

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION Nos.286/2020 & 294/2020

Dated this Tuesday the 16 th day of February, 2021

Coram: Dr. Bhagwan Sahai, Member (A)
Ravinder Kaur, Member (J)

K. Vijaya Rama Rao
 Aged - 45 years
 S/o Venkata Subba Rao
 Address 30-A, Uma Darpan CHSL
 Plot No.14-15, Sector 9,
 New Panvel, Navi Mumbai-410 206.

... **Applicant**
 in OA No.286/2020

Surajit Dutta
 Aged - 41 Years,
 S/o Kali Krishna dutta
 Address A-1103, Silver Star Chs
 Plot No.53, 63, 64, Sector 18
 Kamothe, Navi Mumbai - 410 209.

... **Applicant**
 in OA No.294/2020

(By Advocate Shri Rajeev Kumar)

VERSUS

1. Union of India through Secretary,
 Ministry of Labour,
 Shram Shakti Bhavan, Rafi Marg,
 New Delhi - 110 001.
2. Central P.F. Commissioner
 Bhavishya Nidhi Bhavan,
 14, Bhikaji Cama Place,
 New Delhi - 110 066.
3. Regional P.F. Commissioner-1,
 HRM, Thane Sough,
 6th Floor, Vardhan Commercial Complex,
 Road No.16,
 Thane West -400 604

... **Respondents**
 in both the OAs

(By Advocate Shri R.R. Shetty)

ORDERPer: Ravinder Kaur, Member (J)

Vide common judgment, we shall dispose of OA Nos.286/2020 and 294/2020 since these applications involve common question of law and facts. We shall take OA No.286/2020 as a lead case.

2. The applicant has claimed the following reliefs:-

"(a) That this Hon'ble Tribunal will be graciously pleased to call for the records and proceedings leading to the issue of Order dated 10.01.2020 as an Annexure A-4 and after going through the legality or otherwise thereof, this Hon'ble Tribunal will be pleased to quash and set aside to the extent it directs to continue the inquiry pending criminal Trial.

(b) That this Hon'ble Tribunal will be graciously pleased to call for the records and proceedings leading to the issue of communication dated 27.08.2020 as in Annexure A-5 and after going through the legality or otherwise thereof, this Hon'ble Tribunal will be pleased to quash and set aside the same.

(c) That this Hon'ble Tribunal will be pleased to stay the departmental disciplinary proceedings initiated vide impugned Memorandum of Charges dated 09th May 2011, and further direct the respondents not to proceed with the impugned Memorandum of Charges dated 09th May, 2011 pending the hearing and final disposal of Special Case No.28(A) of 2008 on the file of Special Judge Thane.

(d) That costs of this Application be awarded in favour of the applicant; And

(e) That such other and further reliefs as are expedient be granted in favour of the applicant.

3. The applicant was working as Social Security Assistant of EPFO, SRO Vashi at Sub Regional office, Vashi, Navi Mumbai from 09.09.2004 to 28.02.2005 and from 21.07.2006 to 22.08.2008. Shri Rama Kanta Pati, Accountant and Manager of M/s. Deva Prabhat Infrastructure lodged complaint with CBI, ACB, Mumbai on 19.08.2008 alleging demand of bribe of Rs.5 lacs which was later on reduced to Rs.3 lacs by the present

applicant in connection with the pending 7A matter of his firm. The CBI registered case under Section 7, 8, 13(2) read with Section 13(1)(a) of the Prevention of Corruption Act, 1988 and Section 120B IPC. A trap was laid on 22.08.2008 and the applicant was apprehended at the instance of the complainant for demanding and accepting of bribe of Rs.3 lacs which amount was later on recovered from Shri Surajit Dutta (Applicant in OA No.294/2020), at the instance of the applicant Vijaya Rama Rao (OA No.286/2020). The conversation between the applicant and Shri Rama Kanta Pati at the time of transaction was recorded during the trap proceedings. The CBI after completing the investigation filed chargesheet on 16.10.2008 before Special Court CBI at Mumbai. As per the applicant, the trial in the said criminal case is going on.

3.1 The respondents served the applicant with Memorandum dated 09.05.2011 (Annex A-1) under Rule 10 of the Employees Provident Fund Staff (Classification, Control & Appeal) Rules, 1971 with the same set of allegations as in the criminal case that the applicant while dealing with the case of M/s Deva Prabhat Infrastructure (Establishment Code MH/115064) during his posting as Social Security Assistant at Sub-Regional Office, Vashi from December, 2000 to August 2008 conducted himself in a way inconsistent with the faithful

discharge of his duties to EPFO and in a reckless manner, negligence and prejudicial to the interest of EPFO and by adopting a method revealing improper motive to confer undue favour to an establishment inasmuch as he-

1.demanded and accepted illegal gratification of Rs.Three Lakhs from Shri Rama Kanta Pati, Accountant of the Establishment MH/215064 with the malafide intention of under-assessing the PF dues payable by the establishment in connivance with Shri Paritosh Kumar, 7A Authority/APFC Compliance Circle I SRO Vashi for personal monetary gains causing loss to the Organizaion (EPFO)

2. With malafide intention obtained backdated signatures on the final 7A order from the 7A authority and late dispatched the same.

The applicant was directed to submit his written statement of defence within 10 days and to state whether he desired to be heard in person. He submitted his reply/representation dated 16.05.2011 addressed to respondent No.3 claiming that the charges levelled against him were absolutely false. While relying upon the judgment of Hon'ble Apex Court in the case of **Capt. M. Paul Anthony Vs. Bharat Gold Mines Limited and Anr.** Dated 30.03.1999, he made request to respondent No.3 to keep the departmental proceedings in abeyance. In the meantime, vide order dated 04.08.2011, the Inquiry Officer and the Presenting Officer were appointed by the respondents. As per the directive dated 24.03.2014 issued by the Inquiry Officer, the preliminary hearing took place. When the applicant did not receive any response to his reply/representation dated 16.05.2011, he approached this Tribunal vide OA

No.609/2011 praying for stay of the departmental proceedings till the conclusion of the criminal trial pending before the Special CBI Court, Thane. The said OA was disposed of vide order dated 28.09.2011 with direction to the Disciplinary Authority to consider the representation of the applicant and to dispose of the same in accordance with law by a reasoned order within a specified period. The respondents rejected the representation vide order dated 01.11.2011. The applicant again approached this Tribunal vide OA No.774/2011 whereby he was again directed vide order dated 10.08.2012 to approach the respondents. As a consequence, the applicant filed representation dated 12.02.2014 with the respondents again praying for the departmental enquiry to be kept in abeyance till the conclusion of the criminal proceedings. Vide order dated 28.04.2014, the Competent Authority stayed the departmental proceedings initiated vide Memorandum dated 09.05.2011 till the pronouncement of final judgment in the criminal case. The relevant extract of the said order is as under:-

“ *AND WHEREAS, on the basis of judgment of Supreme Court The Ministry of Personnel, Public Grievances and Pensions have inferred at Point No.3 of Office Memorandum No.11012/6/2007-Estt.A dated 1st August, 2007 that if the charge in the criminal case is of 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 depending upon the nature of offence and the evidence and material collected against the official during investigation or as relected in the chargesheet.*

.....

AND WHEREAS Shri Vijay Rama Rao, SSA has submitted his representation dated 12.02.2014 regarding staying the departmental inquiry till the Hon'ble Court gives decision on the chargesheet filed by CBI. He has cited the reasons as under:

1) The case is squarely covered by the judgment of the Hon'ble Supreme Court in the case of Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. (1999) (3 SCC 679) where the criminal case as well as departmental chargesheet is based on similar and identical set of facts. The list of witnesses and documents are also identical. The department has not collected any independent evidence and is going to rely on the very same evidence which will be testified in the criminal court.

2) Further DoPT OM dated 01.08.2007 provides for stay of departmental inquiry, if the charge in the criminal case is of grave nature which involves complicated questions of law.

3) Also as per Central Vigilance Manual, 4.3, once a case has been referred to and taken up by the CBI for investigation, further investigation should be left to them and parallel investigation by the departmental agencies should be avoided and any further action is to taken on completion of investigation by the CBI on the basis of their report.

AND WHEREAS, the undersigned on consideration of the circumstances of the case and since the charge in the criminal case is of grave nature involving complicated questions of law and fact, has decided to stay the departmental proceedings till the conclusion of the criminal case and pronouncement of final judgment by Hon'ble Court."

3.2 The applicant states that after lapse of six years, the respondent No.3 has issued the impugned order dated 10.01.2020 to continue the departmental proceedings against him. At this he again approached the respondent No.3 vide his representation dated 27.08.2020 to keep the departmental enquiry in abeyance until the trial in Special CBI Court is concluded. It is stated that he has not received any communication from the respondents on his representation, though he was informed by the Inquiry Officer vide order dated 28.08.2020 that no stay was received and therefore, the enquiry will be conducted by

fixing next date of hearing i.e. 14.09.2020. As per the directive, preliminary hearing took place. The applicant again made request to the Inquiry Officer to keep the enquiry proceedings in abeyance in view of the judgment of Hon'ble Apex Court in the case of SBI & Ors. Vs. Neelam Nag and Anr. It is stated that though in the case of applicant, the Disciplinary Authority had stayed the departmental enquiry pending criminal trial relying upon the judgments passed by the Hon'ble Apex Court as well as DoPT OMs, however now arbitrarily he has ignored and disregarded his own order and issued directions to continue the departmental proceedings while appointing Kumari Usha Shode, RPFC-II, RO Thane (North) as the Inquiry Officer to enquire into the charges framed vide Charge Memorandum dated 09.05.2011 against the applicant.

3.3 It is stated that continuance of the enquiry would obstruct and interfere with the cause of justice and would seriously prejudice the defence of the applicant against the criminal charge. In the criminal trial, the prosecution ought not get the opportunity to know the defence before hand before bringing witnesses for examinations, as they may get an unfair advantage to lead witnesses through Examination-in-Chief to scuttle the defence and thus greatly prejudice the case of applicant rendering the trial unfair and against the principles of res-jurisprudence. The applicant further states that the

reliance is being placed by the prosecution on the tape recorded conversation, the authenticity and integrity of the same is being challenged by the applicant in terms of law laid down by the Hon'ble Apex Court in the case of Ziyauddin Burhanuddin Bukhari Vs. Brijmohan Ramdass Mehra, AIR 1975 SC 1788 and subsequent judgments of the Apex Court on the subject.

3.4 The applicant further states that the Disciplinary Authority in arbitrary manner has not considered the facts and peculiar aspects of the case for deciding the issue of keeping the proceedings in abeyance in terms of established law by Hon'ble Apex Court and various OMs of Government of India which were relied upon by the applicant in his representations. Further that the DoPT OM dated 01.08.2007 clarifies that in serious cases involving offences such as bribery/corruption, etc merely because the criminal trial is pending, the departmental enquiry involving the very same charges as is involved in the criminal proceedings is not barred and the only exception to this was in the situation where the charge in the criminal case is of a grave nature involving complicated questions of law and fact as mentioned in para 3 of OM dated 01.08.2007.

3.5 The applicant has stated that on account of the impugned order dated 10.01.2020, the Inquiry Officer has commenced the proceedings with direction to the applicant

to attend the hearing on 14.09.2020. At the same time, the recording of evidence has also commenced in the criminal trial before the Special Judge CBI with the next date of hearing for 24.09.2020. Hence, he filed the present OA seeking stay of the departmental proceedings pending disposal of the criminal proceedings referred above or at least as an interim measure for a period of 12 months so as to prevent the prejudice being caused to the applicant by disclosing the grounds of defence in the departmental enquiry before cross-examination of the prosecution witnesses.

3.6 The applicant has placed reliance on the following judgments:-

- Captain M. Paul Anthony Vs. Bharat Gold Mines Ltd
1999 AIR SCW 1098
- Pradhan Singh Vs. M/o. Personnel, Public Grievances and Pensions (OA No.1082/2018 before CAT Principal Bench, Delhi).
- Kundanlal Parganiha Vs. Union of India (CAT Mumbai Bench OA 206 of 2019)
- Dhananjay Kumar Vs. Union of India (CAT Mumbai Bench OA 385 of 2019)
- R.P. Meena Vs. Union of India order dated 31st July 2018 CAT Mumbai Bench OA 502 of 2018.

3.7 The applicant has challenged the impugned order on the grounds that there is no dispute that the charge in criminal case against the applicant is of grave nature involving complicated questions of law and facts, therefore, the Disciplinary Authority itself had decided to stay the departmental proceedings till the conclusion of the criminal case. Further, the DoPT has issued OM dated 01.08.2007 whereby the Disciplinary Authorities have been advised to stay the departmental proceedings pending the hearing and final disposal of criminal trial involving complicated questions of law and facts. The respondents have made no independent investigation into the matter and are relying upon the same material, both documentary as well as oral evidence with same set of witnesses and documents which are the subject matter of the criminal trial.

4. The respondents have contested the OA and filed detailed reply affidavit, wherein at the outset it is stated that the earlier decision of the respondents to keep the departmental proceedings in abeyance was on the basis of the DoPT OM dated 01.08.2007. However, as per para 3 of the said OM, in the event the criminal trial is continuing for a very long period in time, the departmental proceedings even if initially stayed can be recommenced. It is stated that the applicant is claiming benefit of one part of the OM and is resenting to the

order passed by the respondents in terms of other part of the same OM. He is approbating and reprobating in the same breath. As per DoPT OM dated 21.07.2016, the purpose of the criminal case is entirely different from that of the departmental proceedings. A criminal case has to be proved beyond reasonable doubt whereas the departmental proceedings have to be only proved on the touchstone of preponderance of probability. It is stated that the several judgments have been relied upon by the DoPT while holding that the criminal trial and the departmental proceedings can go on simultaneously. Reliance has been placed by respondents on the judgment of Hon'ble Delhi High Court in the case of Mahabir Singh and Anr. Vs. Union of India decided on 29.11.2001 holding that the purpose of both the criminal and departmental proceedings are entirely different and they can run concurrently. The respondents, relying upon the judgment of Hon'ble Apex Court in the case of K.G. Premshankar, 2002 (VIII) SCC Page 87, stated that the main thrust of the applicant is on the contention that once the competent authority has taken a considered view to stay the disciplinary proceedings as long as criminal trial is not over, the same authority cannot revisit the earlier decision as it becomes *functous officio*, whereas, as per the OM dated 01.08.2007, the same very authority has the power to reconsider the decision, if the criminal trial continues for very long period which in the present

case has been more than 12 years. This has to be treated as a change in the circumstances warranting revisiting of earlier decision of holding or keeping the departmental proceedings in abeyance pending criminal trial. Therefore, the impugned order against the applicant dated 10.01.2020 was issued based on the instructions received from EPFO Vigilance Headquarters, New Delhi vide letter No.Vig.VIII(18)2008/4645 dated 25.09.2019 and letter No.Vig.VIII(18) 2008/4758 dated 10.10.2019 wherein reference is made to DoPT OM No.11012/6/2007.Estt(A-III) dated 21.07.2016 and CVC Circular No.99/VGL/087-389176 dated 31.07.2018 which advices simultaneous action of prosecution and initiation of departmental proceedings. Therefore, the respondent No.3 has decided to continue the departmental proceedings.

4.1 Regarding the decision of Hon'ble Apex Court in the case of Neelam Nag (supra), it is stated that the same was on the basis of facts of that case and no law has been laid down in favour of putting the departmental enquiry on hold. The facts of present case are different from the facts of Neelam Nag's case. In the present case, the applicant was caught red-handed by the CBI and there exists voice recordings and other indisputable proof against the applicant.

4.2 The respondents have claimed that the policy decision of the DoPT is being followed in letter and

spirit and, therefore, does not warrant any interference particularly in view of the fact that the OM dated 01.08.2007 has not been challenged by the applicant. The respondents seek dismissal of the OA.

5. We have heard the arguments addressed by learned counsels for both the parties and the written submissions filed on behalf of the applicants.

6. Learned counsel for the applicants has vehemently argued that the review of the order dated 28.04.2014 granting stay to the departmental proceedings till the disposal of the criminal case pending against the applicant is illegal and violative of the fundamental rights of the applicant under Article 14 and 21 of the Constitution. He further argues that an authority cannot pass two different orders on the same material. Review of an order is impermissible in law, if there is no new material facts on record. Besides, the applicant was not given an opportunity of being heard before review of the order dated 28.04.2014, therefore, the impugned order is void, illegal and contrary to the judgment of the Hon'ble Apex Court in number of cases whereby it is held that an order to the prejudice of a person cannot be passed without giving him a reasonable opportunity of being heard. To this effect, he has placed reliance on the judgment of Hon'ble Apex Court in the case of State of Himachal Pradesh Vs. Nishant Sareen, 2010 (14) SCC 527. The relevant

paragraph 12 is read as under:-

"The power of review, however, is not unbridled or unrestricted. It seems to us sound principle to follow that once the statutory power under Section 19 of the 1988 Act or Section 197 of the Code has been exercised by the Government or the competent authority, as the case may be, it is not permissible for the sanctioning authority to review or reconsider the matter on the same materials again. It is so because unrestricted power of review may not bring finality to such exercise and on change of the Government or change of the person authorised to exercise power of sanction, the matter concerning sanction may be reopened by such authority for the reasons best known to it and a different order may be passed. The opinion on the same materials, thus, may keep on changing and there may not be any end to such statutory exercise. In our opinion, a change of opinion per se on the same materials cannot be a ground for reviewing or reconsidering the earlier order refusing to grant sanction."

7. Learned counsel has further argued vehemently that the impugned order dated 10.01.2020 recalling the order dated 28.04.2014 is violative of Article 14 of the Constitution as the order of stay of the departmental proceedings was well considered decision on the basis of the judgments of the Hon'ble Apex Court and DoPT OMs. In this regard, he has further placed reliance on the judgments of Hon'ble Apex Court in the case of *E.P. Royappa Vs. State of Tamil Nadu*, (1974) 4 SCC 3, *Rattiararam Vs. State of Madhya Pradesh*, AIR 2012 SC 1485 and *Mohd. Hussain @ Julfikar Ali Vs. The State (Govt. of NCT)*, Criminal Appeal No.1091 of 2006, to the effect that his constitutional right to equality has been violated vide impugned order. There is also violation of Article 21 of the Constitution as the applicant has been deprived of his right to fair trial as enshrined in the Constitution of India. Time and again he has argued that applicant

cannot be compelled to disclose his defence in the impugned departmental proceedings which could be used against him in the criminal trial, seriously prejudicing his defence therein. He has further submitted that in the case of SBI Vs. Neelam Nag (Supra), the disciplinary proceedings were delayed by more than 10 years due to stay order, despite that the Hon'ble Apex Court had further granted another one year stay on these proceedings. Therefore, the departmental proceedings pending against the applicant deserve to be stayed pending the hearing and final disposal of the criminal trial pending before the Court of Special Judge at Thane on the identical facts and circumstances with common set of witnesses and documents. The applicants' counsel further argued that on account of the law laid down by the Hon'ble Apex Court in various judgments, the DoPT issued OM dated 01.08.2007 vide which the disciplinary authorities have been advised to stay the departmental proceedings pending the hearing and final disposal of criminal trial in the cases of grave nature involving complicated questions of law and facts.

8. On the other hand, learned counsel for the respondents has justified the impugned order vacating the stay on the departmental proceedings on the ground that the OM dated 01.08.2007 is not only dealing with the aspect of stay of the disciplinary proceedings pending

final disposal of criminal trial in cases of grave nature involving complicated questions of law and facts but in the later part of para 3 of OM, it is clearly mentioned that 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. He also refers to the decision of Hon'ble Apex Court in the case of State of Rajasthan Vs. B. K. Meena and Others (1996) 6 SCC 417 where the Hon'ble Apex Court has emphasised the need for initiating departmental proceedings in such cases. Learned counsel also submitted that in the case of Capt. M. Paul Anthony (supra), the Supreme Court has observed that departmental proceedings and proceedings in criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately. The purpose of resuming the departmental proceedings is only 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 warrant. He further states that the Disciplinary Authority in the present case reinitiated the departmental enquiry based on the OMs dated 01.08.2007,

21.07.2016 and CVC instructions issued vide circular dated 31.07.2018. Mr. Shetty submits that since the respondents have followed the policy decisions of the DoPT in their true letter and spirit, therefore, the impugned order dated 10.01.2020 does not warrant any interference. He has further stated that the applicant has not challenged any of the OMs or the CVC instructions referred above.

9. After hearing the submissions of both the parties, we have carefully perused the various judgments of the Hon'ble Apex Court cited by both the parties and the material available on record specifically DoPT OMs dated 01.08.2007 and 21.07.2016 and the CVC instructions dated 31.07.2018.

10. The Hon'ble Apex Court in the case of M/s. Stanzen Toyotetsu India P. Ltd. Vs. Girish V. & Ors, SLP (C) Nos.30371-30376/2012 decided on 21.01.2014 has made certain relevant observations in para 9 of the judgment on the issue under consideration reproduced as follows:-

"9. We have heard learned counsel for the parties at some length. The only question that falls for determination in the above backdrop is whether the Courts below were justified in staying the on-going disciplinary proceedings pending conclusion of the trial in the criminal case registered and filed against the respondents. The answer to that question would primarily depend upon whether there is any legal bar to the continuance of the disciplinary proceedings against the employees based on an incident which is also the subject matter of criminal case against such employees. It would also depend upon the nature of the charges in the criminal case filed against the employees and whether the case involves complicated questions of law and fact. The possibility of prejudice to the employees accused in the criminal case on account

of the parallel disciplinary enquiry going ahead is another dimension which will have to be addressed while permitting or staying such disciplinary enquiry proceedings. The law on the subject is fairly well-settled for similar issues and has often engaged the attention of this Court in varied fact situations. Although the pronouncements of this Court have stopped short of prescribing any straight-jacket formula for application to all cases the decisions of this Court have identified the broad approach to be adopted in such matters leaving it for the Courts concerned to take an appropriate view in the peculiar facts and circumstances of each case that comes up before them."

11. The Hon'ble Apex Court while discussing its judgment in the case of Divisional Controller, Karnataka State Road Transport Corporation Vs. M.G. Vittal Rao (2012) 1 SCC 442 made the following observations:-

"The relatively recent decision of this Court in Divisional Controller, Karnataka State Road Transport Corporation v. M.G. Vittal Rao, (2012) 1 SCC 442, is a timely reminder of the principles that are applicable in such situations succinctly summed up in the following words:

"(i) There is no legal bar for both proceedings to go on simultaneously.

(ii) The only valid ground for claiming that the disciplinary proceedings may be stayed would be to ensure that the defence of the employee in the criminal case may not be prejudiced. But even such grounds would be available only in cases involving complex questions of facts and law.

(iii) Such defence ought not to be permitted to unnecessarily delay the departmental proceedings. The interest of the delinquent officer as well as the employer clearly lies in a prompt conclusion of the disciplinary proceedings.

(iv) Departmental Proceedings can go on simultaneously to the criminal trial, except where both the proceedings are based on the same set of facts and the evidence in both the proceedings is common."

12. In the case of Captain M. Paul Anthony vs. Bharat Gold Mines Ltd., (1999) 3 SCC 679 the Hon'ble Apex Court has also laid down the following broad principles for application in the facts and circumstances of a given case:

"(i) Departmental proceedings and proceedings in a criminal case can

proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

(ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee 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.

(iii) 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 nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge sheet.

(iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the Departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed 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 honor may be vindicated and in case he is found guilty, administration may get rid of him at the earliest."

13. In the case of **Hindustan Petroleum Corporation Ltd. & Ors. Vs.**

Sarvesh Berry, Civil Appeal No.7980/2004 decided on 09.12.2004, the Ho'ble

Apex Court held as under :-

"It is fairly well-settled position in law that on basic principles proceedings in criminal case and departmental proceedings can go on simultaneously, except in some cases where departmental proceedings and criminal case are based on the same set of facts and the evidence in both the proceedings is common. It is in these cases, the Court has to decide, taking into account special features of the case, whether simultaneous continuance of both would be proper".

It is further held as under:-

'The purpose of departmental enquiry and of prosecution is 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 breach 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 backdrop 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 duty, as distinguished from mere private rights punishable under criminal law. When trial for criminal offence is conducted it should be in accordance with proof of the offence as per the evidence defined under the provisions of the Indian Evidence Act 1872 (in short 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. Under these circumstances, what is required to be seen is whether the department 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'.

14. In the present case also, the applicant is facing the criminal trial vide Special case No.28(A) of 2008 under Section 7 and 8 and 13(2) r.w. 13(1)(a) of Prevention of Corruption Act 1988 and Section 120B of the IPC apart from the departmental proceedings on the identical facts with common set of witnesses and documents. In view of the judgments of the Hon'ble Apex Court discussed above, there is no legal bar for the criminal proceedings as well as departmental proceedings to go on simultaneously. The applicant is seeking relief to quash and set aside the impugned order dated 10.01.2020 on the grounds that the departmental proceedings which were stayed earlier by the Disciplinary

Authority vide order dated 28.04.2014 were resumed contrary to the law laid down by the Hon'ble Apex Court in various judgments and even the OM dated 01.08.2007. His contention is that since the criminal trial pending against the applicant is not yet concluded, therefore, the defence of the applicant is likely to be disclosed during the cross examination of the witnesses in departmental proceedings and would cause serious prejudice to him. Admittedly, as per order dated 28.04.2014, the respondents took decision to keep in abeyance the departmental proceedings pending against the applicant during the pendency of the criminal proceedings based on the same facts and circumstances, witnesses and documents, in terms of the DoPT OM dated 01.08.2007 with the subject "***Simultaneous action of prosecution in a court and initiation of departmental proceedings***" Paras 2 and 3 of the OM 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."

15. The aforesaid OM is based on the observations and directions made by the Hon'ble Apex Court in the case of B.K. Meena (supra), Capt. M. Paul Anthony (supra), Kendriya Vidyalaya Sangathan. (supra) and Noida Entrepreneurs Association Vs. Noida, JT 2007 (2) SC 620. From the bare reading of the above OM, it is clear that merely because the criminal trial is pending, a departmental enquiry involving the same very charge is not barred since the objective of the criminal proceedings and the disciplinary proceedings are altogether different. The OM further says, if 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 till the conclusion of the criminal trial. At the same time, it clearly finds mention 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 the criminal trial can be resumed. The OM dated 01.08.2007 makes it crystal clear that the departmental proceedings cannot be stayed indefinitely during the pendency of criminal trial and if stayed, can be resumed if the criminal proceedings are causing undue delay in its disposal. The Hon'ble Apex Court in the case of B.K. Meena (supra) and Capt. M. Paul Anthony (supra) also observed that if a criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date with a view that if the employee is found not guilty, his honour may be vindicated and in case he is found guilty, administration may get rid of him at the earliest.

16. In the present case, the charge sheet against the applicant in the criminal trial was filed on 16.10.2008. The departmental proceedings with the same set of facts and circumstances, common witnesses and documents were initiated vide Memorandum dated 09.05.2011. The departmental proceedings were stayed vide order dated 28.04.2014 by the Disciplinary Authority in view of the OM dated 01.08.2007. However, later on DoPT issued another OM dated 21.07.2016 with the subject '*Simultaneous*

action of prosecution and initiation of departmental proceedings' in view of the judgment of Hon'ble Apex Court in the case of Ajay Kumar Choudhary Vs. Union of India, 2015 (2) SCALE, reaffirming that there is no bar in law for simultaneous criminal and departmental proceedings on the same set of allegations. This OM was followed by the CVC instructions vide circular dated 31.07.2018 which reiterates that Disciplinary Authority may withhold disciplinary proceedings only in exceptional cases wherein the charge in the criminal case is of grave nature involving complicated questions of fact and law. It further speaks, the disciplinary proceedings once stayed can be resumed if the criminal case gets unduly delayed. Para 4 of the CVC circular reads as under:-

"4. The Commission would like to clarify that Disciplinary Authorities are vested with responsibility to ensure that employees under their control, against whom criminal trial is pending are proceeded against forthwith for simultaneous departmental proceedings. Further, a view as to whether simultaneous disciplinary proceedings are to be initiated need to be invariably taken by the Competent Authorities at the time of considering the request for grant of sanction for prosecution itself. However, the Disciplinary Authority may withhold departmental proceedings only in exceptional cases wherein the charge in the criminal trial is of grave nature which involves questions of fact and law. In other words, in complex matters where, in case it is not possible to delineate the misconduct for the purpose of RDA. 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. Further, even if stayed at one stage, the decision may require reconsideration, if the criminal case gets unduly delayed. It may be noteworthy to mention that the Hon'ble Supreme Court in State of Rajasthan Vs. B.K. Meena & Ors. (1996) 6 SCC 417 emphasised the need for initiating departmental proceedings and stated as below:-

"It must be remembered that interests of administration demand that the undesirable elements are thrown out and any charge of misdemeanor is enquired into promptly. The disciplinary proceedings are meant not really to punish the guilty but to keep the administrative machinery unsullied by getting rid of bad elements. The interest of the delinquent officer also lies in a prompt conclusion of the disciplinary proceedings. If he is not guilty of the charges, his honour should be vindicated at the earliest possible moment and if he is guilty, he should be dealt with promptly according to law. It is not also in the interest of administration that persons accused of serious misdemeanor should be continued in office indefinitely, i.e., for long periods awaiting the result of criminal proceedings."

17. It is in the light of OM dated 21.07.2016 which makes reference to the OM dated 01.08.2007 and the CVC instructions dated 31.07.2018, the Regional PF Commissioner-I Vigilance wrote letter dated 25.09.2019 to the respondent No.3 to review the departmental proceedings in respect of the applicants which have been kept under abeyance. Thus, it is only in view of the judgments of the Hon'ble Apex Court and the OMs dated 01.08.2007, 21.07.2016 and CVC instructions dated 31.07.2018, the Disciplinary Authority issued order dated 10.01.2020 to resume the departmental proceedings which were earlier stayed vide order dated 28.04.2014 till the conclusion of the criminal trial against the applicant. The reason for reviewing the earlier order is quite evident that the departmental proceedings remained stayed for a period of around 6 years but did not conclude. This issue is no more *res integra* that both the departmental and criminal proceedings based on the same

set of facts and circumstances can proceed simultaneously. However, balance has to be drawn between the need for a fair trial to the employee in the criminal proceedings on one hand and the demand for expeditious concluding of ongoing departmental proceedings on the other hand. The pendency of a criminal case against the delinquent cannot be the sole basis to suspend the disciplinary proceedings against him for an indefinite period. In the present case, the departmental proceedings remained stayed for around six years but the criminal trial did not conclude. Considering the fact that the criminal trial is proceeding at snail's pace, there is no possibility of the same being concluded in near future as admittedly till date only one prosecution witness has been examined against the applicant in the criminal trial and PW -2 is under examination, though the chargesheet in the criminal case was filed in the year 2008. The departmental proceedings are also on hold for about six years due to the pending criminal trial against the applicant. No material has been placed on record by the applicant as to why there is delay in the criminal trial and what steps he has taken to get the criminal trial concluded at the earliest. The Hon'ble Apex court in the case of B.K. Meena (supra), Capt. M. Paul Anthony (supra) and several other judgments have held that the departmental proceedings cannot be kept in abeyance

indefinitely. The contention of the applicant that there was no new material available with the Disciplinary Authority to review the order dated 28.04.2014, has no force as delay of departmental proceedings by six years itself was a new circumstance, new ground available to Disciplinary Authority to review the order of stay as the departmental proceedings were unduly delayed. The allegations against the applicant are of serious nature i.e. of demanding and accepting bribe, therefore, the disciplinary proceedings cannot be stayed indefinitely. The applicant was given ample protection against disclosing his defence by staying the departmental proceedings for a period of six years and now it was for him to have taken necessary steps for conclusion of the criminal trial at the earliest though within a reasonable time. Therefore, in our opinion the respondents have rightly vide impugned order dated 10.01.2020 have ordered to continue the departmental proceedings in the light of OMs dated 01.08.2007, 21.07.2016 and CVC instructions dated 31.07.2018 based on the judgments of Hon'ble Apex Court. We need to comment here that the applicant had conveniently accepted the order of stay of departmental proceedings as per first part of para 3 of the OM dated 01.08.2007 ignoring the later part under which the impugned order has been issued. Para 3 second part of the OM clearly empowers disciplinary authority to revisit the

order of stay of the departmental proceedings in case of undue delay in criminal trial. The applicant has enjoyed the luxury of the stay of the departmental proceedings for a period of around six years during which neither the criminal trial concluded nor the departmental proceedings continued. The applicant has placed reliance on the judgment of Hon'ble Apex Court in the case of Neelam Nag (supra), we fully agree with the aforesaid judgment, however, the same is not applicable to the facts and circumstances of the present case. We also do not find force in the argument of the applicant that the impugned order is violative of Articles 14 and 21 of the Constitution. He has failed to demonstrate as to how there is violation of these Articles when the impugned order has been issued within the four corners of OMs dated 01.08.2007, 21.07.2016 and CVC instructions dated 31.07.2018 based on the law laid down by the Hon'ble Apex Court as discussed in the above paragraphs. In the light of these judgments and the OMs, we are of the considered view, howsoever grave are the charges and complicated questions of law and facts involved, the departmental proceedings cannot be stayed indefinitely and this fact cannot be denied that in the the present case undue delay has already been caused by stay of these proceedings. Moreover, as held by the Hon'ble Apex Court in the case of Capt. M. Pal Anthony (supra), the purpose of resuming

the department proceedings is not to cause prejudice to the employee but to ensure 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. The DoPT OMs referred above have been issued on these lines. We also cannot ignore the fact though the applicant has challenged the impugned order passed by respondent No.3 under the guidance of these OMs and the CVC circular, however, neither the OMs nor the CVC circular have been challenged by the applicant.

18. In view of the above discussions, this is not a fit case to exercise the power of judicial review. We find no infirmity in the impugned order, hence, both the OAs, being devoid of merits, are dismissed. No order as to costs.

(Ravinder Kaur)
Member (J)

(Dr. Bhagwan Sahai)
Member (A)

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JD
17/02/21

