneously the criminal proceedings are pending against him.

This case comes in the category of those cases about which a Co-ordinate Appropriate Bench of this Tribunal and plethora of judgments of the apex court have spoken of. The departmental inquiry and the prosecution A.O. etc. do not pertain to any particular instance or incident which has been witnessed by eye witnesses. The prosecution in the criminal trial and the Presenting Officer in the disciplinary proceedings are required to prove that with the limited resources, the applicant could not acquire disproportionate property without indulging in corrupt practices and hence these facts can be proved or disproved on the basis of the documents and witness statements. Hence, it cannot be said that the continuance of the disciplinary proceedings on the face of the pending criminal trial is likely to cause any prejudice to the delinquent if he discloses his defence in his defence before the hearing of other criminal proceedings. In a departmental inquiry the misconduct of the Government servant as such is enquired if the offence given by the employer while in a criminal prosecution, the contravention based upon of the provisions of the general law is tried. If the Government servant is found guilty of the misconduct by the disciplinary authority, then he is punished departmentally. In a criminal trial, a citizen is liable to be convicted if the offence is proved against him beyond reasonable doubt. For both the procedural laws are different.

The documents which the Presenting Officer could not afford to place for the inspection of the applicant on the direction of the Inquiry Officer were not the documents upon which the prosecution was placing reliance because copies of such documents and the list of witnesses is made available to the delinquent when the articles of charges and statements of imputations of misconduct or misbehaviour are given to the delinquent. It is for the inquiring authority to see that if the respondents have failed to provide these documents and statements, the inquiring authority may direct the respondents to do so.

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two files for the inspection of the applicant, in what way the applicant will be prejudiced in the departmental proceedings. Undoubtedly, the Inquiry Officer has power to direct the respondents to make available the files which are demanded by the delinquent for the preparation of his defence. Yet, what shall be consequence of this upon the merits of the inquiry is yet to be adjudged by the Inquiry Officer in his report and the disciplinary authority in his final orders. If those reasons are not just, the applicant will get a further opportunity of challenging the order of the disciplinary authority before the appellate authority and still if he is aggrieved by the orders of the appellate authority, he can raise this ground in the O.A. under Section 19 of the A.T. Act. At the present stage, this Tribunal cannot usurp the functions of the disciplinary authority and the appellate authority. Hence, so far as the question of quashing the departmental inquiry on the ground of not making the files available to the applicant is concerned, it is still premature. Hence, the disciplinary proceedings pending before the Inquiry Officer cannot be quashed at the present stage and the consequential benefits cannot be directed to be paid to the applicant, as prayed for in this O.A.

11. Rule 9 of the Pension Rules provide that the President has powers of withholding or withdrawing a pension or a part thereof whether permanently or for a specified period and of ordering recovery from a pension of the whole or part of any pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service. Sub-rule (2)(a) also provides that the departmental proceedings initiated while the Government servant was in service whether before or after his retirement, to be deemed to be proceedings under this Rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service.

12. Rule 69 of the Pension Rules deals with the payment of provisional pension where departmental or judicial proceedings may be pending. According to the applicant, he is getting the provisional pension, but he has prayed for the payment of the gratuity amount and other pensionary dues alongwith interest. This rule

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provides that where departmental or judicial proceedings are pending, on retirement the delinquent shall receive the provisional pension equal to the maximum pension which would have been admissible on the basis of the qualifying service upto the date of retirement. Sub-rule (c) of Rule 69 of the Pension Rules also provides that no gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings. Sub-Rule (2) of Rule 69 provides that payment of provisional pension made under Sub-Rule (1) shall be adjusted against the final retirement benefits sanctioned to such Government servant upon conclusion of such proceedings, but no recovery shall be made where the pension, finally sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specified period. Thus, in view of this provision of the Pension Rules, the reliefs prayed for cannot be granted to the applicant. The final adjudication of the pension can be made only after the conclusion of the departmental proceedings and the criminal proceedings pending against the applicant. We are, therefore, of the view that the reliefs prayed for in both the OAs cannot be granted to the applicant and we, therefore, dismiss both the OAs as premature.

13. However, before parting, we would stress the necessity of completing the departmental proceedings as early as possible so that the applicant may not be deprived for long of his pensionary benefits. The OAs are, therefore, dismissed with no order as to costs.

(P.C. JAIN) 11

MEMBER (A)

True Copy

Accepted
RMC

(RAM PAL SINGH)

21/9/92 VICE-CHAIRMAN (J)