

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/021/0064/2017

Date of CAV: 22.03.2021

Date of Pronouncement: 29.03.2021



Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member

Sri Katravat Ram Singh Nayak
S/o. Sri Jyothi Ram, Aged 49 years,
Occ: Superintendent of Customs & Central Excise Dept,
Service Tax, Office of Dy. Commission Divn. II, Group IX,
Sitaramprasad Towers, Lakdikapul, Hyderabad,
R/o. H. No. 1-4-118/3, New Maruthi Nagar,
Dilsukhnagar, Hyderabad.

...Applicant

(By Advocate: Mr. N. Vijay)

Vs.

1. The Union of India, Ministry of Finance,
Department of Revenue, North Block, New Delhi,
Rep. by its Deputy Secretary/ Under Secretary.
2. The Principal Commissioner of Service Tax,
Service Tax Commissionerate, Hyderabad,
D. No.11-5-423/1/A, Sitaram Prasad Tower,
Red Hills, Hyderabad, Rep. by its Commissioner.
3. The Deputy Commissioner of Service Tax,
Hyderabad-V Division, Service Tax Commissionerate - III Floor,
Sitaram Prasad Tower, Red Hills, Hyderabad.

....Respondents

(By Advocate : Mr. R.V. Mallikarjuna Rao, Sr. PC for CG)

ORDER
(As per Hon'ble Mr.B.V.Sudhakar, Administrative Member)

2. The applicant filed the OA challenging the Charge Memorandum dt. 19.07.2016 issued under Rule 14 of CCS (CCA) Rules, 1965.



3. The brief facts of the case are that the applicant while working as Superintendent in the respondents organisation, CBI registered a case against the applicant under Prevention of Corruption Act in case No.BC-11 (A)/2014 dated 25.6.2014 alleging demand of illegal gratification of Rs.15,000/- for accepting the surrender application of service tax registration of a company and when the case was pending, respondents issued charge memo dated 19.7.2016 with identical charges. Applicant requested to stay the disciplinary proceedings till the criminal case was over, which was not conceded to and hence the OA.

4. The contentions of the applicant are that the defence submitted in the disciplinary inquiry could be used to his disadvantage in the criminal case. Applicant cited the judgment of the Hon'ble Supreme Court in 2014 (3) SCC 636 in support of his contention.

5. Respondents in the reply statement state that a criminal case was registered against the applicant based on trap proceedings of the CBI in regard to alleged demand of illegal gratification of Rs.15,000/- for surrender of service tax registration of a company. The applicant was also proceeded against for misconduct and departmental charge memo was issued under CCS (Conduct) Rules, 1964. There is no bar to proceed on disciplinary grounds when the criminal case is pending. Respondents cited the Hon'ble Supreme Court judgments in support of their contentions.

The applicant sought interim relief to stay the disciplinary inquiry at the admission stage of the OA and when it was denied, Hon'ble High Court for the State of Telangana and State of Andhra Pradesh was moved, wherein stay was granted on 19.6.2018 till the disposal of the OA.



6. Heard the respondents counsel and perused the pleadings on record.
7. I. The dispute is in regard to conduct of disciplinary proceedings when a criminal case is pending on similar charges. The applicant was issued a departmental charge memo dated 19.7.2016 for misconduct when the criminal case filed by the CBI in case No.RC-11(A)/2014 dated 25.6.2014 was pending adjudication in the competent court. Applicant claims that the defence submitted by him in the disciplinary case would prejudice his cause in the criminal case. We have dealt with an identical issue in OA 14/2020 wherein it was held as under:

*“VI. Now, we come to the aspect of simultaneous conduct of disciplinary and criminal proceedings. The argument of the applicant is that any evidence let in during the disciplinary inquiry will be prejudicial to pursue the cause of the applicant in the criminal case. Legally, the two proceedings are in different planes. Their objectives and operations are different. Disciplinary proceedings, focus on the aspect of misconduct for imposing the appropriate penalty and in criminal proceedings the offences under PC act are weighed in order to impose the apt sentence. There is a difference between the standard of proof, mode of inquiry and the rules relating to inquiry and trial, as observed by the Hon'ble Apex Court in **Karnataka Power Transmission Corporation Ltd vs. Sri C Nagaraju & Anr.** on 16th September, 2019 in Civil Appeal No. 7279 of 2019 (Arising out of SLP (C) No. 25909 of 2013) as under:*

“9. Acquittal by a criminal court would not debar an employer from exercising the power to conduct departmental proceedings in accordance with the rules and regulations. The two proceedings, criminal and departmental, are entirely different. They operate in different fields and have different objectives. 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 PC Act are established, and if established, what sentence should be imposed upon him. The standard of proof, the

mode of inquiry and the rules governing inquiry and trial in both the cases are significantly distinct and different”



*True to speak, there is no legal block for simultaneously proceeding in disciplinary case and criminal trial. The need to stay disciplinary proceedings would depend on the facts and circumstances of each case. Applicant claims that the defence revealed in the disciplinary case would jeopardise his criminal case. The moot point is the advisability, desirability or propriety to stay the disciplinary case, has to be gone into on a case to case basis. It is in the best interest of the employee that a disciplinary case has to be completed early so that he can be mentally free from the Damocles' sword of the pending disciplinary case. Therefore, the desirability to continue with the inquiry ordered by the respondents and advisable in the long term interests of the applicant. Generally criminal cases get procrastinated for legal reasons and it is settled that if the criminal case is delayed then it is good ground for going ahead with the disciplinary case even if they are held over at the earlier stage. In the present case the criminal case was filed in 2018 and now we are in 2021. One does not know when the criminal case will be finalised. The purpose of disciplinary proceedings is to restore the honour of the charged employee if found innocent and if not to be dealt as per law. Continuing officials facing allegations of misdemeanour indefinitely under the pretext of pendency of criminal proceedings, is not in Organisational interest. Therefore staying of disciplinary proceedings should not be a matter of course. Sometimes, the disciplinary proceedings may be unfounded and this can be no ground to procrastinate the disciplinary proceedings. The charges are serious relating to alleged corruption and by way of interim order dt.06.01.2020, the respondents were directed to keep the departmental proceedings in abeyance for a period of six months or till the criminal proceedings are completed, whichever is earlier. More than 2 years have lapsed since the issue of the charge sheet and the criminal case. The interest of the applicant and the administration should not suffer on account of pending criminal case. We take support of the observation of the Hon'ble Apex Court in **State of Rajasthan vs Shri B.K. Meena & Others** on 27 September, 1996 as under, in stating the above:*

It would be evident from the above decisions that each of them starts with the indisputable proposition that there is no legal bar for both proceedings to go on simultaneously and then say that in certain situations, it may not be 'desirable', 'advisable' or 'appropriate' to proceed with the disciplinary enquiry when a criminal case is pending on identical charges. The staying of disciplinary proceedings, it is emphasised, is a matter disciplinary proceedings, it is emphasised, is a matter to be determined having regard to the facts and circumstances of a given case ad that no hard and fat rules can enunciated in that behalf. The only ground suggested in the above questions as constitution a valid ground for staying the disciplinary proceedings is "that the defence of the employee in the criminal case may not be prejudiced." This ground has, however, been hedged in by providing further that this may be done in cases of grave nature involving questions of fact and law. In our respectful opinion, it means that not only the charges must be grave but that the case must involve complicated questions of law and fact. Moreover, 'advisability', 'desirability' or 'propriety', as the case may be, has to be determined in each case taking into consideration all the facts and circumstances of the case. The ground indicated in D.C.M. and Tata Oil Mills is not also an invariable rule. It is only a factor which will go into the scales while judging the advisability or desirability of staying the disciplinary proceedings. One of the contending consideration is that the disciplinary enquiry cannot be - and should not be delayed unduly. So far as criminal cases are concerned, it is well- known that they drag on endlessly



where high officials or persons holding high public offices involved. They get bogged down on one or the other ground. They hardly ever reach a prompt conclusion. That is the reality in spite of repeated advice and admonitions from this Court and the High Courts. If a criminal case is unduly delayed that may itself be a good ground for going ahead with the disciplinary enquiry even where the disciplinary proceedings are held over at an earlier stage. The interests of administration and good government demand that these proceedings are concluded expeditiously. It must be remembered that interests of administration demand that the undesirable elements are thrown out and any charge of misdemeanor is enquired 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 a 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 not also in the interest of administration that persons accused of serious misdemeanor should be continued in office indefinitely, i.e., for long periods awaiting the result of criminal proceedings. It is not in the interest of administration. It only serves the interest of the guilty and dishonest. While it is not possible to enumerate the various factors, for and against the stay of disciplinary proceedings, we found it necessary to emphasise some of the important considerations in view of the fact that very often the disciplinary proceedings are being stayed for long periods pending criminal proceedings. Stay of disciplinary proceedings cannot be, and should not be, a matter of course. All the relevant factors, for and against, should be weighed and a decision taken keeping in view the various principles laid down in the decisions referred to above. We are quite aware of the fact that not all the disciplinary proceedings are based upon true charges; some of them may be unfounded. It may also be that in some cases, charges are levelled with oblique motives. But these possibilities do not detract from the desirability of early conclusion of these proceedings. Indeed, in such cases, it is all the more in the interest of the charged officer that the proceedings are expeditiously concluded. Delay in such cases really works against him. 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 13.10.92. On 9.2.93, he submitted a detailed reply/defence statement, running into 90 pages, controverting the allegations levelled against him. The challan against him was filed on 15.5.93 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 9.2.93. 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 speculator reason. We cannot accept it as valid. Though the respondent was suspended pending enquiry in May, 1990, the order has been revoked in October 1993. The respondent is continuing in office. It is in his interest and in the interest of good administration that the truth or falsity of the charges against him is determined promptly. To wit, if he is not guilty of the charges, his honour should be vindicated early and if he is guilty, he should be dealt with appropriately without any avoidable delay. The criminal court may decide - whenever it does - whether the respondent is guilty of the offences charged and if so, what sentence should be imposed upon

him. The interest of administration, however, cannot brooke any delay in disciplinary proceedings for the reasons indicated hereinabove.

Xxxxx



Staying of disciplinary proceedings pending criminal proceedings, to repeat, should not be 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. We must make it clear that we have not case, and we should not be understood to have cast, any reflection on the merits of either party's case. What we have said is confined to the question at issue, viz., the desirability or advisability of staying the disciplinary proceedings against the respondent pending the criminal proceeding/case against him. For the above reasons, it must be held that the Tribunal was in error in staying the disciplinary proceedings pending the criminal proceedings against the respondent. The appeal is accordingly allowed with costs. The order of the Tribunal is set aside. The disciplinary proceedings against the respondent shall go on expeditiously without waiting for the result of the criminal proceedings. The costs of the appellants are estimated at Rs. 5,000/-."

As per the above observation of the Hon'ble Supreme Court if there is a delay in processing of the criminal case, the disciplinary proceedings can go on and there is no embargo in conducting simultaneous proceedings.

The Hon'ble Apex Court referred to the observations in *B.K.Meena* cited *supra* and in *Paul Anthony* case relating to the conduct of the simultaneous proceedings, in ***Hindustan Petroleum Corporation Ltd & Ors. vs Sarvesh Berry*** on 9 December, 2004 in Appeal (civil) 7980 of 2004 and held as under:

The aforesaid position was also noted in *State of Rajasthan v. B.K. Meena* (1996 (6) SCC 417).

There can be no straight jacket formula as to in which case the departmental proceedings are to be stayed. There may be cases where the trial of the case gets prolonged by the dilatory method adopted by delinquent official. He cannot be permitted to, on one hand, prolong criminal case and at the same time contend that the departmental proceedings should be stayed on the ground that the criminal case is pending.

In *Capt. M. Paul Anthony's* case (*supra*) this Court indicated some of the fact situations which would govern the question whether departmental proceedings should be kept in abeyance during pendency of a criminal case. In paragraph 22 conclusions which are deducible from various decisions were summarised. They are as follows:

(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, the administration may get rid of him at the earliest.



*Again, in 2007, Hon'ble Supreme Court has made similar observations in **Noida Entrepreneurs Assn vs NOIDA & Ors** on 15 January, 2007 in Writ Petition (Civil) No.150 of 1997. Relying on the judgments cited supra and other judgments, the Hon'ble Principal Bench of this Tribunal in OA 3307/2011 on 12.04.2012 has in fact held that it is all the more necessary to expedite disciplinary proceedings when simultaneous proceedings are initiated, in view of the need to handle corruption cases for orderly functioning of the public offices, as under:*

“25. The criminal case against the Applicant is on his alleged violation of the law of the land by commission of alleged offences punishable under IPC and POC Act, but the departmental proceeding has been initiated against the applicant for alleged misconduct under Rule 14 of CCS (CCA) Rules, 1965 for his act exhibiting lack of integrity, lack of devotion to duty and conduct unbecoming of a Government servant. We, therefore, find no reasons as to why the departmental proceeding should not be continued. On the other hand, we feel that the departmental proceeding should not only be continued but also expeditiously completed.

Xxx

*30. At this stage, we may note that if the applicant is not guilty of the misconduct in the departmental proceedings and the same gets completed well in advance before the Trial is completed in the criminal case, he would be in better footing to prove her innocence before the Trial Court. At the same time, we note that in case the applicant is found to be guilty of the alleged misconduct in the departmental proceedings on the allegations which have been levelled against him, the respondents cannot keep quiet but to take action to complete the case in a timely manner. Such expeditious decision taken by the Competent Authority should set an example to others not to commit similar nature of misconducts in future. It is apt for us to cite the observations of Honble Apex Court in the case of **K.C. Sareen Versus C.B.I., Chandigarh** [2001 (6) SCC 584] which are more relevant to the case at hand and the same reads as follows :-*

Corruption by public servants has now reached a monstrous dimension in India. Its tentacles have started grappling even the institutions created for the protection of the republic. Unless those tentacles are intercepted and impeded from gripping the normal and orderly functioning of the public offices, through strong legislative, executive as well as judicial exercises the corrupt public servants could even paralyse the functioning of such institutions and thereby hinder the democratic polity.

There is a delay in the adjudication of the criminal case for understandable reasons and the disciplinary proceedings have been stayed for more than an year by an interim order of the Tribunal. Thus in view of the elaborate deliberations on the issue by the Hon'ble Apex Court cited supra and the issue being one of alleged corruption, we are of the view that the respondents should be given the green signal to proceed with the disciplinary inquiry."

Xxx



xii. *Time and again instructions are being issued by the CVC (dated 3.3.1999) and the G.O.I to complete the disciplinary proceedings at the earliest. Time spans are fixed to complete each stage of the case. The motive is that an innocent employee should not suffer the stigma of a disciplinary case so that he can carry on with his career. Pending disciplinary case is a de-motivating factor as it will not allow the employee to concentrate on his work. Therefore, the urgency to dispose of disciplinary cases in Organizational and individuals interest. Hon'ble Supreme Court in **Prem Nath Bali v Registrar, High Court of Delhi & anr**, in Civil Appeal No. 958 of 2010, has observed that the disciplinary inquiry has to be completed in 6 months and definitely not beyond an year as under:*

33) Keeping these factors in mind, we are of the considered opinion that every employer (whether State or private) must make sincere endeavor to conclude the departmental inquiry proceedings once initiated against the delinquent employee within a reasonable time by giving priority to such proceedings and as far as possible it should be concluded within six months as an outer limit. Where it is not possible for the employer to conclude due to certain unavoidable causes arising in the proceedings within the time frame then efforts should be made to conclude within reasonably extended period depending upon the cause and the nature of inquiry but not more than a year.

Respondents are bound by the legal principle stated and they need to proceed with the inquiry."

II. The instant case is squarely covered by the verdict in the cited OA wherein we held at length by relying on the Hon'ble Supreme Court judgments that there is no bar to hold disciplinary proceedings when a criminal case is pending adjudication. The Hon'ble Supreme Court judgment cited by the applicant would thus not be of any assistance in view of its own judgments cited in the OA referred to above.

III. Therefore, we do not find any merit in the OA and hence the same is dismissed with no order as to costs.



evr

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER