

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 114/2005

With

OA 2453/2005

OA 115/2005

OA 1813/2004

New Delhi, this the 18th day of August 2006

HON'BLE MR. V.K. MAJOTRA, VICE-CHAIRMAN (A)
HON'BLE MR. MUKESH KUMAR GUPTA, MEMBER (J)

OA NO.114/2005

Shri T.R. Prabhakar,
S/o Late Shri Aroor Chand,
R/o 323-R, Model Town,
Panipat, Haryana

... APPLICANT

(By Advocate: Shri S.K. Gupta)

VERSUS

1. Union of India,
Through Secretary,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi
2. Commissioner,
Central Excise, Delhi-I,
C.R. Building, I.P. Estate,
New Delhi – 110 002
3. Shri R.K. Sood,
Assistant Commissioner,
Central Excise Division,
210, Urban Estate- II,
Hissar (Haryana)

... RESPONDENTS

(By Advocate : Shri R.N. Singh)

O.A. 2453/2005

Shri Sanjeev Kumar,
S/o Shri Hari Chand
R/o AG-1/65-B, Vikas Puri,
New Delhi – 110 018
Presently working as Inspector,
Custom Preventive Commissionerate,
New Customs House, New Delhi
Aged about 36 years.
Group "C" post

... APPLICANT

(By Advocate : Shri S.K. Gupta)

VERSUS

1. Union of India,
Through Secretary,
Ministry of Finance,
Department of Revenue,

North Block, New Delhi

2. Commissioner,
Central Excise, Delhi-I,
C.R. Building, I.P. Estate,
New Delhi – 110 002
3. Additional Commissioner (P&V),
Office of Commissioner,
Central Excise Delhi-I,
C.R. Building, I.P. Estate,
New Delhi – 110 002
4. Narendra Singh,
Assistant Commissioner (Preventive),
Office of Joint Commissioner of Customs,
I.G.I. Airport,
New Delhi

RESPONDENTS

(By Advocate : Shri R.V. Sinha)

O.A. 115/2005:

Shri B.S. Panwar,
S/o Shri Hari Singh,
R/o Village & P.O. Shamri,
District Sonepat (Haryana)

APPLICANT

(By Advocate : Shri S.K. Gupta)

VERSUS

1. Union of India,
Through Secretary,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi
2. Additional Commissioner (P&V),
Central Excise, Delhi-I,
C.R. Building, I.P. Estate,
New Delhi – 110 002

3. Shri R.K. Sood,
Assistant Commissioner,
Central Excise Division,
210, Urban Estate- II,
Hissar (Haryana)

RESPONDENTS

(By Advocate : Shri R.N. Singh)

O.A. No.1813/2004:

Shri K.K. Loona,
S/o Shri C.R. Loona,
R/o GH-13/1039, Paschim Vihar,
New Delhi

APPLICANT

(By Advocate : Shri S.K. Gupta)

VERSUS

1. Union of India,
Through Secretary,

Ministry of Finance,
Department of Revenue,
North Block, New Delhi

2. Commissioner,
Central Excise, Delhi-I,
C.R. Building, I.P. Estate,
New Delhi – 110 002
3. The Additional Commissioner (P&B),
Office of Commissioner of central Excise,
Delhi-I,
C.R. Building, I.P. Estate,
New Delhi
4. Shri Rajesh verma,
Inquiry Officer,
Assistant Commissioner,
Custom (Preventive),
New Custom House,
New Delhi

... RESPONDENTS

(By Advocate : Shri R.N. Singh)

O R D E R

By Mr. Mukesh Kumar Gupta, Member (J):-

Basic issue raised in these four applications is whether departmental proceedings can be initiated simultaneously when criminal case is pending before a competent court of law.

2. Since issue raised in these applications is grounded on same facts and incident, present common order will dispose of the same. For sake of convenience, facts narrated in OA 114/2005, taken as leading case, will be delineated hereinafter.

3. Factual matrix is that applicant, Sh. T.R. Prabhakar, Superintendent was placed under suspension vide order dated 26.7.2002 as disciplinary proceedings were contemplated against him. Later, said order was modified vide addendum dated 26.9.2002 stating that he was placed under suspension in respect of a criminal offence under investigation. A case was registered by CBI vide RC No.30(A)/2002/Chg dated 22.7.2002 alleging that Shri Naresh Goyal S/o Sh. G.C. Goyal resident of Panipat had applied on 17.7.2002 for cenvat certificate in the office of Central Excise, Panipat. In this regard, he met Sh. T.R. Prabhakar, Supdt., Range-I, Central Excise, Panipat and Sh. B.S. Panwar on 19.7.2002.



Both the accused demanded a sum of Rs.5000/- from the complainant for issuance of said certificate. Complainant made written complaint on 21.7.2002 and a case was registered based on said complaint. Applicant was arrested on 22.7.2002 and remained under judicial custody upto 04.9.2002. He was bailed out only in September, 2002. CBI filed challan along with list of documents in witness before Learned Court of Special Judge, Ambala. Suspension was revoked on 12.8.2003, and he resumed duties. Thereafter, respondents issued memorandum under Rule 14 of CCS(CCA) Rules on 09.2.2004, containing same allegations as of criminal case. As per list of witnesses & documents all eleven witnesses were and all twelve documents respectively relied upon in departmental proceedings were same as listed in said criminal case. In these circumstances, he submitted representation dated 27.2.2004 denying said allegations. Thereafter respondent no.2 appointed respondent no.3 as enquiring office, who fixed date of hearing on 18.11.2004. He submitted representation dated 18.11.2004 and requested to stay departmental proceedings till pendency of criminal case. As per order sheet dated 18.11.2004, no particular date of hearing was fixed. But later, enquiry officer fixed next date of hearing as 11.1.2005 vide communication dated 04.1.2005. It also rejected his request to stay the said departmental proceedings stating that criminal trial as well as disciplinary proceedings are on different footings as one relates to criminal aspect and other relates to misconduct. Furthermore, there is no danger of double jeopardy. It was further disclosed that said proceedings were in consonance with Central Vigilance Commission's instructions dated 01.12.1999. Aforesaid communication dated 04.1.2005 as well as CVC's instructions dated 01.12.1999 have been impugned in present proceedings. Further prayer is made to direct respondents to keep departmental inquiry in abeyance till pendency of criminal trial vide RC No.30(A)/2002-Chd. dated 22.7.2002.

4. Shri S.K. Gupta, learned counsel for applicants in these applications vehemently contended that when they are already facing criminal trial on same facts and incident based on same allegation, wherein all witnesses & documents are common and criminal trial is at an advance stage, initiation of departmental



proceedings had not been justified. In fairness, his request for stay or keeping such disciplinary proceedings in abeyance should not have been rejected; that there has been total non-application of mind on the part of authorities in placing reliance on CVC's instructions dated 01.12.1999 as it ignored the law laid down on said subject. Vide para-4(iii) of said circular, it is brought that once photocopies of documents are received, the disciplinary authority should initiate action to launch departmental inquiry. There will be no danger of double jeopardy because the prosecution which will be launched by the CBI or the Police based on the trap documents would relate to the criminal aspect of the case and the disciplinary proceedings will relate to the misconduct under the Conduct, Discipline and Appeal Rules. It would be expedient to notice para 4 of said circular, which read thus:-

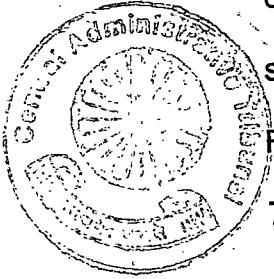
4. *In order to ensure that effective punishment is quickly meted out to the corrupt, the following instructions are issued under the powers vested in the CVC in para 3(v) of DOPT Resolution No.371/20/99 AVD III dated April 4, 1999.*

- (i) *In every organization those who are corrupt are well known. The Disciplinary Authorities and the CVOs as well as those who are hurt by such corrupt persons can arrange for traps against such public servants. The local Police or CBI can be contacted for arranging the traps.*
- (ii) *The CBI and the Police will complete the documentation after the traps within a period of two months. They will make available legible authorized photocopies of all the documents to the disciplinary authority within two months from the date of trap for action at their end.*
- (iii) *Once the photocopies of the documents are received, the disciplinary authority should initiate action to launch departmental inquiry. There will be no danger of double jeopardy because the prosecution which will be launched by the CBI or the Police based on the trap documents would relate to the criminal aspect of the case and the disciplinary proceedings will relate to the misconduct under the conduct, Discipline and Appeal Rules.*
- (iv) *Retired, honest people may be appointed as special inquiry officers so that within a period of two months, the inquiry against the corrupt public servants involved in traps can be completed.*
- (v) *On completion of the departmental process, appropriate punishment must be awarded to the trapped charged officer or public servant, if the charge is held as proved.*
- (vi) *If and when the court judgement comes in the prosecution case, action to implement the court decision may be taken appropriately."*



[Handwritten signature/initials]

Strong reliance was placed on *Delhi Cloth & General Mills Ltd. Vs. Kushal Bhan* [1960 (3) SCR 227] to contend that if the issue raised before criminal court is of a grave nature involving questions of fact or law, which are not simple, it would be advisable for the employer to await the decision of the criminal trial court, so that the defence of the employee in the criminal case may not be prejudiced. Reliance was also placed on *Tata Oil Mills Co. Ltd. Vs. its Workmen* [1964 (7) SCR 555] wherein the earlier judgment of Kushal Bhan (supra) had been followed and reiterated. The question of initiating disciplinary proceedings during pendency of criminal case on same facts also cropped up in *Jang Bahadur Singh vs. Baij Nath Tiwari* [1969 (1) SCR 134] wherein a contention was raised that initiation such departmental proceedings amounted to contempt of Court. Said contention had been rejected by Hon'ble Supreme Court, stating that pendency of criminal proceedings does not bar the taking up of disciplinary action. The power of taking such action is vested in disciplinary authority. Reliance was also placed on *Kusheshwar Dubey vs. M/s. Bharat Coking Coal Ltd.* [(1988) 4 SCC 319] particularly paras-7 & 8, wherein it has been observed 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 particular case there should or should not be such simultaneity of the proceedings would then receive judicial consideration. It was observed therein that it is neither possible nor advisable to evolve a hard and fast strait-jacket formula valid for all cases and of general application without regard to the particularities of the individual situation. Hon'ble Court further observed therein in instant case, the criminal action and the disciplinary proceedings were grounded upon the same set of facts and, therefore, the disciplinary proceedings should have been stayed. Reliance was also placed on *Depot Manager, Andhar Pradesh State Road Transport Corporation vs. Mohd. Yousuf Miya* [1997 (2) SCC 699] wherein it was reiterated that there is no bar to proceed simultaneously with the departmental



enquiry and trial of a criminal case unless the charge in the criminal case is of a grave nature involving complicated questions of fact and law. Next reliance was placed on *State of Rajasthan vs. B.K. Meena* [(1996) 6 SCC 417] wherein it was held that staying of disciplinary proceedings is a matter which has to be determined in each case having regard to the facts and circumstances of a given case. Only ground suggested constituting a valid ground for staying the disciplinary proceedings is that 'the defence of the employee in the criminal case may not be prejudiced.' Reliance was also placed on *Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd. & Anr.* [1999 (2) SLR 338: 1999 (3) SCC 679] particularly to para-22. Reliance was also placed on *State Bank of India vs. R.B. Sharma* [2004 (7) SCC 27] and *Kendriya Vidyalaya Sangathan vs. T. Srinivas* [2004 (7) SCC 442]. Learned counsel vehemently contended that Sh. T.R. Prabhakar and Sh. B.S. Panwar are facing common trial before criminal court and a common departmental enquiry has been initiated against him. As far as OA No.1813/2004 is concerned, the next date of hearing before criminal court is 11.10.2006 as witness who was to be cross-examined has not been produced by the prosecution on last date of hearing i.e. 08.8.2006. As far as OA No.114/2005 is concerned, last witness to be examined in criminal court is slated for hearing on 19.8.2006. As far as OA No.2453/2005 is concerned learned counsel was not able to point out the stage of criminal trial. In alternative, it was suggested that departmental enquiry be stayed for say about four months and if criminal trial is not concluded in the aforesaid period, respondents may be allowed to proceed with such proceedings.

5. Respondents contested the claim laid by filing detailed reply and raised preliminary objections namely that OA is premature; and is an abuse of process of law; that applicant's case was examined in the light of law laid down in *Capt. M. Paul Anthony* (supra) and it was found that neither the charges were serious nor complicated questions of law and fact were involved; that the impugned order dated 04.1.2005 was issued based on law laid by Hon'ble Supreme Court and in consonance with CVC's instructions dated 01.12.1999. Applicant's prayer to quash said CVC's instructions and circular is baseless and untenable. It only

emphasized the prompt action against the corrupt public servant. Moreover, CVC has not been impleaded as a party, contended Sh. R.N. Singh, learned counsel for respondents. It was pointed out that the criminal proceedings were initiated in the year 2003, and are still pending. Even all the witnesses have not been examined so far. There is no allegation made by the applicant that the said criminal is being delayed at the behest of State. Applicant approached this Tribunal and obtained stay of departmental proceedings vide order dated 18.1.2005, which interim order remains in force. Therefore, it was suggested that it is the applicant, who has gained out of such delay and not respondents. Applicant has filed to prove that the charges are grave and it involves complicated question of law and fact. On the other hand, charges levelled against applicant are serious in nature as he demanded and accepted illegal gratification. Strong reliance was placed on Capt. M. Paul Anthony judgment (supra) particularly para-22 to suggest that since criminal trial has been unduly delayed, department is justified to take recourse to such proceedings. Reliance was also placed on 96 (2002) DLT 369 [*Brahma Prakash Kalra vs. National Thermal Power Corporation & Ors.*] wherein Learned Single Judge of Hon'ble Delhi High Court, in similar facts and situation dismissed the challenge made to the initiation of departmental proceedings. Shri R.V. Sinha, learned counsel for respondents in OA 2453/2005 adopted arguments and contentions raised by respondents in other OAs.

6. Sh. S.K. Gupta, learned counsel, in rejoinder, contended that non-impleadment of CVC is not fatal. Similarly, High Court judgment relied upon is not applicable in facts & circumstances of present case. There is no finding recorded by disciplinary authority while rejecting applicant's representation / request vide communication dated 04.1.2005 that the issue raised did not involve complicated question of facts and law. Therefore, at this stage, respondents cannot be allowed to improve their stand, contended learned counsel.

7. We have heard learned counsel for parties at length and perused pleadings carefully.

8. Before proceeding further we may note that in Capt. M. Paul Anthony (supra), Hon'ble Supreme Court surveyed and analysed all its earlier judgments beginning from Kushal Bhan, and vide para-22 concluded the principles deducible from said judgments. The relevant excerpts of said para-22 read thus:-

"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 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.* (emphasis supplied).

As far as challenge to circular dated 01.12.1999 is concerned, we may note that apart from contending that said circular is void and illegal besides contrary to law laid down on said subject, no material has been placed on record or brought to our notice to render the said circular illegal. We have carefully perused the said circular and find that the basic object behind it is that in order to curb the corruption cases and to ensure that corrupt public servants are punished, certain steps are required to be taken and the said circular is a step in the said direction. There is a need to the issue of tackling corruption to create a

31
healthy atmosphere that corruption will not be tolerated. Effective and prompt punishment of the corrupt is a sin quo non to change the present atmosphere of cynical apathy in the organizations. The said circular in our considered view is neither contrary to the law of the land nor it is void and illegal as contended. It only lays down certain instructions and guidelines to take effective steps to meet out the corrupt practices in every organization. The challenge made to the said circular cannot be countenance.

9. On bestowing our careful consideration to all aspect of the case particularly when the facts as noticed hereinabove, are not in dispute that applicant in OA 114/2005 was arrested by CBI on 22.7.2002 and proceeded under provisions of Rule 14 of CCS (CCA) Rules. Furthermore it is not in dispute that criminal proceedings initiated, have not been concluded or reached at the substantial stage. We may also note the fact the charge levelled against Sh. T.R. Prabhakar vide charge memorandum dated 09.2.2004 is that he: **“demanded and directed Shri Naresh Goyal on 22.7.2002 to handover bribe of Rs.5000/- to his Inspector B.S. Panwar for issuance of cenvat certificate and Sh. B.S. Panwar demanded & accepted bribe of Rs.5000/- from Sh. Naresh Goyal on direction of Sh. T.S. Prabhakar.”** A perusal of above nowhere, leads to conclusion that either criminal charge or departmental enquiry involved “complicated questions of fact & law, required and desired to stay departmental proceedings till conclusion of criminal case. We find justification in contention raised by respondents that onus which rested on applicants to establish such aspect, has not been discharged by them. We do not find that the charge in criminal case “is of a grave nature involving complicated question of fact & law.” As per principle laid down in Capt. M. Paul Anthony (supra) noticed hereinabove, we find that criminal case did not proceed with speed and its disposal is being unduly delayed for one reason or the other. In these circumstances, departmental proceedings which have been stayed almost one and a half year by now, should conclude at an early date. We are conscious of the fact that proceedings in criminal case and departmental proceedings operate in distinct and different jurisdictional areas whereas in the departmental

proceedings, where charge relating to misconduct is being investigated, the factors operating in the mind of the disciplinary authority may be many such an enforcement of discipline or to investigate the level of integrity of the delinquent or the other staff, the standard of proof required in a criminal case. In criminal cases, the charge has to be proved by the prosecution beyond reasonable doubt, while in departmental proceedings standard of proof is one of preponderance of the probabilities. In Capt. M. Paul Anthony (supra) particularly para-13, Hon'ble Supreme Court observed that "little exception" may be where the departmental proceedings and the criminal cases are based on same set of facts and the offence in both proceedings is common without their being variance. In our considered view applicant's case does not fall within the category of "little exception" as number of documents as well as the number of witnesses relied upon in criminal case, is more incomparison to departmental proceedings. Moreover, the purpose of disciplinary proceeding is different besides the degree of proof required in such proceedings. The very fact that the applicant demanded illegal gratification is sufficient proof to proceed against him in departmental proceedings. We find support in adopting this view from the observations made by Hon'ble High Court in Brahma Prakash Kalra (supra).

10. In view of the discussion made hereinabove, we are of the considered view that in the facts & circumstances of present case, continuation of departmental proceedings cannot be said to be of such a nature, where the same need to be stayed pending adjudication by criminal court of the cases filed against the applicants. Thus OAs are dismissed and interim order is vacated.

No costs.

(Mukesh Kumar Gupta)
Member (J)

/gkk/

14.4.00
(V.K. Majotra)
Vice-Chairman (A)

मुकेश कुमार गुप्ता (मा००५)
Executive Officer (J-1)
सेक्रेटेयर एकाधिकारी
Administrative Tribunal