

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
PRINCIPAL BENCH,
NEW DELHI.

(6)

Date of decision:

3.1.92

OA 1914/91

JUGAL KISHORE

... Applicant.

Shri Mukul Sharma

... Counsel for the applicant.

VERSUS

THE UNION OF INDIA &
OTHERS

... Respondents.

Shri P.P. Khurana

... Counsel for the respondents.

CORAM:

THE HON'BLE MR. D.K. CHAKRAVORTY, MEMBER (A).

THE HON'BLE MR. J.P. SHARMA, MEMBER (JUDL.).

JUDGEMENT

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

The applicant, Inspector, Customs and Central Excise in the office of the Assistant Collector of Customs & Central Excise, Rohtak (Haryana), filed the application under section 19 of the Administrative Tribunals Act, 1985, challenging the order dated 22.3.91/Collector of Customs (Annexure A-1). By this above assailed order the respondent No.3 has instituted a disciplinary proceedings against the applicant. The applicant is also an accused in a criminal prosecution before the Special Judge, Delhi and in the charge-sheet filed against the applicant on 19.12.89 there are almost

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the same allegations and the same material which is the subject matter of the disciplinary proceedings.

In this application the applicant has claimed the following reliefs :-

That the disciplinary proceedings instituted against the applicant by the impugned order may be declared as incompetent and the proceedings of the disciplinary enquiry instituted against the applicant vide order dated 22.3.91, order to be held in abeyance during the pendency of the criminal prosecution against him.

The facts of the case are that in the year 1986 the applicant was posted as Inspector Customs in the office of the Assistant Collector of Customs, Foreign Post Office, New Delhi. The applicant is charged for allegedly fraudulent exports cleared by him and his colleagues in respect of firms M/s.V.K. Exports and M/s. Lusa Exports in a disciplinary proceedings by the impugned order dated 22.3.91 (Annexure A-1 to A-6).

The applicant and some of his colleagues have also been accused by the Central Bureau of Investigation vide FIR Nos.3(S)/88 and 4(S)/88 SIU(IX) SPE/CBI dated 18.4.88 for offence under section 120-B IPC read with section 419/420/468/471 IPC and section 5(1)(t) read with section 5(2) of the Prevention of the Corruption Act. The charge-sheet has already been filed in the court of the Special Judge, Delhi (Annexure A-7 to A-10).

After the institution of the charge-sheet the applicant and others substantially on the same charges

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on which the applicant and other co-accused are on trial in criminal case before the Special Judge, the disciplinary proceedings have been instituted. It is stated that the applicant read the list of witnesses proposed to be examined against the applicant. The disciplinary proceedings show that the list of witnesses in the disciplinary proceedings is only abbreviated form of the list of witnesses proposed to be examined against him in the criminal trial. According to the applicant the similar is the position with regard to the list of documents which have been relied upon the disciplinary authority (Annexure A-5) and the prosecution (Annexure A-9).

It is further stated that the documents supplied to the petitioner by the disciplinary authority are the same as supplied to him alongwith the charge-sheet of the criminal case. It is stated by the applicant that there is a grave danger to him if the criminal prosecution and the disciplinary proceedings against him go on simultaneously or the disciplinary proceedings are not held in abeyance during the conclusion of the criminal trial before the Special Judge, Delhi. Since the witnesses and the material to be established against the applicant at the criminal trial of the disciplinary proceedings being identical, by filing the written statement, by commenting upon the documents relied upon in the disciplinary proceedings and the cross examining witnesses put forth by the Presenting Officer at the disciplinary proceedings, the petitioner shall be disclosing his defence beforehand with respect to the charges against him at the criminal trial, which automatically puts his defence at great risk. As such the applicant shall not

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be in a position to attempt to properly defend himself. The applicant requested the disciplinary authority to stay the criminal proceedings but his request was rejected vide memo dated 5.7.91 (Annexure A-13).

The respondents contested the application and stated that the applicant and eight others of the department posted at Foreign Post Office during 1986-87 joined hands with one Ajay Kumar Chopra in claiming and receiving duty drawback of Rupees thirteen lakhs fourteen thousands thirty for the fraudulent exports of value of rupees seventy six lakhs twenty four thousands four hundred, on the basis of forged false documents. The charge-sheet under Rule 14 of the CCS CCA Rules 1965 was issued to the applicant alongwith other persons involved in the case vide order dated 22.3.91 for violation of Rule 3 of the CCS (Conduct) Rules 1964 which had been impugned in this case. The respondents have denied that the charge-sheet and list of documents and also witnesses are same or abbreviation of CBI's list of charge-sheet. It is further stated by the respondents that the pendency of the criminal case is no bar to the departmental proceedings (Annexure-A). It is said that the application has no force.

We have heard the learned counsel for both the parties at length and have gone through the records of the case. It is not disputed that the applicant alongwith other officers as well as one private individual are being tried in a criminal court before the Special Judge, Delhi under various offences of cheating and forgery under Anti-Corruption Act. with charge-sheet dated December '89. A challenge to that criminal charge-sheet has also been made before the Delhi High Court. The department, therefore,

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issued a memo dated 22.3.91 to proceed departmentally against the applicant. Though there appears to be no legal bar to departmental proceedings being held simultaneously with the criminal trial but at the same time the matter have come before the Hon'ble Supreme Court as well as other High Courts and each case has its own facts. In the case of Kusheshwar Dubey Vs. M/s. Bharat Cooking Coal Limited , AIR 1988 SC page 2118, the Hon'ble Supreme Court has observed at page 2120 that in a case where the criminal action of the disciplinary proceedings are grounded upon the same facts, the disciplinary proceedings should be stayed. The Supreme Court referred to its earlier decisions in the Delhi Cloth and General Mills Ltd. Vs. Kusal Bhan, AIR 1960 SC page 806 and in Tata Oil Mills Co. Ltd. Vs. its workmen, AIR 1965 SC page 155.

In the Annexure-A appended to the counter, it has been stated that the criminal investigation is no bar to the domestic enquiry and the pendency of criminal proceedings is no bar to the departmental enquiry. The judgement (Annexure-A) attached to the counter, of the Hon'ble Supreme Court in Masood Khan Vs. UOI, AIR 1974 SC page 28 and the decision of CAT in M.Deivasigamani Vs. Senior Divisional Mechanical Engineer, Southern Railway, Trichy and Another, 1987(3) ATC page 841 has been referred to but each case has its own facts and what is to be seen & judged as to whether the delinquent employee will be prejudiced in his defence in the Departmental Enquiry proceedings.

However, in view of the judgement in the Kusheshwar Dubey's case supra and in view of the recent decision of the Principal Bench in OA 593/90 M/s. Jagtar Khan Vs. the

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Commissioner of Police and Another, decided by the Principal Bench on 22.8.90, it has to be seen whether the allegations in the departmental enquiry is almost the same as in the charge-sheet filed in the Criminal Court. The learned counsel for the applicant argued that the ~~existing charges~~ charges framed against the applicant in the disciplinary proceedings are substantially based on the same accusation which are the subject matter of the charge-sheet dated 19.12.89 filed before the Special Court, Delhi. The article of the charge-sheet framed against the applicant in the departmental proceedings has been enclosed to the Annexure A-3 of the applications and that is reproduced below:-

Shri Jugal Kishore while functioning as Inspector, Customs in the office of the Asstt. Collector of Customs, Foreign Post Office, New Delhi, during 1986 misutilised his official position and failed to maintain absolute integrity and devotion to duty and committed gross mis-conduct in as much as :

That he in collusion with Shri HRK Bhatnagar, the then Superintendent Customs, Foreign Post Office, New Delhi, Shri Gurdeep Singh, the then Inspector of Customs, Foreign Post Office, New Delhi, Shri Gorakh Pal, the then Inspector, Customs, Foreign Post Office, New Delhi, Shri Rajiv Kapoor, the then Inspector Customs, Foreign Post Office, New Delhi, Shri Om Dutt Sharma, the then Inspector, Customs, Foreign Post Office, New Delhi, Shri N.Shanker, the then Inspector, Customs, Foreign Post Office, New Delhi, Shri K.D. Shah, UDC, Office of the Asstt. Collector of Customs, Foreign Post Office, New Delhi and Shri Ajay Chopra, resident of 649, Dr. Mukherjee Nagar, Cheated the government of India by allowing fraudulent export to Shri Ajay Chopra in the name of two non-existent

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firms M/s. V.K. Exports, Importers and Exporters, S-1/4, Guru Harkishan Shopping Arcade, Naniwala Bagh, Azadpur, Delhi, purported to be proprietorship concern of Shri V.K. Jain and M/s. Lusa Exporters, Importers and Exporters, Lusa Shopping Complex, LG-9, Azadpur, Delhi, purported to be proprietorship concern of Shri Ramesh Kumar, Shri Ajay Chopra has been signing as V.K. Jain for M/s. V.K. Exports and as Ramesh Kumar for M/s. Lusa Exports on all the export documents. Fraudulent export for a total FOB value of Rs.35,44,000/- has been allowed in the name of M/s. Lusa Exporters while fraudulent export for a total FOB value has been allowed in the name of M/s. V.K. Exports. On the basis of this fraudulent export duty drawback totalling to Rs.3,86,040/- and Rs.9,27,900/- has been given in the name of M/s. V.K. Exports and M/s. Lusa Exports respectively to Shri Ajay Chopra by the Customs. The export proceeds on account of fraudulent export have not been received in India and the papers supposed to be routed through the Bank of Baroda, Parliament Street, New Delhi have not routed through the said Bank.

He has allowed fraudulent export pertaining to post parcel No.1554 PP form No. PQ 177375 for a FOB value of Rs.26,000/- to M/s. Lusa Exports. This parcel was checked by him on 10.7.86 and as per the attestation made by him the parcel contained electronic components ceramic cartridges. The contents of the parcels were not as per the export documents and the same were dummy plastic moulds having no functional utility, as electronic components as per export documents. The false attestation made by him on the export documents

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falsely showing the fraudulent export to be genuine export has facilitated. Shri Ajay Chopra to deceitfully receive duty drawback amounting to Rs.7,800/- from the customs.

He thereby contravened Rule 3(1) of CCS (Conduct) Rules 1964.

The charge-sheet (Annexure A-7) to the application shows that the applicant is an accused at Sl. No.7 and at Sl. No.18. The accusation against the applicant are as follows :-

Accused Jugal Kishore while abusing his official position as Inspector, Customs, Office of the Asstt. Collector of Customs, Foreign Post Office, New Delhi has allowed the fraudulent export pertaining to post Parcels as mentioned as Sl. No.2 of Annexure 'B' pertaining to M/s. Lusa Exports for a value of Rs.26,000/- on the basis of which accused Ajay Chopra dishonestly and fraudulently took duty drawback amounting to Rs.7,800/- accused Jugal Kishore has falsely certified the contents of the parcels to be genuine in respect of the quality, quantity and value as per export documents whereas the contents of the parcels were dummy plastic moulds having no functional utility as electronic components as per export documents.

List of documents and witnesses enclosed to the article of charges which is ~~an xxxxxxxx~~ Annexure A-5 and A-6 to the application are also almost the same as the list of witnesses and documents attached to the criminal charge-sheet, that is Annexure A-8 and A-9. The respondents in their reply to para 4 C and D have stated that "the witnesses of documents quoted in annexure of departmental

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charge-sheet are much less a number in comparison of CBI's charge-sheet."

In the interest of equity and fair play and on the principles of natural justice the applicant has to be given a fullest opportunity to defend himself in the departmental proceedings. The applicant has to open his case and also take the defence by bringing the facts in the cross examination of the witnesses presented by the department in the departmental proceedings. In doing so the applicant has to open his defence. Thus, if two parallel proceedings are instituted and allowed to continue simultaneously the applicant is likely to be prejudiced in his defence and the prosecution is bound to take advantage of this fact. Keeping in view of the judgement of the Hon'ble Supreme Court in Kusheshwar Dubey case (supra) which held that departmental proceedings be kept in abeyance till the conclusion of criminal trial, in the present case also the Departmental Enquiry has to be stayed.

It is not shown by the respondents that the applicant is to retire soon or any of the witnesses is to be examined against the applicant are not likely to be available subsequently. Mostly the evidence against the applicant is based on a number of documents which are common in the departmental proceedings as well as in criminal proceedings. The department will not at all be prejudiced if the proceedings should be stayed till the disposal of the criminal trial. On the other hand the applicant will sustain irreparable loss if he is made to open his defence and the respondents or the prosecution in the criminal case take advantage of the same. This loss can not be compensated in any manner

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whatsoever against the applicant in the criminal trial besides losing his job if the charges are established against him is also likely to give punishment under various sections of the penal statute.


Though, it can-not be said that the department is absolutely de-barrred from proceedings against the applicant during the pendency of the criminal trial, yet it is to be seen whether the applicant can get fair trial and opportunity during the proceedings or not. If there is least doubt in this regard then on the principles of natural justice and fair play the departmental proceedings have to be stayed.

Though the learned counsel for the respondents has referred to certain cases law which is from a photo-stat copy of a text on departmental proceedings yet he has not shown any authoritative precedent wherein in every case, departmental proceedings can go on irrespective of any harm to be done to the delinquent employee.

In view of the above discussion, we are of the opinion that the application is to be allowed and the departmental proceedings instituted against the applicant by virtue of the memo dated 22.3.91 has to be stayed till the disposal of the criminal trial. However, it shall be open to the respondents to proceed against the applicant departmentally irrespective of the result of the criminal trial after the conclusion of the criminal case.

The parties to bear their own costs.


(J.P. SHARMA) 3.1.92
MEMBER (J)

 31/1/92
(D.K. CHAKRAVORTY)
MEMBER (A)