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CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH

Original Application No. 1000 of 1994

Allahabad this the 8/5 day of March 1995

Hon'ble Mr. S. Das Gupta, Member(A)
Hon'ble Mr. Jasbir S. Dhaliwal, Member(J)

Indra Pal Shukla, Sorting Assistant, HRO X down
Jhansi, 486 Nanakganj, Sipari Bazar, Jhansi

Applicant.

By Advocate Shri R.K. Tewari
P.K. Sharma

Versus

1. Union of India through Secretary Ministry of Post and Telegraph Dak Bhawan, Parliament Street, New Delhi.
2. Director General Post, Dak Bhawan, Parliament Street, New Delhi.
3. Senior Superintendent Post Offices, Agra Division, Agra-282001
4. S.R.M. Post Offices, Jhansi.

Respondents.

By Advocate Km. S. Srivastava

O R D E R

By Hon'ble Mr. Jasbir S. Dhaliwal, Member (J)

The petitioner who is facing a departmental inquiry on five charges served on him through letter dated 12.4.1994 has come to the Tribunal praying for deferring the departmental proceedings against him by the respondents till the disposal of the criminal trial and for a direction to the Criminal Court to decide his case expeditiously. He pleads that he has been a Trade Union leader

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and that was a cause for involving him into a false criminal case by the respondents. He was earlier posted as a Divisional Stock Clerk in the office of S.R.M., Jhansi and in the month of 1993 was working as Platform Inspector. An inquiry was started against him and then an F.I.R. was lodged against him in which case he was arrested by the Police and released on bail on 09.5.1993. He claims that a departmental inquiry cannot go on till the criminal trial is concluded.

2. We have considered the contention and have also gone through the records. The police papers filed against the present petitioner is for causing injury to a public servant, interfering in the performance of duties of a public servant, causing mis-chief and criminal intimidation on 08.5.1993, whereas the chargesheet shows that the applicant stands charged with violation of Provisions of Rule 366 and 375 of P & T Manual Vol.II between July 1991 to August 1992 while making entries in the Stationery register which were mentioned to be falsely made and thereby embezzling an amount causing loss to the department of Rs.12,522-25/- and failing to maintain integrity and devotion to duty, considering the same period regarding short opening

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balances in the Stationery Register, showing fake local purchases, thus violating Rule 366 and 367 of the aforesaid manual, striking short balances in stationery items, misappropriating the Government money by transferring 5965 Carbon papers short to his successor on 3/4 August, 1992. Besides these ~~articles~~ of charges no. 2 to 5, he also stands charged with article of charge no.1 mentioning that while he was being interrogated by Supdt. R.M.S. Jhansi Division and A.S.R.M., Agra in connection with the embezzlement case, the petitioner handed over the stationery register to two out siders where a scuffle took place and in this manner, Sri Shukla had assisted those miscreants to destroy the evidence/documents which were required in connection with the embezzlement case. We find that none of the charges is identical with the offences ~~of which~~ with which he stands charged ^{the} ~~appeared before~~ criminal court. Article of charges no.2 to 5 are clearly distinct relating to a different period of time of July, 1991 to August, 1992. Article of charge no.1 though happened to be nearest to the time of the alleged commission of offences by the petitioner but, definitely relates to the conduct of the petitioner as a public servant which is said to be in contravention of Rule 3 of C.C.S. Conduct Rules, 1964. We do not find that article of

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charge no.1 is the subject matter of the criminal trial which the petitioner is facing.

3. Even otherwise, the law has now been settled by the Hon'ble Supreme Court about the permissibility of both the criminal trial and the departmental proceeding simultaneously. In Kusheshwar Dubey V. M/s Bharat Coking Coal Ltd. and Others A.I.R. 1988 S.C. page 2118, it was observed that there was no legal bar for simultaneous proceedings being taken against a delinquent employee for a criminal offence and as a disciplinary proceeding. There may, however, be some cases where the facts being same in the two proceedings, a petitioner may apply for injunction from a Court for stopping the departmental proceeding till the criminal case is concluded. It was held that it would be a matter of judicial consideration in the given facts of particular case to decide the desirability or otherwise of both the proceedings going on at the same time. The Lordships referred to A.I.R. 1969 Supreme Court page 30 Jang Bahadur Singh V. Baij Nath Tiwari, where the facts in the criminal trial and the disciplinary proceedings were the same. In Jang Bahadur's case the Court held that the pendency of the Court proceeding (Criminal) does not bar the taking of

disciplinary action. The power of taking such action is vested in the disciplinary authority. The civil or criminal court has no such power. The initiation and continuation of continuation of disciplinary proceedings in good faith is not calculated to obstruct or interfere with the course of justice in the pending court proceedings. The Apex Court also took note of the authorities where ^{on} the facts of particular case, the disciplinary proceedings were stayed. In view of the pending criminal case, considering the ratio of this authority we are of the considered opinion that petitioner has not been able to make out a case for stay of disciplinary proceedings during the pendency of criminal trial.

4. It is pertinent to mention here that a criminal trial for certain acts or omissions proceeds under the penal provisions to which Indian Evidence Act is normally applicable whereas to disciplinary proceeding, the provisions of the Indian Evidence Act are not made strictly applicable. Standard of proof for proving an offence against an accused is also of a higher standard requiring proof beyond doubt and an accused is entitled to an acquittal when the evidence is not proved

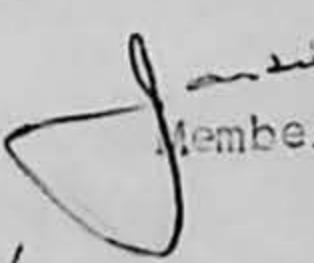
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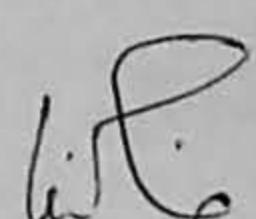
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in consonance with the provisions of the Evidence Act and when some doubt is open in the appreciation of the evidence. A disciplinary proceeding proceeds on a totally different platform which considers whether the conduct of an employee based on some facts of act or omission require to be dealt with under disciplinary proceedings. Its aim is to find out by preponderance of the evidence whether the acts or omissions constitute mis-conduct or whether the employee has conducted himself in a manner unbecoming of a public servant. It also aims to find out whether he has violated some provisions/rules setting out the conduct of a public servant. The very object of the criminal proceeding and disciplinary proceeding is different in its end. A Court while considering the desirability or otherwise of allowing the simultaneous proceedings in a criminal case and under Disciplinary Conduct Rules would consider all these facts.

5. In view of the fore-going discussion, this petition is dismissed being devoid of any merit.

/M.M./


Member (J)


Member (A)