

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION No.146/2021

Date of Decision: 1st March, 2021

CORAM: DR. BHAGWAN SAHAI, MEMBER (A)
RAVINDER KAUR, MEMBER (J)

Himesh Ranjan Prakash
Aged - 56 yrs.
S/o. Sh. P.S. Manuj
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... Applicant

(By Advocate Shri Rajeev Kumar)

VERSUS

1. Union of India through Secretary,
Ministry of Labour,
Shram Shakti Bhawan, Rafi Marg,
New Delhi - 110 001.
Email: secy-labour@nic.in
2. Central Provident Fund Commissioner
Employees' Provident Fund Organization,
Bhavishya Nidhi Bhawan
14, Bhikaji Cama Place,
New Delhi - 110 066
Email: cpfc@epfindia.gov.in
3. Smt Nisha O.V., Regional P.F. Commissioner/
Inquiry Officer, Employees' Provident Fund
Organization, 14, Bhikaji Cama Place,
New Delhi - 110 066
Email : ov.nisha@epfindia.gov.in ... Respondents

(By Advocate Ms. P. Janvekar)

Proceeding conducted through videoconferencing with
consent of counsels for the parties

ORDER (ORAL)Per: Ravinder Kaur, Member (J)Present:

Advocate Shri Rajeev Kumar for the applicant.

Advocate Ms. P. Janvekar for the respondents.

2. The respondents' counsel seeks three weeks time for filing short reply on interim relief sought by the applicant to stay the departmental proceedings pending the criminal trial on the same facts, identical witnesses and documents. By the Tribunal's order dated 18.02.2021, continuation of the departmental proceedings was stayed till date. The applicant's counsel had submitted on the last date of hearing that if the departmental proceedings are stayed for a period of three months, he would ensure that in the criminal trial, the applicant would cross-examine all the relevant witnesses cited against him in the departmental proceedings. Consequently, the counsel for the respondents was directed to seek necessary instructions also in this regard from the respondents.

3. However, today Ms. Janvekar informs that the respondents are opposing this plea of the applicant as well.

4. The applicant' counsel relies upon the Apex Court judgments in the case of *State of Rajasthan Vs. B.K. Meena & Others* (1996 6 SCC 417) and *Capt. M. Paul Anthony Vs. Bharat Gold Mines Limited* (1999 3 SCC 679).

5. On the basis of the Apex Court judgments in the case of *B. K. Meena (supra)*, *Capt M. Paul Anthony (supra)*, *Kendriya Vidyalaya Sangathan & Orthers Vs. T. Srinivas (2004 (6) SCALE 467)* and *Noida Entrepreneurs Association Vs. Noida (JT 2007 (2) SC 620)*, the DOPT issued OM dated 01.08.2007 with the subject "***Simultaneous action of prosecution in a court and initiation of departmental proceedings***".

The relevant paras 2 and 3 are reproduced as under:-

"2. What may be deduced from the above instructions is that in serious cases involving offences such as bribery corruption etc., action should be launched for prosecution as a matter of course. The Hon'ble Supreme Court had held in their various judgments, the important ones being, *State of Rajasthan Vs. B.K. Meena & Others (1996 6 SCC 417)*, *Capt. M. Paul Anthony Vs. Bharat Gold Mines Limited (1999 3 SCC 679)*, *Kendriya Vidyalaya Sangathan & Others Vs. T. Srinivas (2004 (6) SCALE 467)* and *Noida Entrepreneurs Association Vs. Noida (JT 2007 (2) SC 620)*, that merely because a criminal trial is pending, a departmental inquiry involving the very same charges as is involved in the criminal proceedings is not barred. The approach and objective in the criminal proceedings and disciplinary proceedings are 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 the Government servant are established and if established, what sentence can be imposed on him. In serious nature of cases like acceptance of illegal gratification, the desirability of continuing the concerned Government servant in service in spite of the serious charges leveled against him may have to be considered by the Competent Authority to proceed with departmental action.

3. However, if the charge in the criminal case 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. This will depend upon the nature of offence and the evidence and material collected against the Government servant during investigations or as reflected in the charge-sheet. If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were kept pending on account of the pendency of the criminal case, can 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, if the case so warrants."

6. From reading of the OM, it is clear that if the charge in the criminal case is of grave nature involving complicated questions of law and facts, it would be desirable to stay the departmental proceedings on the identical facts till the conclusion of the criminal trial. At the same time, it clearly finds mention therein that in case the criminal trial does not proceed or there is undue delay in its disposal, the departmental proceedings, which were stayed during the pendency of criminal trial, can be resumed.

7. In the present case, the applicant is facing the departmental proceedings as well as the criminal trial with the allegations of demanding and accepting bribe which are grave in nature involving complicated questions of law and facts. Despite the representations of the applicant, the respondents did not stay the departmental proceedings at any point of time. As such, there is no delay caused to the departmental proceedings on account of pending criminal trial against the applicant. In view of para 3 of the OM dated 01.08.2007, it would be desirable to stay the departmental proceedings, if not till the conclusion of criminal case, at least for a period of three months on assurance by the applicant's counsel that during this

period he would ensure cross examination of the three prosecution witnesses (who are also cited against him in the departmental proceedings) so that his defence in the criminal trial is not disclosed before the examination of the prosecution witnesses against him.

8. In our considered opinion by staying the departmental proceedings for a period of only three months, these proceedings will not be unduly delayed and this will be in consonance with the OM dated 01.08.2007 to create a balance between the rights of the department and the applicant who is facing criminal trial on the same facts, identical set of witnesses as involved in the departmental proceedings. Therefore, we allow this OA directing the respondents to stay the departmental proceedings for a period of three months. During this period, the applicant shall ensure that all the three witnesses who are common in both the proceedings are cross examined by him during the criminal trial.

9. With the above directions, the Original application stands disposed of. No order as to costs.

(Ravinder Kaur)
Member (J)

(Dr. Bhagwan Sahai,
Member (A)

ma.

JD
09/03/21

