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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration O.A. No. 557 of 1987

Brij Kishore Srivastava ..... Applicant

Versus

Union of India & Others ..... Respondents.

Hon.S.Zaheer Hasan, V.C.

Hon. Ajay Johri, A.M.

(By Hon.S.Zaheer Hasan, V.C.)

This is an application under Section 19  
of the Administrative Tribunals Act XIII of 1985.

2. The applicant B.K.Srivastava was working as Cashier in the office of Controller of Defence Accounts (Pensions), Allahabad. As a result of surprise checking a shortage of Rs. 63,790-36 was detected in the actual official cash. This misappropriation relates to 1981-84. On 19.4.84 F.I.R. was lodged with the police in which the aforesaid amount was mentioned as misappropriated. The police registered this case as Crime No. 49 of 1984 and after investigation submitted a chargesheet before the Magistrate in respect of the aforesaid amount. The departmental proceedings in this regard started on 3.6.1985 and a memorandum of charge was framed containing five charges.



The charge No.1 relates to Rs. 63,790-36, Charge No.2 to Rs.50,696-86, Charge No.3 to Rs. 16,600/-, Charge No.4 to Rs.13789-95 and Charge No.5 to Rs.2,901/-.

According to the applicant his defence in the <sup>Criminal</sup> immediately case will be prejudiced if the departmental proceedings are started. In this connection he moved the Department to stop the departmental proceedings without any success. So he was compelled to come to this Tribunal with a prayer that the respondents be directed not to proceed with the departmental proceedings on the strength of the aforesaid chargesheet till the final decision of the Criminal Case State Versus B.K.Srivastava under Section 409 Indian Penal Code.

3. The Charge No.1 relates to 63,790-36 for which a chargesheet has been submitted by the police and the matter is pending before the learned Magistrate for trial. In a case reported in 1965 S.C. 155 Tata Oil Mills Co. Ltd. Versus Workmen and in another case reported in 1960 SC. 806 Delhi Cloth and General Mills Ltd Versus Kaushal Bhan it was observed that "it is desirable that if the incident giving rise to a charge framed against an employee is being tried in a criminal court, the employer should stay the domestic enquiry pending the final disposal of the criminal case. It would be particularly appropriate to adopt such a course where the charge against the employee is of grave character, because in such a case, it would be unfair to compel the employee to disclose the defence which he may take



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before the criminal court. But to say that domestic enquiries may be stayed pending criminal trial is very different from anything that if an employer proceeds with the domestic enquiry in spite of the fact that the criminal trial is pending, the enquiry for that reason alone is vitiated. An accused can be punished under Section 409 I.P.C. upto the imprisonment for life. So there is no doubt that the charge against the accused is of 'grave character'. The accused has a right not to disclose his defence in Criminal trial till the entire prosecution evidence is over. In the departmental proceedings charges are framed and the employee is asked to give his explanation. In case he gives an explanation regarding the charges framed during the departmental proceedings there is every likelihood that his defence in the criminal trial will be prejudiced.

of there is <sup>an</sup> conviction of the applicant in the criminal court, <sup>an</sup> Consequential order will follow from the Govt. without an enquiry. Therefore it is unnecessary wastage of money from the State Exchequer and the wastage of public fund can be well avoided. If the applicant is acquitted the law will take its own course so far as domestic enquiry is concerned. Under the circumstances we direct that the departmental enquiry should be stayed so far as Charge No.1 relating to Rs.63,790-36 is concerned, till the final disposal of the criminal case referred to above.

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4. There are four other items of misappropriation as detailed above. They relate to different accounts and funds. So far as these items are concerned no criminal case is pending nor the police is making any investigation regarding the same. The police has submitted chargesheet in respect of Rs.63,790-36 only. First F.I.R. was lodged on 19.4.1984. It was contended that in the letter dated 9.4.85 addressed to the police the Department informed that there was a total shortage of Rs.1,47,365-41 which includes Rs.63,790-36, and subsequently on 5.8.87 the Department wrote to the police that no action be taken regarding the rest of the amount (not mentioned in the F.I.R.) because they could not gather sufficient material and in this way they want to punish the applicant departmentally and have wrongfully ordered the police not to investigate. Here the simple question to be seen is whether the applicant will be prejudiced in his defence or not. Since no case is pending in Court nor before the police so there is no question of any prejudice. It is something else that the Department was not justified in withdrawing the case (partly) and it is quite different matter that the applicant will be prejudiced in his defence as already stated. The main point to be considered is as to whether the defence will be prejudiced or not. It is not a case in which we are required to quash the request made by the Department to the police regarding non-investigation of the rest of the amount. Here the question is as to whether



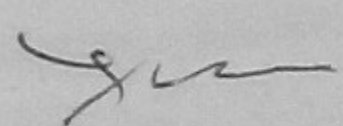
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the departmental proceedings should be stopped or not regarding the "balance" amount! There is nothing to suggest that the police is going to submit any chargesheet. The Department has made a request not to investigate the case regarding the "balance amount". The chargesheet regarding Rs. 63,790-36 for which F.I.R. was lodged has already been submitted before the Magistrate and that the trial is pending. So far as this item is concerned we are of the view that the departmental proceedings should be stopped. So far as the "balance amount" is concerned, we do not consider it to be a fit case <sup>for staying</sup> ~~to stop~~ the departmental proceedings. It is not a case in which the Department is withdrawing a case from the police <sup>in order</sup> ~~not~~ to save the accused. It would be too much to presume that the applicant would be definitely punished in the departmental enquiry. Who knows the enquiry <sup>officer</sup> may hold that no case has been made out against him. So it cannot be inferred that the request to the police not to investigate the case regarding the "balance amount" was made with some oblique motive. It may be that this "balance amount" was not mentioned in the F.I.R. and the Department preferred to proceed departmentally. The standard of proof in criminal court and departmental proceedings is quite different. The authorities have a discretion to hand over a case to the police or to proceed departmentally. There is no illegality if both the proceedings go on simultaneously. It may be that the Govt. may not be able to realize the



the amount if found due from the pay etc. of the applicant. So to be on safer side they filed a Civil Suit also. In short there is no question of any prejudice being caused to the applicant regarding the "balance amount" and we find no good ground to stay the departmental proceedings regarding the same.

5. The departmental proceedings in respect of Charge No.1 involving Rs. 63,790-36 are stayed. As regards the remaining four charges the department will be at liberty to proceed with the departmental enquiry and the prayer for staying the same is rejected. The petition is disposed of accordingly with costs on parties.

  
Vice Chairman

  
Member (A)

Dated the 23 October, 1987

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