

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD.**

OA No.331/2019 with MA Nos.338/2019 & 454/2020

This the 29th day of January, 2021

**Coram : Hon'ble Shri J.V.Bhairavia, Member (J)
Hon'ble Shri A.K.Dubey, Member (A)**

D.M.Rathwa,
Son of late Muljibhai Rathwa
Aged about 51 years,
Residing of 2- Jeevandep Society
Nehru Baug Road,
Behind New Bus Stand
Anand – 388 001.Applicant
(By Advocate : Shri Joy Mathew)

Versus

1. Union of India
Notice to be served through
The Secretary,
Ministry of Communications & IT
Department of Posts,
Dak Bhavan, Sansad Marg,
New Delhi - 110 001.
2. The Chief Postmaster General,
Gujarat Circle, Khanpur,
Ahmedabad 380 001.
3. The Postmaster General
Vadodara Region, Vadodara 390 002.
4. The Superintendent of Post Office.
Anand Division, Anand 388 001. Respondents

(By Advocate : Ms. R.R.Patel)

O R D E R – ORAL

Per : Hon'ble Shri J.V. Bhairavia, Member (J)

Considering the grounds and reasons stated in the MA No.338/2019
for condonation of delay, the same is allowed.

2. In the instant OA, being aggrieved by the departmental proceedings initiated vide charge memorandum dated 02.6.2017 (Annexure A-1) by the Disciplinary Authority, the applicant herein has filed the present OA under Section 19 of the A.T. Act, 1985 seeking the following reliefs :

- "A) quashing and setting the Charge Memorandum No.B2/14-01/ DMR/2017-18 dated 02.06.2017 at Annexure A/1.*
- B) in the alternative, staying further departmental proceedings pursuant to the Charge Memorandum No.B2/14-01/ DMR/2017-18 dated 02.06.2017 for a period of one year; and*
- C) passing any other appropriate order."*

3. The facts of the case in brief are as under :

- 3.1** The applicant, while working as Sub-postmaster (SPM) at Sardarganj, Taluka Sub Office (TSO) during the period from 02.07.2014 to 11.04.2016 was arrested on 01.02.2015 by Anti Corruption Bureau, Anand for the alleged acceptance of bribe of Rs.1000/- from one Shri Manubhai Chaturbhai Patel. Later on, he was released on bail by the competent court.
- 3.2** Pursuant to his arrest, the applicant was put under suspension which was later revoked. Presently, the applicant is working as Postal Assistant under the respondent No.4.

- 3.3** The respondent No.3 vide its letter dated 15.12.2015 directed the respondent No.4 to initiate departmental proceedings against the applicant under the Rule 14 of the CCS(CCA) Rules, 1965. The respondent No.4 for the reasons best to known to him, till 02.06.2017, did not initiate departmental proceedings against the applicant. However, as per the

direction / order of the respondent No.3, the respondent No.4 issued impugned charge memorandum dated 02.6.2017 (Annexure A/1) for major penalty and appointed Inquiry Officer and Presenting Officer. The applicant submitted his detailed representation before the Disciplinary Authority dated 10.10.2017 (Annexure A/4) and requested to withhold the proceedings since criminal prosecution had been initiated against him on identical charges and the said judicial proceedings was pending before the Trial Court.

3.4 The Disciplinary Authority did not consider the representation submitted by the applicant and proceeded with the inquiry. The last date of inquiry was on 09.09.2017 which was subsequently adjourned to 17.09.2019. It is stated that the criminal case, the charge sheet submitted before the criminal court, wherein the witnesses and documents proposed by the prosecution were mentioned and the details stated in the departmental proceedings i.e. charge memorandum are the same. Therefore, the applicant contends, continuation of the departmental inquiry at this stage will cause prejudice to the applicant as he will have to disclose his defence in the departmental inquiry.

3.5 The learned counsel also argued that the impugned charge memorandum had been issued on the direction of the respondent No.4 i.e. Appellate Authority. Therefore, the charge memorandum issued against the applicant is not an independent decision of the Disciplinary Authority. In case, any adverse order is passed by the said Disciplinary Authority, the

applicant cannot approach the Appellate Authority as he has already made up his mind against the applicant. It is a serious apprehension of the applicant that the disciplinary authority will not consider his case independently. It is also submitted that in fact, the criminal case registered against the applicant is ready for the trial. If the department still proceeds with the departmental inquiry, it will adversely affect his defence in the trial. As the applicant will have to disclose his defence in the departmental inquiry since the witnesses and documents being relied upon by the disciplinary authority in the departmental proceeding and in the prosecution of the criminal case are the same. It is also submitted that continuation of the departmental inquiry will cause serious prejudice to his defence in the criminal case. In this regard, the counsel for the applicant placed reliance on the judgment passed by the Hon'ble Apex Court in the case of *State Bank of India & Ors. v/s. Neelam Nag & Anr.*, reported in **2016 (9) SCC 491** and *Stanzen Toyotetsu India Private Ltd. V/s. Girish V. & Ors.* reported in **2014 (3) SCC 636**.

3.6 Learned counsel for the applicant submits that the criminal case was registered on the basis of the complaint of one of the customers of the Postal Department. In fact, the applicant had nothing to do with the complainant. The fix deposit was made by one of the relatives of the complainant. On maturity of the fix deposit, the customer along with the complainant had approached the Post Office while applicant was on duty for the withdrawal of the said amount of mature fix deposit. At the relevant

time, the Sub Postmaster, Sardarganj was not authorised to issue any cheque. Therefore, the applicant asked the customer to approach the office on 09.11.2015 because by that time, his cheque book would have come from the Head office. On 09.11.2015, the cheque book was handed over to the customer. However, the complainant had filed a false and frivolous complaint against the applicant. The department was aware of the said fact and till 02.06.2017; it did not initiate any departmental proceedings against the applicant from the date of registration of the complaint. Therefore, the impugned charge memorandum had been issued by the Disciplinary Authority only on the direction issued by the Appellate Authority without independent preliminary inquiry and the same was required to be quashed and set aside.

4. On the other hand, the respondents have filed their counter reply and denied the contention of the applicant.

4.1 Learned standing counsel for the respondents Ms. R.R.Patel submits that it is strange that on one hand, the applicant is assailing very legality of the charge sheet and on the other hand, he is arguing to keep in abeyance the departmental proceedings, which means that after one year, said departmental proceedings can proceed against him. On the contrary, the Hon'ble Apex Court held that pendency of criminal proceedings is not a ground to stay the departmental inquiry as both the proceedings, stand on different footing. It is submitted that in the catena of decisions, the Hon'ble Supreme Court held that there is no bar against initiation of criminal as well

as departmental proceedings simultaneously even on the same set of charges/ allegations. In this regard, learned counsel placed reliance on the judgment passed by the Hon'ble Supreme Court in the case of *State of Rajasthan v/s. B.K.Meena & Ors.* reported in **(1996) 6 SCC 417** wherein it was held that : “*it must be remembered that interest of administration demand that the undesirable elements are thrown out and charge of misdemeanour is inquired into promptly. The disciplinary proceedings are meant not really to punish the guilty but to keep the administrative machinery unsullied by getting rid of bad elements. The interest of the delinquent officer also lies in prompt conclusion of the disciplinary proceedings. If he is not guilty of the charges, his honour should be vindicated at the earliest possible moment and if he is guilty, he should be dealt with promptly according to law. It is also in the interest of the administration that persons accused of serious misdemeanour should be continued in office indefinitely i.e. for long periods awaiting the result of criminal proceedings.*”

4.2 It is submitted that on the basis of inquiry/ investigation carried out by the ACB, Anand and as per other material on record, the departmental proceedings was initiated against the applicant. Therefore, it is not correct on the part of the applicant to assert that the impugned charge memorandum (Annexure A/1) was issued by the Disciplinary Authority under the influence of the Appellate Authority.

4.3 Further, it is submitted that according to the revised schedule of Appointing/ Disciplinary Authority issued under DGs Memo No.12/6/89-VIG-III dated 27.8.1990 (Annexure R/1), the Postmaster General is neither

the Appellate Authority nor the applicant's Appellate Authority. In the case of the applicant, the DPS, Vadodara is the Appellate Authority. Thus, the applicant has not stated correct facts correctly and has attempted to mislead this Tribunal.

4.4 It is submitted that the simultaneous criminal proceedings and the departmental proceedings having the same charges are permissible as per GOI decision No.17 below the Rule 14 of the CCS (CCA) Rules, 1965 (Annexure R/2). Therefore, the charge memorandum issued by the Disciplinary Authority against the applicant cannot be said to be illegal.

4.5 The respondents had also filed their additional reply to the MA No.454/2020 filed by the applicant for grant of interim relief. In the said reply, the respondents have clarified that this Tribunal had never granted any stay against the further proceedings. Therefore, the DA's direction to the Inquiry Officer vide letter dated 08.10.2020 to take appropriate decision on the request of the applicant to postpone the hearing/ schedule of departmental inquiry, was in order. Further, the Inquiry officer had re-fixed the date for further hearing to 21.12.2020. As such, the applicant is not entitled for any relief sought in this OA. The learned counsel for the respondents relied upon the order passed by the Principal bench of this Tribunal in the case of Ms. Ruma Das v/s. Kendriya Vidyalaya Sangathan, OA No.3306/2010, decided on 4.4.2011 (Annexure S/1) and submitted that departmental inquiry should be completed expeditiously.

5. Heard the parties and perused the materials on the record.

6. It is noticed that the applicant herein was served with departmental charge memorandum dated 02.06.2017 (Annexure A/1, impugned herein), for the alleged charges that :“*while the applicant was working as SPM Sardargunj, Taluka : Sub Office (TSO) during the period from 02.07.2014 to 11.04.2016, he was alleged to have accepted of tip of Rs.1000/- which may called as bribe from one Shri Manubhai Chaturbhai Patel on 09.11.2015, he was caught red-handed by ACB, Anand for taking tips/ bribe. He was detained in custody from 1.12.2015 to 5.12.2015. It is therefore, the applicant/ C.O. while functioning as SPM now Postal Assistant Anand is alleged to have violated provision of Rule 13 (Sub para 11 of DG P&T Letter dated 20.11.1976) of CCS (Conduct) rules, 1964 and further alleged to have maintained absolutely integrity, devotion to duty and have acted in a manner of unbecoming of a Government servant, violating provisions of Rule 3(1)(i), (ii), & (iii) of CCS (Conduct) Rules, 1964.”*

7. The learned counsel for the applicant mainly submitted that for the said incident, criminal case was registered against the applicant by the CBI and the judicial proceeding was pending before the CBI Court. It was also argued that the material relied upon by the Disciplinary Authority were common in nature with the material of prosecution case registered against him in the criminal court. It was also argued by the counsel that if the department proceeded with the departmental inquiry, it would adversely affect the defence of the applicant in the Trial as the applicant would have to disclose his defence in the departmental inquiry. In support of the said submission, the learned counsel placed reliance on the judgment passed by the Hon’ble Apex Court in the case of *State Bank of India & Ors. v/s.*

Neelam Nag & Anr., and Stanzen Toyotetsu India Private Ltd. V/s. Girish V. & Ors. (supra).

8. As far as the aforesaid submission of the applicant that departmental inquiry will cause prejudice to his defence in the criminal court is concerned, we are of the considered opinion that the said submission is not tenable in the light of the judgement passed by the three Judges' Bench of Hon'ble Apex Court in the case of *Depot Manager, A.P. State Road Transport Corporation v/s. Mohd. Yousaf Miya* reported in **(1997) SCC L&S 548**, wherein it was held that:

"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 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 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 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. The enquiry in the departmental proceedings relates to the conduct of the delinquent officer and proof in that behalf is not as high as in an offence in criminal charge. It is seen that invariably the departmental enquiry has to be conducted expeditiously so as to effectuate efficiency in public administration and the criminal trial will take its own course. The

nature of evidence in criminal trial is entirely different from the departmental proceedings. In the former, prosecution is to prove its case beyond reasonable doubt on the touchstone of human conduct. The standard of proof in the departmental proceedings is not the same as of the criminal trial. The evidence also is different from the standard point of the Evidence Act. The evidence required in the departmental enquiry is not regulated by the Evidence Act."

(emphasised supplied)

9. The Hon'ble Apex Court in the case of *M.Paul Anthony v/s. Bharat Gold Mines* reported in (1999) 3 SCC 679 considered the question whether the departmental proceedings and proceedings in a criminal case on the basis of the same set of facts and evidence can be continued simultaneously and after referring the judgment passed in A.P.SRTC (supra) answered in para 22 as under :

"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."

10. Recently, the Hon'ble Apex Court in the case of **Shashi Bhushan Prasad V/s. CISF** reported in **(2019) 7 SCC 797 : (2019) 2 SCC (L&S) 527** held after considering the law laid down in the case of **A.P.SRTC v/s. Mohd. Yousuf Miya (supra)**, and **Ajit Kumar Nag v/s. Indian Oil Corporation Ltd**, it is held that :

"It is fairly well settled that two proceedings criminal and departmental are entirely different. They operate in different fields and have different objective whereas the object of the criminal trial is to inflict appropriate punishment on an offender, the purpose of inquiry proceedings is to deal with the delinquent departmentally and to impose the penalty in accordance with the service rules."

11. Guided by the above settled position in law, we may examine the facts of the case. It is noticed that the complaint was registered by the ACB, Police on 01.12.2015, after it had laid a trap and the applicant had demanded bribe from the complainant and had accepted Rs. 1000/- as a bribe in Sardargunj TSO in the presence of witness and caught red handed by ACB, Anand. He was arrested on 01.12.2015 and remanded to judicial custody. Subsequently he was released on bail. Criminal prosecution was initiated by the police authority concerned and as admitted by the applicant (delinquent), the criminal case lodged against him was pending trial before the criminal court.

12. At this stage, it suffices to state that the criminal case was registered against the Applicant for alleged offence punishable under Sections 7, 13(1)(d) & 13(2) of the Prevention of Corruption Act, 1988. Whereas, the departmental proceeding has been initiated against the Applicant for alleged violation of Government of India decision dated 20th November, 1976, referred at item No. 11 below the Rule 13 of CCS (Conduct) Rules, 1964. The said rules prohibit acceptance by any Government servant any gift such as tips. Rule 3 (1)(iii) of the said rules lays down that every Government servant shall act all time to do nothing which is unbecoming of a Government servant asking for 'Tips' or 'Bakshish' or accepting the same even when voluntarily offered in clearly violation of these rules. Government servant indulging in this practice rendered themselves liable for action for their misconduct for contravening these provisions. Accordingly, the Disciplinary Authority decided to initiate the disciplinary proceedings and issued charge memorandum dated 02.06.2017 under Rule 14 of CCS (CCA) Rules, 1965 to maintain discipline in the Organization.

13. It is apt to mention here that the charges levelled against the applicant under the disciplinary proceedings under the CCS (CCA) Rules and the charges under the provisions of the Prevention of Corruption Act, 1988 are different. As noted hereinabove, the levels of evidence required in the departmental proceedings and Criminal Proceedings are different. The preponderance of probability of misconduct is sufficient, as per the guiding principle in case of Departmental Proceedings whereas the magnitude of

evidence that is required to prove the prosecution case to convince the Trial Court beyond reasonable shadow of doubt to establish and confirm the culpability of the criminal act is quite different. We, therefore, find no reasons as to why the departmental proceeding should not be continued. The judgment relied upon by the counsel for the applicant in the facts and circumstances of the present case as narrated hereinabove are not helpful. Even otherwise, it is settled principles of law that the departmental proceedings cannot be unduly delayed.

14. In view of above factual matrix, we do not find any procedural infirmities in the decision of the Disciplinary Authority in issuance of the charge memorandum under the provisions of Rule 14 of the CCS (CCA) Rules, 1965 and conducting the departmental inquiry against the applicant in addition or parallel to the criminal proceeding before the competent court. The judgment relied upon by the counsel for the applicant in the facts and circumstances of the present case as narrated hereinabove are not helpful. Even otherwise, it is settled principles of law that the departmental proceedings cannot be unduly delayed.

15. It is further noticed that in the present OA the applicant, apart from his prayer to quash and set aside of the charge memorandum, has also prayed for stay of further departmental proceedings pursuant to the charge memorandum dated 02.06.2017 for a period of one year. In this regard, it is required to mention that the applicant had filed the present OA on 27.09.2019 and as such, now one year has already elapsed. Therefore, the

respondents are correct in their submissions that the OA is required to be dismissed on this sole ground.

16. In view of our above discussion and guided by well settled position in law on the issue, we come to the considered conclusion that the Applicant has not made out a case calling for our intervention. The OA lacks merit. Accordingly, the same is dismissed. Pending MA, if any, also stands disposed of. No order as to costs.

(A.K.Dubey)
Member (A)

(J.V.Bhairavia)
Member (J)

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