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Central Administrative Tribunal, Principal Bench

Original Application No.672 of 2004

New Delhi, this the 9th day of July, 2004

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

Head Constable Karambir Singh,
S/o Shri Seo Chand,
R/o Shilani Gali Gurgaon Road,
Near Subzi Mandi Haryana

....Applicant

(By Advocate: Shri Sachin Chauhan)

Versus

1. Secretary,
Govt. of NCT of Delhi,
Sachivalaya, I.P. Estate,
New Delhi

2. Dy. Commissioner of Police,
Traffic (NR),
Delhi

....Respondents

(By Advocate: Shri Ajesh Luthra)

O R D E R

Justice V.S. Aggarwal, Chairman

The applicant is a Head Constable in Delhi Police. By virtue of the present application, he seeks to keep the departmental enquiry proceedings in abeyance till the conclusion of the criminal case (FIR No.58/2001) dated 20.10.2001 with respect to offences punishable under Section 7 read with Section 13 of the Prevention of Corruption Act.

2. Some of the relevant facts which are not in dispute can be delineated in few words. A First Information Report had been registered against the applicant with respect to offences punishable under Section 7 read with Section 13 of the Prevention of Corruption Act.

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The relevant part of the allegations are:

"It is alleged that on 20.10.2001 Shri Vikas Chawla S/o Shri B.P. Chawla R/o C-30, East Arjun Nagar, Delhi-32, owner of RTV Vehicle No. DL-IV-7609, approached ASI Satbir Singh, No.4328-D, Kotwali Traffic Circle who was standing near local police beat box, Kodiapul alongwith Const. Manoj Kumar No.474-T and Head Const. Karamvir Singh, No. 238-T. Shri Vikas Chawla told ASI Satbir Singh in the presence of panch witness Shri Ashok Kumar UDC Social Welfare Department, GNCT of Delhi that his RTV Vehicle was stopped on two days by Const. Suresh and he had come to give the monthly payment as Constable Suresh and Manoj had demanded from him on the previous day. Shri Vikas Chawla enquired about Const. Suresh and on this HC Karamvir Singh said that Suresh had gone some where. Shri Vikas Chawla signalled towards Const. Manoj and said that he had come the previous day and spoke to him and Const. Suresh regarding monthly payment. Const. Manoj replied in affirmative and asked registration number of his vehicle and started looking into his note book but Shri Vikas Chawla told him that he had not given money as such the number of vehicle would not be written there. Meanwhile HC Karamvir Singh took Shri Vikas Chawla to the traffic booth across the road in search of Const. Suresh and there he demanded accepted and obtained Rs.100/- saying that he would tell Const. Suresh in this regard and noted down the registration of his RTV Vehicle on the hundred rupee note itself and kept the currency note in the Traffic Notice Book. HC Karamvir Singh, No. 238-T was apprehended red handed and arrested in case FIR No.58/2001 dated 20.10.2001 U/S 7/9/13 of POC Act, PS Anti Corruption Branch, Delhi.

The above act of Head Const. Karamvir Singh, No. 238-T (PIS No. 28823953) amounts to grave misconduct, negligence, dereliction in the discharge of official duties and an act unbecoming of a Govt. servant and there by violating the provisions of C.S.S. (Conduct) Rules, 1964 which renders him liable to be dealt with departmentally under the provisions of the Delhi Police (Punishment & Appeal) Rules, 1980."

3. The applicant had been placed under suspension.



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Departmental proceedings had been initiated by virtue of the order dated 5.6.2003. It is not in dispute that pertaining to the abovesaid First Information Report, the learned Special Judge has already framed a charge against the applicant and the matter is pending for recording of evidence.

4. Learned counsel for the applicant had argued that keeping in view that there are common facts in the trial that is taking place before the Special Judge, Delhi and the departmental proceedings, the latter can be kept in abeyance.

5. The application is being opposed. It has been pointed that request of the applicant has since been rejected. This is for the added reason that it appears that it will take a long time before the trial is proceeded and completed.

6. Learned counsel for the applicant urged that keeping in view the totality of facts and circumstances, the applicant should not be forced to disclose his defence in the departmental proceedings which may prejudice his claim. In this regard, he relied upon the decision of this Tribunal in O.A.1534/2003 entitled Constable Achyetanand and another vs. Secretary, Govt. of National Capital Territory of Delhi and others decided on 17.10.2003. In the cited case, on the facts that were before the Bench, it was made clear that if there was inordinate delay in completion of the trial, respondents can restart the

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departmental proceedings. Therein, following order had been passed:

"13. For these reasons, we dispose of the present application by making the following order:-

(a) In the facts of the present case, the departmental proceedings would remain in abeyance till the criminal proceedings are pending before the learned Metropolitan Magistrate at Delhi; and

(b) In case there is inordinate delay in completion of the criminal proceedings referred to above, the respondents would be within their rights to restart the departmental proceedings."

As would be noticed hereinafter, the facts of the present case are totally different.

7. The question as to whether when disciplinary proceedings and criminal trial involving identical controversy are pending, disciplinary proceedings could be stayed or not has been alive and agitating the minds of the courts on more than one occasions. The Supreme Court in the case of **Delhi Cloth and General Mills Ltd. v. 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

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criminal trial court before taking action against an employee. In *Shri Bimal Kanta Mukherjee v. 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 v. 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 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, strait-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."



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Identical was the view point expressed few years later in the case of **Food Corporation of India v. George Varghese and Anr.**, 1991 Supp.(2) SCC 143 in the following words by the Supreme Court:-

U "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.

U 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."

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

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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 of charges, on 13.10.1992. On 9.2.1993, he submitted a detailed reply/defence statement, running into 90 pages, controverting the allegations levelled against him. 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 9.2.1993. 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 ^C~~h~~ould proceed simultaneously. The stay of the disciplinary proceedings should not be a matter of course but a considered decision. Even if the disciplinary proceedings are stayed, the same could be reconsidered, if criminal trial gets unduly

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delayed. The finding in this regard reads:-

"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.

9. Similarly, in the case of Depot Manager, A.P.State Road Transport Corporation v. 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 finding of the Supreme Court read:-

"8. We are in respectful agreement with the above view. The purpose of departmental enquiry and of prosecution are two different and distinct aspects. The

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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."

10. Lastly our attention was drawn towards a decision rendered by the Supreme Court in the case of **Capt.M.Paul Anthony v. 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

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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."

11. From the aforesaid, it is clear that strictly speaking, there is no bar in conducting departmental and criminal cases simultaneously. But departmental proceedings cannot be allowed to be unduly delayed if the criminal trial does not make a headway. These facts have already been noted in the case of Capt.M.Paul Anthony which we have reproduced above.

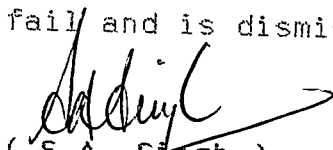
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12. With this backdrop, we revert back to the facts of the present case. In the present case before us though the First Information Report had been registered in the year 2001, the charge has only been framed in January, 2004. As yet, witnesses even have not been examined. Therefore, it is obvious that criminal case is taking a long time to be concluded. In face of these facts, it is improper that the departmental proceedings should be kept in abeyance. The purpose of a criminal trial is to punish a person who has violated the law of the land and the departmental proceedings are initiated to maintain discipline therein. In the facts of the present case where the departmental proceedings are being inordinately delayed, we find no reason as to why the same should be stayed and kept in abeyance. In the case of Constable Achyetanand... (supra), it was found that criminal trial was making a headway and, therefore, the order referred to above was passed. It is clearly distinguishable.

13. In fact in the case of Head Constable Narender Kumar and anr. vs. The Commissioner of Police and anr. (O.A. No.1562/2003) decided on 28.8.2003, when similar situation had arisen as in the present case, the petition was dismissed because after a long delay only, the charge had been framed. Identical is the position herein. Therefore, it must be held that there is no merit in the present application.

14. For these reasons, O.A. being without merit must fail and is dismissed.


(S.A. Singh)
Member (A)


(V.S. Aggarwal)
Chairman