IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 1000 of 1986 198
T.A. No.

DATE OF DECISION 12.3.87

Shri S.K. Bahadur — Petitioner

Shri M. Chandrashekharan — Advocate for the Petitioner(s)

Versus

Union of India — Respondent

Shri G. Ramaswamy, Additional Solicitor General with Shri N.S. Mehta — Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr.S.P.MUKERJI, ADMINISTRATIVE MEMBER

The Hon'ble Mr.H.P.BAGCHI, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ? No
2. To be referred to the Reporter or not ? No
3. Whether their Lordships wish to see the fair copy of the Judgement ? No

(H.P.BAGCHI)
JUDICIAL MEMBER

(S.P.MUKERJI)
ADMINISTRATIVE MEMBER

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
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Regn.No.OA1000/86 DATE OF DECISION:12.3.87

Shri S.K. Bahadur ...Petitioner

Versus

Union of India ...Respondent

FOR PETITIONER: Shri M.Chandrashekharan, Advocate

FOR RESPONDENT: Shri G.Ramaswamy, Addl. Solicitor General and Mr. N.S. Mehta, Advocate

CORAM: HON'BLE MR. S.P.MUKERJI, ADMINISTRATIVE MEMBER
HON'BLE MR. H.P.BAGCHI, JUDICIAL MEMBER

JUDGMENT:

The applicant, Shri S.K. Bahadur, who was working as Joint Secretary and Legal Adviser in the Ministry of Law, and was working as Joint Secretary & Legal Adviser to the Chief Controller of Imports & Exports, has moved the Tribunal with his application dated 11.11.86 under Section 19 of the Administrative Tribunals Act praying that the proposed disciplinary proceedings under Rule 19 of the Central Civil Service (CCA) Rules, 1965 should be stayed till a final decision in the matter from the court of law is available.

2. The brief facts of the case can be recounted as follows. The applicant was directly appointed as Deputy Legal Adviser in the Ministry of Law and Justice on 16.10.69 and posted in Delhi in the pay scale of Rs.1100-1600. In 1974, he was promoted to the rank of the Additional Legal Adviser in the pay-scale of Rs.1500-2000 and after two deputations to the Ministries of Defence and Labour, he came back to the Ministry of

Law on 11.1.79 as Joint Secretary and Legal Adviser in the pay-scale of Rs.2500-2750. He was posted for some time in the Law Ministry's Branch Secretariat at Calcutta and in March, 1983, he was transferred to Delhi and posted as Joint Secretary and Legal to the Chief Controller of Exports and Imports with effect from 6.7.1983. On 3.12.84, a case was registered in the Delhi Police Special Establishment against the applicant under Section 5(2) read with Section 5(1)(e) of the Prevention of Corruption Act, 1947 alleging that the applicant was in possession of assets and pecuniary resources disproportionate to his own sources of income. The case is now pending before the Special Judge, Tis Hazari Courts, Delhi where a charge-sheet has been filed. Further the respondent has moved an application in the court the learned District Judge on 18.12.85 praying that orders under Section 4 of the Criminal Law (Amendment) Ordinance be passed for interim attachment of the movable and immovable properties of the applicant and his relatives. The applicant was suspended on 12.12.84. According to the S.P.(Investigation) immediately before the check period i.e., between 16.10.69 and 4.12.84, the applicant did not have considerable movable or any immovable assets and his bank balance and assets were worth Rs.21,000/- only. Immediately after the check period, i.e., on 4.12.84, he was found to be in possession of assets/properties/ pecuniary resources in his own name and in the name of his family members to the tune of Rs.46.94 lacs of which it is alleged that Rs.45.37 lacs are disproportionate to his known sources of income. While the criminal

case was registered by the S.P.E. on 3rd December, 1984, and raid was conducted at his premises on 4.12.84 when Rs.14 lacs in cash were recovered. By the impugned memorandum dated 9.10.86, the petitioner was served with a charge-sheet for disciplinary proceedings. On 27.10.86, the applicant requested the respondents to stay the disciplinary proceedings in the interests of justice, since the matter was already subjudiced in the court of Special Judge and the District Judge, but the application was rejected. In this application, before the Tribunal, the petitioner has pleaded that since the disciplinary proceedings are based on the same facts and circumstances as in the criminal proceedings, in accordance with various rulings of the Supreme Court and the Tribunal, the respondents should have stayed the disciplinary proceedings. He has also indicated that the fact that the District Judge refused to stay the proceedings of attachment initiated by the respondents goes to show that the title of the impugned assets which forms the basis of the charge-sheet is not without doubt and has to be adjudicated upon. He has also argued that departmental proceedings at this stage would be prejudging the points at issue before the courts and will be a travesty of justice. He has referred to the Government of India's instructions below rule 14 of the CCS (CCA) Rules where it has been laid down that the departmental action in cases of bribery, corruption etc. should be taken only after the process of prosecution in the court of law has been completed.

3. The contention of the respondents is that the criminal prosecution and disciplinary proceedings are quite different and distinct. They have also indicated that the departmental proceedings is to ascertain whether the office has committed any misconduct and whether he is fit to be retained in service and the area covered by the two proceedings is not identical. According to them it has been established that there is no bar against departmental inquiry in respect of a charge which is also the subject matter of criminal prosecution. They have adverted to the articles of charge which mostly relate to the petitioner in not reporting or taking prior permission in relation to various transactions of movable and immovable properties. Thus, contravention of the provisions of the conduct rules has resulted, which cannot be decided by the criminal court.

4. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The main point raised by the learned counsel for the petitioner is that by subjecting him to disciplinary proceedings at a time when the criminal proceedings are also being conducted, the petitioner will be obliged to reveal his defence during the disciplinary proceedings on charges which are also at issue in the criminal court. This, according to the learned counsel, will compromise his defence and will give an undue

advantage to the prosecution and will make him handicapped in getting himself cleared in the criminal court. He has further argued that since conviction in the criminal court will result in ~~the~~ automatic termination of his services, by the process of disciplinary proceedings and by divesting him of his chances of successfully defending himself in the criminal court, The respondents are trying to indirectly short-circuit the disciplinary proceedings by precipitating his ~~dismissal~~ dismissal on the results of the disciplinary proceedings. The learned counsel has also referred to the Government of India's Insutructions No.2 below Rule 14 of the C.C.S.(CCA) Rules, 1965, which reads as follows:-

> "In all cases which are considered fit for prosecution according to the criteria laid down in the preceding sub-paragraphs, a report should be lodged with the police as soon as the case comes to notice and departmental inquiry should not be held simultaneously with the police inquiries except to the extent permitted by the police. The question of taking departmental action in such cases would arise after either completion of police inquiries or after the process of prosecution in a court of law have been completed....."(emphasis added).

The learned counsel has also referred to the ruling of the Calcutta Bench of the Central Administrative Tribunal in Abullais Khan Vs. The State of West Bengal and others: ATR 1986(2) C.A.T.97 in which it was held after considering the principles laid down in Tata Oil Mills Ltd. Vs. Workmen (AIR 1965 SC 155) and Khushi Ram v. Union of India (1974 Lab.I.C. 553) that fair play and equity demands that the applicant should not be compelled to disclose his defence in the departmental inquiry which may

possibly be taken in the criminal trial which also involves serious charges....." It was further observed that if there is a conviction of the applicant in the criminal court, the consequential orders of dismissal may follow from the government without an inquiry. Therefore, unnecessary wastage of money from the State Exchequer and wastage of public time could be well avoided.

5. It was also argued by the learned counsel for the petitioner that the petitioner is going to retire in six months while the respondents took more than 18 months to file a charge-sheet in the criminal court in July 1986 when the C.B.I. had registered the case as far back as on 3.12.84. According to the learned counsel for the petitioner, the disciplinary proceedings are now being started with unseemly haste to deprive the petition of the retirement benefits which will accrue to him after six months. He has also argued that the manner in which the charges have been framed during disciplinary proceedings shows that there has not been any application of mind.

6. In order to assess the main point of law raised by the petitioner that his interest will be unduly jeopardised in the criminal court by the initiation of the disciplinary proceedings, it will be useful to juxtapose the charges framed against him for the disciplinary proceedings and the charge-sheet pending before the criminal court. The articles

of charge in the disciplinary proceedings are as follows:

"

Article-I

That Shri S.K. Bahadur while functioning in different capacities in the Ministry of Law & Justice, Govt. of India during the period 16.12.69 to 4.12.84 failed to maintain absolute integrity and exhibited acts unbecoming of a Government servant in as much as he was found in possession on 4.12.84 unaccountable cash of Rs.14 lakhs, unaccountable gold and diamond jewellery worth Rs.2,96,905/- and unaccountable foreign exchange of US$ 2596 and British Sterling £ 1220, on 5.12.84 in possession of unaccountable cash of Rs.10.28,900/-, unaccountable gold jewellery worth of Rs.84,675/-, on 6.12.84 in possession of unaccountable cash of Rs.2,50,000/-, unaccountable gold and diamond jewellery worth Rs.1,57,650/- and on 7.12.84 in possession of unaccountable gold and diamond jewellery worth Rs.75,615/- suggesting that he acquired the said pecuniary resources by questionable means and/or from dubious sources.

AND, he thereby committed grave misconduct by contravening the provisions of rule3(1)(i) & 3(1)(iii) of the Central Civil Services (Conduct) Rules, 1964.

Article-II

That Shri S.K. Bahadur, while functioning in different capacities in the Ministry of Law & Justice, Govt. of India during the period 16.12.69 to 4.12.84 failed to maintain absolute integrity and acted in a manner unbecoming of an officer of his rank in as much as:-

(i)(a) he, while, posted as Joint Secretary in the Ministry of Law & Justice during 1982-83 did not intimate the competent authority about the acquisition of a plot No.B-93, Sector XXVII, NOIDA (New Okhla Industrial Development Area) measuring 276 sq. mts. purchased by his dependent wife Smt. Asha Bhatnagar at a cost of Rs.1,71,875.20 and also failed to report the said transaction in his immovable property return for the year 1982-83 and thereby contravened rules 18(2) and 18(4) of the CCS (Conduct) Rules, 1964.

(ii)b) he, while posted as Joint Secretary during 1984 did not obtain permission of the competent authority for the construction of a house on plot No.KD-63, Kavi Nagar, Ghaziabad (UP) acquired by him in the name of his dependent wife Smt. Asha Bhatnagar during Dec.83 to June 84 nor did he declare the same in the immovable property return filed by him for the year 1983. And he thereby contravened provisions of rule 18(2) & 18(4) of the CCS (Conduct) Rules, 1964.

iii)c) he, while posted as above did not report to the prescribed authority in respect of his registration on 27.11.1979 under Self Financing Scheme of Delhi Development Authority for the allotment of a category-III flat on payment of Rs.15,000/- and also in respect of payment of 3 instalments totalling Rs.2,32,730/- to the DDA during 1983-84. And he, thereby contravened the provisions of rule 18(3) of the CCS (Conduct) Rules, 1964.

iv)d) he, while posted as above during 14.6.82 to 22.6.82 did not report to the prescribed authority about getting his two dependent daughters, namely, Miss Taral Bahadur and Viral Bahadur, registered under Vth Self Financing Housing Registration Scheme, 1982 for the allotment of a category-III flat to each of them by DDA on payment of Rs.15,000/- each. And he thereby contravened the provisions of Rule 18(3) of the CCS(Conduct) Rules, 1964.

v) e) he while posted as above did not report to prescribed authority about getting his two dependent daughters, namely, Miss Taral Bahadur and Miss Viral Bahadur, registered on 9.5.83 with M/s. Maruti Udyog Ltd. for the allotment of Maruti-800 car each on payment of Rs.10,000/- each. And he, thereby contravened the provisions of rule 18(3) of the CCS(Conduct) Rules, 1964.

vi)f) he, while posted as above, did not report to the prescribed authority in respect of the acquisition of movable assets exceeding Rs.2,000/- each maely 3 Colour televisions, 3 Video cassette recorders, one AIWA Hi-Fi Casettee Stereo Deck (all of foreign make) one philips Hi-Q International Stereo system one refrigerator, one air conditioner, one Godrej safemyra steel almirah in his name/ names of the dependents of his family. And he thereby contravened the provisions of rule 18(3) of the CCS(Conduct) Rules, 1964.

vii)g) he, while posted as above during 1983-84 failed to maintain absolute integrity and exhibited acts unbecoming of a Government servant of his status in as much as he neither obtained permission nor reported to the comptent authority regarding his visits to Singapore, Hongkong, Bangkok andTokyo along with his dependent family members on getting cash payment made of Rs.96,388/- towards costs of the air tickets and the foreign exchange purchased under foreign travel scheme and in order to conceal the foreign trips he obtained earned leave from the Ministry from 30.5.83 to 12.6.83 and 14.5.84 to 27.5.84

on the misrepresentation that the leave was required by him on account of personal problems and domestic reasons and the leave address on both occasions were given as 84 Ghanta, Kisrol, Moradabad (U.P.) and he thereby contravened the provisions of rule 3(1)(i), 3(1)(iii) and 18(3) of the CCS (Conduct) Rules, 1964.

viii)h)he, while posted as above, did not report to prescribed authority about the transactions exceeding Rs.2,000/- in respect of two payments of Rs.5,000/- and Rs.8,000/- to Miss Ekta Wazirani, Junior Central Government Advocate, Ministry of Law and Justice, Delhi High Court through account payee cheques dated 8.1.83 and 6.8.84 respectively. And he thereby contravened the provisions of rule 18(3) of the CCS(Conduct) Rules, 1964

And thereby Shri S.K. Bahadur, committed gross misconduct in contravention of the provisions of Rules 3 and 18 of the Central Civil Services(Conduct) Rules, 1964.

7. As against the above, a charge-sheet filed in the Court of Special Judge, Anti-corruption, reads as follows:-

"The case No.RC3/84 CIU II was registered in CIU. II Branch of Delhi Special Police Establishment, Central Bureau of Investigation, New Delhi on 3.12.1984 against Shri S.K. Bahadur, formerly Joint Secretary and Legal Adviser, working in the Ministry of Commerce, CGIAS, Udyog Bhawan, New Delhi on allegation that Shri S.K. Bahadur was a corrupt officer and had by corrupt and illegal means managed huge assets which were disproportionate to his known sources of income. It was further alleged that Shri Bahadur had constructed a house in the name of his wife Asha Bhatnagar on Plot No.KD-43,Kavi Nagar, Ghaziabad (UP) at the estimated cost of Rs.3.38 lakhs in addition to a plot No.93, Block B Sector XXVII, NOIDA (UP) purchased for a sum of Rs.1.59 lakhs in the name of his wife. In addition to the above Shri Bahadur was also reported to be in possession of costly moveable assets like fiat car, refrigerator, Rajdoot Motor Cycle, Air-conditioner Colour T.V., Video Cassette Recorder, gold jewellery and luxurious furntiure etc."

8. A perusal of the articles in the disciplinary proceedings and the charge-sheet should show that except for Article I of the charge, there is no commonality between the imputations before the disciplinary authority and the charge-sheet before the criminal court. All the

articles of charges except the first refer to the alleged misconduct of the petitioner for not reporting certain transactions etc. to the competent authorities as required under the CCS(Conduct) Rules, 1964. These articles cannot be adjudicated upon by the criminal court. The standard of proof before the criminal court even in respect of any ground of Article 1 would by the nature of things vary. Even if the petitioner is acquitted in the criminal court that will not per se entitle him to be absolved of the charges of misconduct in the disciplinary proceedings in case these charges are proved. The frame of reference in the criminal court is about the culpability of the offences and the frame of the charges adopted by the disciplinary proceedings is in regard to the suitability for being retained in the government service. In this context, therefore, it appears to us that apart from the rulings of the Supreme Court and various High Courts, there cannot be any intrinsic disability to have disciplinary proceedings simultaneously with the criminal proceedings in the instant case.

9. We are reinforced in our aforesaid conclusion by the fact that subsequent to 13.6.77 when the Government of India's Instructions No.2 below rule 14 of the CCS(CCA) Rules was issued, the Central Vigilence Commission on 3.2.81 issued a circular No.IK DSP3 to all Chief Vigilence Officers of various ministries on 3.2.1981, para 2 of which reads as follows:-

> 2 There is a common misunderstanding that the institution of departmental proceedings in cases where criminal prosecution has been sanctioned may not be legal or might adversely affect the result of the criminal prosecution

> or vice versa. It is clarified that there is no legal bar to the initiation of disciplinary action under the rules applicable to the delinquent public servant where criminal prosecution is already pending, and generally there should be no apprehension of the outcome of the one affecting the other, because the ingredients of delinquency/misconduct in criminal prosecutions and departmental proceedings as well as the quantum of proof required in both cases are not identical. In criminal cases, the proof required for conviction has to be beyond reasonable doubt, whereas in departmental proceedings proof based on preponderance of probability is sufficient for holding the charges to have been proved.

10. Coming now to the various rulings of the Supreme Court and High Courts about the legality and desirability of running disciplinary proceedings and criminal proceedings on the same charges ~~together~~, it comes out very clearly that there no legal or constitutional bar to launch disciplinary proceedings while criminal proceedings are also on their way. In Delhi Cloth & General Mills Vs. Kushal Bhan, AIR 1960 SC 806, the Supreme Court observed as follows:-

> "It is true that very often employers stay enquiries pending the decision of the criminal courts and that is fair, but we cannot say that principles of natural justice require that an employer must wait for the decision of at least of the criminal trial court before taking action against an employee."

After considering Shri Bimal Kanta Mukherjee Vs. Messrs Newman's Printing Works :1956 Lab A.C.188, it was further observed in the aforesaid case that "we may however, add that if the case is of a grave nature or involves questions of fact or law, which are not simple, it would be advisable for the employer to await the decision of the trial court, so that the

defence of the employee in the criminal case may not be prejudiced. The present, however, is a case of a very simple nature and so the employer cannot be blamed for the course adopted by him. In the circumstances, there was in our opinion no failure of natural justice in this case.....". In Tata Oil Mills Vs. Vowkmen: AIR 1965 SC 155, the Supreme Court observed as follows:-

> "But to say that domestic enquiries may be stayed pending criminal trial is very different from anything (sic) that if an employer proceeds with the domestic enquiry in spite of the fact that the criminal trial is pending, the enquiry for that reason alone is vitiated and the conclusion reached in such an qnuiry is either bad in law or mala fide. In fairness, we ought to add that Mr. Menon did not seek to justify this extreme position. Therefore, we must hold that the Industrial Tribunal was in error when it characterised the result of the domestic enquiry as mala fide party because the enquiry was not stayed pending the criminal proceedings against Raghavan. We accordingly hold that the domestic enquiry in this case was properly held and fairly conducted and the conclusions of fact reached by the Enquiry Officer were basedon evidence which he accepted as true. That being so, it was not open to the Industrial Tribunal to reconsider the same question of fact and come to a contrary conclusion."

~~Simultaneous~~ Parallel enquiry by domestic tribunal and court in respect of misconduct of an employee was considered by the Supreme Court again in Jang Bahadar Singh v. Baijnath: AIR 1960 SC 30 with the following observations:

> "The issue in the disciplinary proceedings is whether the employee is guilty of the charges on which it is proposed to take action against him. The same issue may arise for decision in a civil or criminal proceeding pending in a court. But the pendency of the court proceeding does not bar the taking of disciplinary action. The power of taking such action is vested in the disciplinary auth ority. The civil or criminal court has no such power. The intention and continuation of disciplinary

> proceedings in good faith is not calculated to obstruct or interfere with the course of justice in the pending court proceeding. The employee is free to move the court for an order restraining the continuance of the disciplinary proceedings. If he obtains a stay order, a wilful violation of the order would of course amount to contempt of court. In the absence of a stay order the disciplinary authority in free to exercise its lawful power."

In State of Andhra Pradesh Vs. Sree Rama: AIR 1973 SC 1923 the Supreme Court upheld that the judgment in a criminal court is not binding in a departmental enquiry against the same public servant. The various rulings on a similar issue were considered by the Bombay High Court in Civil Writ Petition No.5327/86 in an unreported case, Kirloskar Borthers Limited and others Vs. Union of India and another decided on 7.1.87, the learned Judge observed as follows:-

> "3. We have gone through all the aforesaid decisions and are of the view that they do not avail the petitioners. The law on the subject so far laid down is very clear and can be summed up in the following propositions. There is no hard and fast rule that any of the proceedings should be stayed pending the other proceeding. Since the Act itself envisages simultaneous proceedings, the fact that there may be conflicting decisions in the proceedings is not a relevant consideration. Unless it is shown that either of the proceedings is started mala fide or to pressurise the other party, there is no need to stay any proceeding. In each case the court has to come to its own conclusion looking to the nature of the proceedings, delay that is likely to occur by stay of the proceedings resulting in loss of evidence, unavailability of witnesses, interests of administration of justice, public interests, the likely embarrassment to the parties etc.
>
> 4. In the present case the only ground that is urged by the petitioners to stay the adjudication proceedings is that they will be compelled to disclose their defence

to the criminal prosecution in the adjudication proceedings which may embarrass them in the criminal trial. According to us this apprehension is misplaced since in the affidavit filed on behalf of the Respondents it is categorically stated that they will not use in the criminal trial any of the statements made by the petitioners in the adjudication proceedings. In view of this assurance, the only ground urged in support of the petition does not survive.

5. Even otherwise we are of the view that the Act permits both adjudication and criminal prosecution simultaneously. To stay the adjudication proceedings till the criminal trial with all the appeals upto the High Court are over which is bound to take a pretty long time, will not be justified. The delay is bound to result in loss of precious evidence. Both the proceedings are started by the public authorities for a public purpose and neither of them can be said to be malafide, muchless to pressurise the petitioners in either of the proceedings. In view of the assurance given by the Respondents that the statements made in the adjudication proceedings will not be used in criminal proceedings neither the interests of justice nor the public interests require that the adjudication proceedings be stayed. The authorities should therefore be allowed to proceed according to law. What is more, any such precedent created in the present case will held up all adjudication proceedings which may be at present pending before the authorities.

6. Petitions are therefore rejected."

11. Thus, it is well established that parallel criminal proceedings and disciplinary proceedings against the same officer on the same charges are not barred in law. The question whether the defence put up by the petitioner in the disciplinary proceedings will amount to prejudicing his case before the criminal court by prematurely compelling him to reveal his defence during disciplinary proceedings which may be taken advantage of by the prosecution has been

amply taken care of in para 4 of the Bombay High Court's judgment quoted above. The same has been dealt with at length by the Hon'ble Supreme Court in Tukaram G. Gaokar Vs. R.N. Shukla and others: AIR 1968 SC 1050, in the following terms:-

> "The appellant then claims that the proceedings under Sections 111 and 112 are in violation of Article 20(3) of the Constitution. He says that unless the proceedings are stayed he will be compelled to enter the witness box to rebut the evidence of John D'Sa and will be forced in cross-examination to give answers incriminating himself. Article 20(3) affirms that "no person accused of any offence shall be compelled to be a witness against himself". The first information report has been lodged and a formal accusation has been made in it against the appellant charging him with offences in connection with the smuggling of gold. The appellant is, therefore, a person accused of an offence. But it is not possible at this stage to say that he is compelled to be a witness against himself. There is no compulsion on him to enter the witness box. He may, if he chooses, not appear as a witness in the proceedings under Sections 111 and 112. The necessity to enter the witness box for substantiating his defence is not such a compulsion as would attract the protection of Article 20(3). Even in a criminal trial, any person accused of the offence is a competent witness for the defence under Section 342-A of the Criminal Procedure Code and may give evidence on oath in disproof of the charges made against him. It may be very necessary for the accused person to enter the witness box for substantiating his defence. But this is no reason for saying that the criminal trial compels him to be a witness against himself is in violation of Article 20(3) Compulsion in the context of Article 20(3) must proceed from another person or authority. The appellant is not compelled to be a witness if he voluntarily gives evidence in his defence. Different considerations may arise if he is summoned by the customs authorities under Section 108 to give evidence in the proceedings under Sections 111 and 112. But he has not yet been summoned to give evidence in those proceedings. We express no opinion on the question, whether in the event of his being summoned he can claim the protection under Article 20(3) and whether in the eventof his being thereafter compelled to give incriminating answers he

can invoke the protection of the proviso to Section 132 of the Indian Evidence Act against the use of those answers in the criminal proceedings. It may be noted that counsel for the customs authorities gave undertaking in the High Court that they would not use in any criminal proceedings the statement, if any, that might be made by the appellant during the course of the adjudication proceedings."

12. The instant case seems to be a little better than the Gaokar's case inasmuch as while in Gaokar's case, the same authority, i.e., the Customs were not only adjudicating on imposition of penalty under Section 112(b) of the Sea Customs Act but also prosecuting the same person in a trial under Section 135(b) in a criminal court, in the instant case, while the disciplinary proceedings are being conducted by the Ministry of Law, the prosecution in the criminal case is being conducted by another organisation, i.e., C.B.I. which is not under the Ministry of Law.

13. In order to fortify the petitioner against any misutilisation of evidence adduced during the disciplinary proceedings, for the purpose of framing him in criminal proceedings, the learned Additional Solicitor General fairly gave an undertaking at the Bar that the respondents would not use in any criminaly proceedings the statment, if any, that might be made by the applicant during the disciplinary proceedings. In view of this, we feel that the apprehension of the petitioner that as a result of the disciplinary proceedings he will be

severely handicapped in defending his case in the criminal proceeding is unfounded.

14. Thus taking a holistic view of the facts and circumstances of the case, we are satisfied that both law and logic, common sense and common construction of the ratio of the various authorities discussed above, lead to the unmistakable conclusion that the case would not warrant our intervention for staying the disciplinary proceedings merely on the specious plea that the criminal proceedings have been initiated; more so when no mala fide against the respondents have been alleged much less established. To our mind, there is no question of 'testimonial' compulsion violating Article 20(3) of the Constitution prejudicing the case of the appellant in view of the solemn undertaking given by the learned Additional Solicitor General at the Bar. In sum, we find no merit in the application and the same is, accordingly, dismissed with no order as to costs.

(H.P. Bagchi) 12.3.87
Judicial Member

(S.P. Mukerji)
Administrative Member