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Central Administrative Tribunal, Principal Bench

Original Application No. 1368 of 2004

New Delhi, this the 1st day of June, 2004

Hon'ble Mr. Justice V.S. Aggarwal, Chairman  
Hon'ble Mr. S.K. Naik, Member (A)

Shri Mukesh Bansal,  
Inspector of Customs and Central Excise,  
Technical Branch (Central Excise Delhi-I)  
C.R. Building, I.P. Estate,  
New Delhi-2

....Applicant

(By Advocate: Shri B.S. Mainee)

Versus

Union of India: Through

1. The Secretary,  
Ministry of Finance,  
Department of Revenue,  
North Block, New Delhi
2. The Commissioner of Central Excise,  
(Delhi-I),  
First Floor,  
C.R. Building,  
I.P. Estate, New Delhi-2
3. The Additional Commissioner of Central Excise,  
(Delhi-I),  
First Floor,  
C.R. Building,  
I.P. Estate, New Delhi-2
4. The Dy. Commissioner of Central Excise (CCU),  
First Floor,  
C.R. Building, I.P. Estate,  
New Delhi-2

....Respondents

O R D E R (ORAL)

By Justice V.S. Aggarwal, Chairman

The only relief pressed is that because of the pending criminal case, the departmental proceedings should be stayed. Therefore regarding the other plea about supply of certain documents, learned counsel states that he would file a separate petition. Allowed as prayed.

2. Reverting back to the contentions raised, the

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facts can conveniently be delineated.

3. The applicant is an Inspector in the Customs and Excise Department. In the year 1995, a criminal complaint had been filed against him which is still pending before the Additional Chief Metropolitan Magistrate at Delhi. Simultaneously, departmental proceedings had been initiated on 23.7.99.

4. The precise grievance of the learned counsel is that because of the pending criminal case, departmental proceedings should be stayed because this may prompt the applicant to disclose his defence.

5. Learned counsel for the applicant in support of his argument relied upon the decision of this Tribunal in the case of Shri Yogesh vs. The Lt. Governor through Chief Secretary, New Delhi and anr. (O.A.3137/2002) decided on 4.9.2003.

6. At the outset, it must be stated that every matter has its own dockets and facts. Perusal of the case of Yogesh (supra) clearly shows that therein the matter was not old and, therefore keeping in view the decision rendered by the Supreme Court in the case of Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. & Anr., JT 1999 (2) SC 456, the proceedings were stayed for a period of six months to ensure that the criminal proceedings are completed in the meantime.

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7. The facts in the present case are totally different. Herein the proceedings are already pending since the year 1995. Even the departmental proceedings had been initiated in the year 1997. Therefore, the present case before us is totally on a different premise.

8. We know from the decision in the case of Capt. M. Paul Anthony (supra) that if the criminal case does not proceed or its disposal is unduly delayed, the departmental proceedings even if they were stayed, could be started.

The Supreme Court held:

"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 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

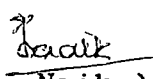
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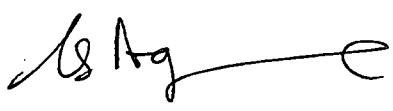
unduly delayed.

- (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. When the present case is examined on the touch-stone of the decision of the Supreme Court, it is obvious that in fact it does not support the claim of the applicant. In the present case before us, the criminal case started nine years ago and departmental proceedings were initiated in the year 1999. It is too late in the day for the applicant now to contend on this pretext to stay the departmental proceedings. In fact the decision of the Supreme Court in the case of Capt.M.Paul Anthony (supra) reveals that whenever there was undue delay in the criminal case, departmental proceedings would continue. Identical is the position herein. The criminal case is pending since the year 1995. The purpose of the same as is well known is to punish the guilty, if proved. The departmental proceedings are to maintain discipline in departments. When the criminal proceedings are pending for a number of years, now to stay the departmental proceedings will be improper. Therefore, there is no ground to stay the departmental proceedings.

10. Resultantly, the O.A. being without merit must fail and is dismissed in limine.

  
( S.K. Naik )  
Member(A)

  
( V.S. Aggarwal )  
Chairman