

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.1277/2004

New Delhi, this the 15th day of December, 2004

**Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.A.Singh, Member (A)**

Sh. M.L.Dhussa
S/o Late Shri Chuni Lal
R/o 90, Adarsh Nagar
Jalandar City, Punjab.

... Applicant.

(By Advocate: Sh. K.C.Mittal)

Versus

1. Union of India
Through Secretary
Ministry of Finance
Department of Revenue
North Block,
New Delhi.

2. Chairman, Central Board of Direct Taxes
North Block
New Delhi.

3. Director General of Income Tax (Vigilance)
Hardayal Singh Library
Deendayal Upadhyay Marg
Near I.T.O.
New Delhi.

... Respondents

(By Advocate: Sh. V.P.Uppal)

O R D E R(Oral)

By Mr. Justice V.S.Aggarwal:

Applicant by virtue of the present application seeks a direction to keep the disciplinary proceedings in abeyance till the completion and finalisation of the trial proceedings pending before the learned Special Judge.

2. The facts which are not in dispute can conveniently be delineated. The applicant has been served with the following statement of the Articles of Charge:



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"Sh. M.L.Dhussa, while posted and functioning as Commissioner of Income Tax (Appeals)-II, Ludhiana demanded a bribe of Rs.5 lakhs, later reduced to Rs.3 lakhs, from the appellant Sh. Mohinder Singh, s/o Sh. Joginder Singh, Sekhwanwala Chowk, Mandirwali Gali Moga, Prop. M/s Anand Springs (India) Ltd., for favourably deciding four appeals of the appellant and later arranged, with the help of his brother-in-law, Sh. Deepak Chugh, to accept part payment of Rs.2.5 lakhs through a close friend Sh. Paramjit Singh Makkar. The said illegal gratification of Rs.2.5 lakhs, which was accepted by Sh. Paramjit Singh Makkar on behalf of Sh. M.L.Dhussa, was recovered from Sh. Makkar by the CBI trap team on 18-12-2002.

By his above acts, Sh. M.L.Dhussa failed to maintain absolute integrity and devotion to duty and displayed conduct unbecoming of a government servant. He thereby contravened the Rules 3 (1)(i), 3(1)(ii) and 3(1)(iii) of the CCS (Conduct) Rules, 1964."

3. It is not in dispute that pertaining to the same facts, a report under Section 173 of the Code of Criminal Procedure had been filed before the learned Special Judge. Charge has been framed and the matter is pending trial. Applicant claims that during the pendency of the trial before the Special Judge with respect to offence punishable under Section 7 read with Section 13(1) (b) and Section 13(2) of the Prevention of Corruption Act, the departmental proceedings may be stayed because the applicant might well have to disclose his defence in the departmental proceedings.

4. In the reply, the application is being contested. According to the respondents, there is no ground to stay the departmental proceedings. From the aforesaid, it is clear that a short question that comes up for consideration is as to whether the departmental proceedings during pendency of the trial which the applicant is facing before the Special Judge should be stayed or not.

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5. The Supreme Court in the case of **Delhi Cloth and General Mills Ltd. vs. Kushal Bhan**, AIR 1960 SC 806 held that if the case is of a grave nature or involves questions of fact or law, which are not simple, it would be advisable to stay the departmental proceedings. It was observed:-

“(3) It is true that very often employers stay enquiries pending the decision of the criminal trial courts and that is fair; but we cannot say that principles of natural justice require that an employer must wait for the decision at least of the criminal trial court before taking action against an employee. In *Shri Bimal Kanta Mukherjee vs. Messers, Newsman's Printing Works*, 1956 Lab AC 188, this was the view taken by the Labour Appellate Tribunal. 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.”

Similarly, in the case of **Kusheshwar Dubey vs. Bharat Coking Coal Ltd.** (1988) 4 SCC 319, the Supreme Court held that there is 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. The principle in this regard, referred to above, has been put in the following words:-

“7. 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

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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 down any general guide-line."

Identical was the view point expressed few years later in the case of

Food Corporation of India vs. George Varghese and Anr., 1991

Supp.(2) SCC 143 in the following words by the Supreme Court:-

"After the conviction the order of dismissal was passed but immediately on the respondents being acquitted the appellant fairly set aside that order and reinstated the respondent and initiated departmental proceedings by suspending him and serving him with the charge-sheet and the statement of allegations, etc. It cannot, therefore, be said that the appellant was guilty of delay. It is true that between setting aside the order of dismissal and the service of the charge-sheet, there was a time gap of about eight months but we do not think that that can prove fatal.

3. In the Result, we allow this appeal, set aside the order of the High Court and direct that the appellant will proceed with the inquiry expeditiously and complete the same as far as possible within a period of six months or thereabout provided the respondent co-operates in the inquiry and does not delay the proceedings. If the respondent has not filed his written statement to the charges levelled against him, he may do so within two weeks from today. The appeal is allowed accordingly with no order as to costs."

6. Entire case law had been considered by the Supreme Court in the case of ***State of Rajasthan vs. B.K. Meena & Ors.***, (1996) 6 SCC 417. In the cited case, the Central Administrative

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Tribunal had stayed the departmental proceedings till the conclusion of the criminal trial. The same question had come up for consideration and the Supreme Court noted that proceedings in criminal trial were going to take a long time and conclusion of the same was nowhere in sight. The Supreme Court noted in this regard:-

"16. Now, let us examine the facts of the present case. The Memo of charges against the respondent was served on him, along with the articles or charges, on 13.10.1992. On 9.2.1993, he submitted a detailed reply/defence statement, running into 90 pages, controverting the challan against him was filed on 15.5.1993 in the criminal court. The respondent promptly applied to the Tribunal and got the disciplinary proceedings stayed. They remain stayed till today. The irregularities alleged against the respondent are of the year 1989. The conclusion of the criminal proceedings is nowhere in sight. (Each party blames the other for the said delay and we cannot pronounce upon it in the absence of proper material before us.) More than six years have passed by. The charges were served upon the respondent about 4 years back. The respondent has already disclosed his defence in his elaborate and detailed statement filed on 9.2.1992. There is no question of his being compelled to disclose his defence in the disciplinary proceedings which would prejudice him in a criminal case. The charges against the respondent are very serious. They pertain to misappropriation of public funds to the tune of more than rupees one crore. The observation of the Tribunal that in the course of examination of evidence, new material may emerge against the respondent and he may be compelled to disclose his defence is, at best, a surmise - a speculative reason."

Thereupon, the conclusions drawn were that the disciplinary proceedings and criminal trial would proceed simultaneously. The stay of the disciplinary proceedings should not be a matter of course but a considered decision. Even if the disciplinary

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proceedings are stayed, the same could be reconsidered, if criminal trial gets unduly delayed. The findings in this regard read:-

"17. There is yet another reason. The approach and the objective in the criminal proceedings and the disciplinary proceedings is 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 him under the Prevention of Corruption Act (and the Indian Penal Code, if any) are established and, if established, what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are entirely distinct and different. Staying of disciplinary proceedings pending criminal proceedings, to repeat, should not be a matter of course but a considered decision. Even if stayed at one stage the decision may require reconsideration if the criminal case gets unduly delayed."

Thereafter the Supreme Court had allowed the appeal and set aside the order of the Central Administrative Tribunal.

7. Similarly, in the case of **Depot Manager, A.P. State Road Transport Corporation vs. Mohd. Yousuf Miya and Others**, (1997) 2 SCC 699, the Supreme Court held that it would be expedient that disciplinary proceedings are conducted and completed expeditiously and the pendency of criminal trial is no ground to stay the disciplinary proceedings. The findings of the supreme Court read:-

"8. We are in respectful agreement with the above view. The purposes of departmental enquiry and of prosecution are 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 guide-lines 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 (sic 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 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."

8. Our attention was drawn towards a decision rendered by the Supreme Court in the case of **Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd. & Anr.**, in Civil Appeal No. 1906 of 1999 on 30.3.1999. Same question had come up for consideration. The Supreme Court after scanning through the various precedents, some of which have been referred to above, had drawn the conclusion:-

"22. The conclusions which are deducible from various decisions of this Court referred to above are:

- (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 proceeding 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 honour may be vindicated and in case he is found guilty, administration may get rid of him at the earliest."

9. Strong reliance has been placed further on the decision of the Supreme Court in the case of **Kendriya Vidyalaya Sangathan & others vs. T. Srinivasan**, (2004) 7 SCC 442. In that case also departmental proceedings had been initiated while he had been arrested. Hence charged for offence punishable under Section 7 read with Section 13(1)(d) of the Prevention of Corruption Act. The Supreme Court referred to the decision rendered in the case of **State of Rajasthan vs. B.K. Meena** (Supra) and of **Capt.**

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M. Paul Anthony (Supra) and held that in the facts of that case proceedings were not to be stayed.

10. It has to be remembered that the cited decision is confined to the peculiar facts therein. The charge had already been framed and the Tribunal as well as the High Court of Andhra Pradesh had held that till the criminal trial continues, the disciplinary proceedings must remain in abeyance but the Supreme Court held that this was an erroneous approach and it concluded:

“14. We are of the opinion that both the Tribunal and the High Court proceeded on an erroneous legal principle without taking into consideration the facts and circumstances of this case and proceeded as if the stay of disciplinary proceedings is a must in every case where there is a criminal trial on the very same charges, in this background it is not necessary for us to go into the second question whether at least Charge 3 by itself could have been permitted to be decided in the departmental enquiry as contended alternatively by the learned counsel for the appellant.”

In fact, the Supreme Court added that each case has to be examined on its own facts.

11. Our attention has further been drawn to yet another decision rendered by the Supreme Court in the case of **STATE BANK OF INDIA & ORS. v. R.P. SHARMA**, 2004(2) SCSLJ 205. The Supreme Court held that there would be no bar to proceed simultaneously with the departmental inquiry and trial of criminal case unless the criminal trial is of grave nature involving complicated questions of fact. Whether the nature of charge in criminal case is grave and whether complicated questions of fact or

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law are involved, will depend upon the nature of the case and material collected. The Supreme Court held:

"9. The purpose of departmental enquiry and of prosecution are 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 question 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 departmental 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."

12. Once again it is obvious from the findings of the Supreme Court that the facts of each case have to be taken note of.

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13. In the present case before us, we were informed that one witness of the prosecution before the Special Judge had been examined and with regard to the other witness, part statement had been recorded. However, what cannot be denied is that the offence is grave because if at all any offence has been committed pertaining to one punishable under the Prevention of Corruption Act, it is a serious dereliction of duty. It can certainly involve complicated question as to whether there was a demand by the applicant of illegal gratification, whether there was any acceptance, what was the conversation at that time and co-related facts.

14. In addition to that, it is not in dispute that the trial has already started before the Learned Special Judge. The facts are identical as are before the Special Judge and in the departmental proceedings. It is true that the purpose of departmental proceedings is to maintain discipline in the department while that of the criminal trial is to punish the person who has gone contrary to the law.

15. In this regard, one is bound to believe that there might be some overlapping in the findings. Taking stock of the totality of the facts and the circumstances and the decisions of the Supreme Court in the peculiar facts and in face of the findings that trial has already started and making a headway, it would be appropriate in the circumstances not to straightway direct that departmental proceedings can continue. The decisions rendered by the Supreme Court in the case of **KENDRIYA VIDYALAYA SANGATHAN & ORS. v. T. SRINIVAS**, (supra) and **STATE BANK OF INDIA & ORS. v. R.B.SHARMA** (supra) are patently distinguishable. As already pointed above, it was held that the question about gravity


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of the offence and whether complicated questions are involved goes with the facts and circumstances of each case. Thus, we are not expressing ourselves as to if the departmental proceedings would prejudice the applicant or not. In these circumstances, it would be in the fitness of things to stay the departmental proceedings for *a period of six months only* ~~some time~~ and still in terms of the decision of the Supreme Court in the case of **Capt. M. Paul Anthony's case (supra)**, if the trial is not *in that time* concluded, the proceedings can be revived.

16. For these reasons, we accordingly dispose of the present application.


(S.A. Singh)
Member (A)


(V.S. Aggarwal)
Chairman

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