

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

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O.A.No. 1427/92.

Date of decision 4/9/92

Shri Prakash Chandra ... Applicant

v/s

Union of India & Ors. ... Respondents

CORAM:

The Hon'ble Mr. Justice Ram Pal Singh, Vice-Chairman (J)

The Hon'ble Mr. I.P. Gupta, Member (A)

For the Applicant ... Shri G.K. Aggarwal,
Counsel.

For the Respondents ... Shri M.L. Verma,
Counsel.

(1) Whether Reporters of local papers may be
allowed to see the Judgement ?

(2) To be referred to the Reporter or not ?

J_U_D_G_E_M_E_N_T

[Delivered by Hon'ble Shri I.P. Gupta, Member (A)]

In this application the applicant has requested for the relief for grant of permanent injunction against disciplinary proceedings pursuant to memo. of charges dated 3rd March, 1989. The contention of the Learned Counsel of the applicant is that ^{the} charges of disciplinary proceedings are the same as in a criminal proceedings for which the ^{chargesheet} ~~FIR~~ was filed on ^{25.8.89} ~~10.10.1988~~.

2. The main contention of the Learned Counsel for the applicant is that where a criminal case is pending against the applicant in a Court of Law, the disciplinary proceedings should be stayed since the statement recorded in the disciplinary proceedings will prejudice his trial in the criminal case.

3. The Learned Counsel for the respondents quoted

the case of S.K. Bahadur v/s Union of India [1987(4) (CAT)(PB-New Delhi p.51, decided on 12.3.1987] where it was clearly held that there was no bar to continue proceedings (criminal as well as disciplinary) simultaneously; the respondents gave undertaking that incriminating statement recorded in disciplinary proceedings will not be used in criminal proceedings. The finding was clear that the disciplinary proceedings would proceed simultaneously. Further in the case of Delhi Cloth & General Mills Ltd. v/s Kushal Bhan [AIR 1960 S.C.806] it was observed by the Hon'ble Supreme Court that 'it cannot be said that principle of natural justice require that an employer must wait for the decision, atleast of the criminal trial court before taking action against the employee.' Other cases were also cited but we do not feel the necessity of reproducing them.

4. Law is well-settled on the point that there is no bar for holding disciplinary proceedings during the pendency of the criminal trial, ^{even} though the basis of the criminal case and the subject matter of the charge in both the proceedings is one and the same. However, there may be cases where it would be appropriate to defer disciplinary proceedings awaiting disposal of the criminal case. In this connection the extracts below from the case of Kusheshwar Dubey v/s M/s. Bharat Coking Coal Ltd. [AIR 1988 2118 S.C.] may be quoted :-

" 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.

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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, 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 guideline.

In the instant case, the criminal action and the disciplinary proceedings are grounded upon the same set of facts. We are of the view that the disciplinary proceedings should have been stayed and the High Court was not right in interfering with the trial court's order of injunction which had been affirmed in appeal."

5. The case of S.K. Bahadur v/s Union of India (Supra) quoted by the Learned Counsel for the respondents has also a point of difference in that the charges were not the same. In the other case of Delhi Cloth & General Mills Ltd. (Supra) the fuller observation is as follows :-

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"Though very often employers stay enquiries into the misconduct of the employees pending the decision of the criminal trial courts dealing with the same facts and that is fair, it cannot be said 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. However, 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."

Therefore it will be seen that here too the finding was that if the case is of a grave nature or involves questions of facts or law, it would be advisable for them to await the decision of the trial court.

6. In this particular case the Learned Counsel for the applicant brought ^{out} up that the charges in respect of both the proceedings were the same. All the material witnesses are the same. The employee has superannuated on 30th April, 1991. Provisional pension has to be allowed where departmental or judicial proceedings may be pending or where both are pending. The departmental proceedings instituted while the Government servant was in service can now at best be deemed to be proceedings under rule 9 of the Central Civil Services (Pension) Rules where President reserves himself the right of with-holding or withdrawing pension or a part thereof. Keeping in view the facts in this particular case and bearing in mind the observations of the Apex Court in the case of Delhi Cloth & General Mills and Kusheshwar Dubey (Supra) we direct that the disciplinary proceedings against the applicant should be stayed until the order in the criminal case filed in the trial court. After the decision of the trial court, the disciplinary authority is at liberty to consider the question of continuing with the disciplinary proceedings.

6. With the above direction and orders the case is disposed of with no order as to costs.

I. P. Gupta
Member (A)
4/9/92

Ram Pal Singh
Vice-Chairman(J)