

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

3
O.A. No. 1916/90
T.A. No.

199

DATE OF DECISION 30.11.90

<u>SHRI JAI PRAKASH</u>	Petitioner
<u>SHRI G.D. GUPTA</u>	Advocate for the Petitioner(s)
Versus	
<u>U.O.I. & ANOTHER</u>	Respondent
<u>SHRI M.L. VERMA</u>	Advocate for the Respondent(s)

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The Hon'ble Mr. P.C. JAIN, MEMBER(A)

The Hon'ble Mr. J.P. SHARMA, MEMBER(J)

1. Whether Reporters of local papers may be allowed to see the Judgement ? Y
2. To be referred to the Reporter or not ? Y
3. Whether their Lordships wish to see the fair copy of the Judgement ? N
4. Whether it needs to be circulated to other Benches of the Tribunal ? N

JUDGEMENT

(Judgement of the Bench delivered by Hon'ble
Mr. J.P. Sharma, Member(J).

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The applicant, Upper Division Clerk, under suspension,
~~XXXXXXXXXXXXXX~~ filed the application under Section 19 of the
Administrative Tribunals Act, 1985, on 11.9.1990 against the O.M. dated
23.4.1990 by which the request of the applicant for
holding the departmental enquiry in abeyance pending the
trial and decision of the criminal prosecution against the
applicant was not acceded to (Annexure-A-14).
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for

2. The applicant prayed for the following reliefs: -

- (i) quash the O.M. dated 23.4.1990 (Annexure-A-14).
- (ii) direct the respondents not to hold any departmental enquiry against the applicant on the allegations/charges which are subject matter of the criminal prosecution case against the applicant &
- (iii) declare the act of holding such enquiry against the applicant on the allegations/charges which are subject matter of the criminal prosecution against the applicant as illegal, void, ultravires, arbitrary and violative of Article 14 & 16 of the Constitution of India.

3. The applicant claimed the interim relief also that the respondents be restrained from holding any departmental enquiry as said above during the pendency of the O.A. An ex-parte ad interim stay was granted to the applicant by the order dated 21.9.1990: "In the meantime, disciplinary proceedings in pursuance of the memo dated 29.1.1990 (Anneuxre-A-5) are stayed till then. List on 5.10.1990 for hearing on the question of interim relief."

4. Heard the learned counsel of both the parties on the interim relief/OA as the grant or refusal of interim relief by itself disposes of the main relief claimed in the OA.

5. The brief facts are that the applicant was working in the office of the Protector of Emigrants under the Ministry of Labour. C.B.I. had launched a raid in the said office on 21.4.1988. At that time at about 6 P.M., according to the applicant, he was not present in the office. The raid was effected on the basis of a complaint dated 21.4.1988 by the Protector of Emigrants, on the basis of which the First Information Report was written. According to the applicant, though he was not named in the F.I.R. but later on somehow the name of the applicant was made to be involved by manipulation so he surrendered before the Special Judge on 2.5.1988 and was ordered to be released on bail. A charge-sheet against the applicant and others was filed on 22.9.1989 in the Court of the Special Judge, New Delhi under Sections 120-B r/w 161, and 165-A I.P.C. and Section 5(2) r/w 5(1)(d) of the Prevention of Corruption Act, 1947.

6. The applicant on 29.1.1990 was served with a charge-sheet (Annexure-A-5) under Rule 14 of the C.C.S. (C.C.A.) Rules, 1965. The Article of charge against the applicant is :

Article of Charge

"Shri Jai Prakash, while working as Lower Division Clerk/Upper Division Clerk in the office of Protector of Emigrants, Man Singh Road, New Delhi, amassed huge assets through corrupt and illegal means during the period from 1.4.1985 to 21.4.1988, which are disproportionate to the tune of Rs.57,654.85 to the known sources of his income.

Thus Shri Jai Prakash by his above act committed gross misconduct and failed to maintain absolute integrity and devotion to duty and acted in a manner unbecoming of a Govt. servant, thereby contravening the provisions of Rule 3(1) (i), 3 (1) (ii) and 3 (1) (iii) of Central Civil Services (Conduct) Rules, 1964."

Statement of imputation of misconduct in support of article of charge framed against Shri Jai Prakash, Upper Division Clerk in the office of Protector of Emigrants, New Delhi.

That Shri Jai Prakash was posted as Lower Division Clerk in the office of Protector of Emigrants, Man Singh Road, New Delhi on 1.4.1985. He was promoted as Upper Division Clerk and remained posted in the same office till the date of C.B.I's raid in the office of POE, Delhi i.e. till 21.4.1988. While he was posted in the office of POE on the seat Man Power (Group), it was his duty to attend to the files received from POE after his permission and approval. It was also the duty of Shri Jai Prakash to receive from the parties the required documents such as Passports, list of workers, emigration fees, deposit receipts (Challans), copies of service agreement of each worker etc. and to scrutinise these papers and then to put up the file to P.O.E. It was also his duty to return the passports to the concerned party after the approval of POE. Shri Jai Prakash while attending to the said work of different parties received habitually illegal gratification and amassed huge assets by such corrupt means. His verified assets acquired

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during the period from 1.4.1985 to 21.4.1988 came to Rs.1,60,826.80 (Appendix-I), whereas his total income from all legal sources comes to Rs.1,19,409.45 (Appendix-II). Shri Jai Prakash made house hold and educational expenditure only to the tune of Rs.16,237.50 and thus his likely saving during the period of check, i.e. 1.4.1985 to 21.4.1988 comes to Rs.1,03,171.95 (Appendix-III). Thus he is in possession of disproportionate assets to the tune of Rs.57,654.85.

7. The learned counsel for the applicant relied on Kusheshwar Dubey Vs. M/s. Bharat Coking Coal Ltd. & Ors., AIR 1988 S.C. page 2118. The Hon'ble Supreme Court in para 6 at page 2120 laid down: -

"The view expressed in the three cases of this 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 case, we do not think it necessary to say anything more, particularly when we do not intend to lay any general guideline.

Further in para 7 it has been held: -

"... In the instant case, the criminal action and the disciplinary proceedings are grounded upon the same set of facts. We are of the view that the disciplinary proceedings should have been stayed and the High Court was not right in interfering with the trial court's order of injunction which had been affirmed in appeal."

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8. It is, therefore, laid down by the Hon'ble Supreme Court that if the departmental enquiry against the applicant is grounded on the same charges which have been levelled against the applicant in the criminal prosecution then the departmental proceedings may be stayed till the decision of the pending criminal case.

The evidence ⁱⁿ the criminal case before the Special Judge containing the five FDRs amounting to Rs.50,000/- and a pass-book mentioning a balance of Rs.80,000/- besides other evidence is likely to be adduced. In the departmental proceedings the evidence following evidence besides other is to be adduced and that has been shown in Annexure-III to the charge-sheet (Annexure-A-5).

- (1) Copy of the F.I.R. in case RC 19(A)/88-DLI.
- (2) Disclosure memo by Jai Prakash (applicant) dated 3.5.1988 u/s 27 of Evidence Act.
- (3) Observation memo & Search memo dated 21.4.1988.
- (4) Statement of A/c No.14893 & 14775 P.N.B., Naraina.
- (5) Statement of A/c No.893 & seizure memo dated 5.5.88.
- (6) ^{out-cum-} Pointing/ recovery memo dated 5.5.1988.

9. The learned counsel for the respondents opposed the interim relief and placed reliance on ATC (1990) Volume 12. Page 621. Animoh Ram vs. U.O.I. However in the case of C.A.T. Patna the Hon'ble Bench held in para 7 "we are conscious that rare cases may arise where the criminal proceedings are based on the same set of facts and are attempted to be established by the same evidence, and that in such cases it may

be expedient and desirable to hold up the departmental
proceedings till the finalisation of the criminal pro-
ceedings". (emphasis supplied). In the present case the
evidence is common to both criminal proceedings and depart-
mental proceedings. The applicant has come before the
Court without delay while in the above cited case the
applicant ~~is~~ had done this after a year or so. The authority,
therefore, helps the applicant and does not help the respon-
dents. B.Rajamany Vs. Sr.Admn.Officer, (1989) Vol. 3 S.L.J.
Page 642 Madras Bench, C.A.T. is not applicable to the present/
as in that case an admission was made of the guilt by the
delinquent official in the departmental proceedings and no
further evidence was to be adduced. In the same journal at
page 358, Kamla Pd. Gaur Vs. U.O.I. & Ors. of Jabalpur Bench,
Central Administrative Tribunal has also/cited but that case
is totally different as the criminal case had already proceeded
and ended in acquittal and the plea was that in departmental
proceedings, no penalty could be imposed because of the acquittal
in the criminal case. ~~XXXXXXXXXXXX~~ In Kalyani Vs. Supdt.
Engg. & Ors. reported in 1989 A.T.L.T. Page 168, Karnataka
High Court lays down "there is no bar to hold departmental
enquiry during the pendency of the criminal trial on same
charge." Even in this authority on page 7 referring to the
case of Tata Oil Mills Co. (AIR 1965 S.C. 155) it has been
observed by the learned single Judge. of the Supreme Court
~~XXXXXXXX~~ that in a case of a grave nature it is advisable

for the employees to await the decision of the trial court so that the defence of employee in the criminal case may not be prejudiced." Reliance has been placed by the respondents on the authority S.K.Bahadur Vs. Union of India reported in 1987 (4) C.A.T., P.B. page 51 where it was held by a Division Bench that Disciplinary case can proceed simultaneously with the criminal prosecution. In this authority it has also been observed in para 8 at page 57 "a perusal of the articles in the disciplinary proceedings and the charge-sheet would show that except for Article 1 of the charge, there is no commonality between the imputations before the disciplinary authority and the charge-sheet before the Criminal Court."

9. The authority of Kusheshwar Pubey (supra) has to be followed in letter and spirit. In the present case allegation of possession of assets disproportionate to the known sources of income (income not profitable to the legal remuneration) on which the departmental enquiry had been ordered is exactly the same which is the subject matter of the criminal case (charge U/s 5(1) & 5(1)(d) of the Prevention of Corruption Act, 1947). Further, the evidence to be adduced in the two proceedings is almost the same. It is also well settled that in a criminal prosecution the accused is not to disclose his defence before the prosecution has established his case. If the department is simultaneously allowed to hold the departmental enquiry then in that case, he will be indirectly forced to disclose his defence during the proceedings of the departmental enquiry and prejudice this will certainly not be the case of the delinquent officer in prosecuting the trial in the criminal case.

10. In view of the above, the interim order passed on 21.9.1990 is made absolute and the respondents are directed not to proceed with the departmental enquiry till the final decision is given by the Court of the Special Judge as by the time the applicant would have also disclosed his defence. The departmental proceedings, therefore, are stayed till the decision of the criminal prosecution case is pronounced by the Court of the Special Judge, New Delhi.

11. In view of the above decision, we are also of the opinion that the O.A. has to be allowed at this stage alone as both parties have been finally heard and there is only the legal point involved in the case.

12. In the circumstances of the case, the OA is allowed and the interim order dated 21.9.1990 referred to in para 3 above, is made absolute as directed above. The parties are left to bear their own costs.

J.P. Sharma
(J.P. Sharma)
Member (Judl.)

P.C. Jain
(P.C. Jain)
Member (Admn.)