

CENTRAL ADMINISTRATIVE TRIBUNAL

ALIAHABAD BENCH

THIS THE 17 DAY OF NOVEMBER, 1995

Original Application No. 457 of 1995

HON. MR. JUSTICE B.C. SAKSENA, V.C.

HON. MR. S. DAS GUPTA, MEMBER(A)

M.C. Srivastava aged about 40 years  
son of Late Shri P.D. Srivastava,  
r/o 673, Masihaganj, Sipri Bazar  
Jhansi (U.P.)

..... Applicant

BY ADVOCATE SHRI M.P. GUPTA

Versus

1. The Union of India through the  
The General Manager, Central Railway  
Bombay V.T.
2. The Divisional Railway Manager,  
Central Railway, Jhansi

..... Respondents

BY ADVOCATE SHRI G.P. AGRAWAL

ORDER (Reserved)

JUSTICE B.C. SAKSENA, V.C.

Through this O.A. the applicant has sought  
therelief for restraining the respondents not to continue  
the departmental proceedings initiated against the  
applicant on the basis of the charge-sheet dated  
22.8.1994 and to stay the same till the disposal of  
the criminal case no. 193 of 1994 State Vs. Ram Sanehi  
and Ors, pending in the court of Addl. C.J.M., Railway  
Jhansi in which the applicant is an accused.

2. The applicant is at present working as  
Permanent Way Inspector, Central Railway at Jhansi

but at the relevant time he was posted as P.W.I./Incharge at Orai, a railway station at Jhansi division of the Central Railways. On 17.5.94 1034 Pushpak Express train had derailed between Ata and Orai railway stations. The applicant was posted at Orai as P.W.I./Incharge at the said time. A preliminary inquiry was conducted by the Commissioner, Railway Safety and a charge-sheet dated 22.8.94 was issued to the applicant. One Shri G.C. Mishra, XEN(MD), Central Railway Jhansi was appointed as Enquiry Officer. In the charge sheet the allegations against the applicant was that while working as P.W.I Incharge, Orai contravened Para G.R. 15.01, G.R 15.02(a) of G & SR and Para 125 of the I.R.P.W.M 1986. It was further alleged that the applicant had failed to bring about necessary level of supervision and control over his gangmen.

3. It appears that an F.I.R was lodged with the police about the aforementioned derailment of Pushpak Express. Investigations were conducted and the applicant was also charge-sheeted and was summoned in the court of the Additional C.J.M. Railways to stand trial u/ss 304 A/338 and 337 I.P.C for allegedly having committed offences. It is alleged that the said criminal case is still pending.

4. The applicant requested the Disciplinary Authority that the departmental proceedings against him be stayed till the disposal of the criminal case, on the plea that both the departmental proceedings as also the criminal case are grounded upon the same set of facts. The Enquiry Officer vide his letter dated 24.1.95 informed the applicant that his request for suspending the enquiry till the judgment of the criminal court <sup>has been</sup> not agreed to. At the time the O.A. came up for admission and by way of an ~~interim~~ order it was only

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will directed that the respondents/~~xxx~~ not passed final orders in the disciplinary proceedings which may go on.

5. We have heard the learned counsels for the parties. The respondents have filed a counter affidavit and the applicant has filed a rejoinder affidavit. The relevant pleadings will be referred to while considering the submissions made by the learned counsels of the parties.

6. The learned counsel for the applicant submitted that the allegations in the departmental proceedings against the applicant and also in the criminal case are grounded on the same set of facts, It has been submitted that if ~~a~~ disciplinary proceedings are allowed to go on the applicant will be seriously prejudiced. He will not be able to put forth his evidence in defence effectively, particularly because any defence he would be raising ~~in~~ him the disciplinary proceedings would also affect/in the criminal case. The learned counsel for the applicant in support of his submissions cited a Supreme Court decision reported in A.I.R. 1988 Supreme Court 2118 Kusheshwar Dubey Vs. M/s Bharat Cooking Coal Ltd and Others. The Hon'ble Apex Court in the said decision noted the judicial authorities in support of the position that there is nothing wrong in parallel proceedings being taken should (1) by way of disciplinary proceedings and ~~the~~ <sup>(2)</sup> in the criminal court. The Supreme Court's earlier decisions laying down that it would be desirable to stay the disciplinary proceedings till the criminal case was over if the criminal case was with regard to the same allegation for which the disciplinary proceedings were being held were also noted and in para 6 of the judgment it was

observed:-

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" while there could be no legal claim 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. 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."

" It was further observed 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."

7. The learned counsel for the applicant also relied on a decision reported in 1993 IAB.I.C 1720 A.R. Kavi Vs. Karnataka Agro Industries Corporation Ltd and Others. This is a judgment by a Division Bench of the Karnataka High Court. In the said case in

ing view of the finding that the criminal case and the disciplinary proceedings are grounded on the same set of facts, even though the disciplinary proceedings were reaching a culmination, the plea that the applicant has already disclosed his defence and no further prejudice would be caused to him was repelled on the ground that being the disciplinary proceedings ought not have been proceeded with the fact that it has been proceeded with, it would not make any difference ~~xxxxxxxx for staying the xxxxxxxx~~ disciplinary proceedings.

8. The crux of the matter is whether the criminal case and the disciplinary proceedings are on the same set of facts. In the case in hand, the criminal case against the applicant is for his allegedly having committed offences punishable under various sections of the I.P.C. The gravamen of the said charges cannot be said to be identical or similar to the charges for which disciplinary proceedings are being held against the applicant. As noted hereinabove the applicant in the departmental proceedings is alleged to have violated certain provisions of the G & SR. In the O.A the said provisions have not been quoted. However from a perusal of Articles of charges drawn up in the ~~xxxxxxxx~~ disciplinary proceedings becomes apparent that the allegation in ~~xx~~ the departmental proceedings against the applicant is that he failed to maintain the permanent way under his charge to the requisite standard and failed to keep schedule of inspection as per stipulation laid down which is contravention of various provisions of G & SR and resulting in violation of Rule 3 of the Railway Services (Conduct) Rules.

The further allegation in the charge sheet of the departmental proceedings against the applicant is that he failed to make creep adjustment and maintain necessary creep register and creed indicator boards. The allegation in the departmental charge sheet further is that the applicant tampered with the evidence of derailment by instructing his gangmen for rectification of certain deficiencies at the site of the accident. The ingredients of the charge in the departmental proceedings this is grounded on ~~alleged~~ contravention to comply with the relevant provisions of the G & SR and the (Conduct) Rules while the criminal charge though is in respect to the derailment of the Pushpak Express but the ingredients of the criminal offence to our mind has not been shown to be in any manner similar or ~~identical~~ to the charges in the departmental proceedings.

9. It would be relevance to indicate that in Para 6 of A.R. Kavi's decision the Karnataka High Court Division Bench's attention was invited to a D.B. decision of the Madras High Court in G. Chandrasekharan Vs. The Chairman Madras Port Trust, 1990 (2) LLJ 337. In the said decision, the decision in Kusheshwar Dubey's case was distinguished on the basis that therein the criminal ~~x~~ case and the disciplinary proceedings were not grounded on the same set of facts. In Para 6 of the said decision it was observed:

" In this case it is not disputed, as indeed it cannot be, that the gravamen of the charges in the disciplinary proceedings pertain to violation of the Conduct Rules which are not the charges in so far as the criminal case is concerned..... "

"The violation of the Conduct Rules is, therefore independent matter as compared to the charges in the criminal case which have been drawn up against the applicant."

In this view of <sup>the</sup> matter the prayer for staying ~~outside~~ the departmental proceedings was rejected. The Karnataka High Court in A.R. Kavi's case after referring to the Madras High Court decision took the view that the said decision does not deal with the case in which the criminal proceedings and the disciplinary proceedings are grounded on the same set of facts. The Hon'ble Supreme Court in Kusheshwar Dubey's case clearly held that no ~~track~~ <sup>straight</sup> jacket formula can be laid down to have general application to all cases. Thus every case has to be analysed on the basis of the facts of the said case.

10. As noted hereinabove, the disciplinary proceedings have been concluded. The necessary evidence has been recorded including the defence evidence. The final order in the disciplinary proceedings was stayed by way of an interim order by this Tribunal. The respondents in their counter affidavit have pleaded that the decision of the criminal case and its evidence and findings are altogether different. It has been pleaded that acquittal in criminal case would not render the applicant immune from his negligence and violation ~~from~~ <sup>of</sup> the departmental <sup>al rules</sup> governing ~~track~~ <sup>track</sup> ~~track~~ operation and track maintainance etc. In the rejoinder affidavit the said averment has not been controverted. The only plea taken is that if the departmental proceedings were allowed to be finalised the defence of the applicant in the criminal case will be seriously prejudiced.

11. As noted hereinabove, the departmental inquiry has already reached a culmination point. Because of the ~~inx~~ interim order final order in the disciplinary proceedings has not been passed. We, therefore, do not find any merit in the plea taken. In this context, it would be instructive to refer to the D.B. decision of the C.A.T Ernakulam Bench reported in (1990) 12 ATC 115 G.K. Murugan Vs. Union of India and Others. In ~~the~~ <sup>view</sup> said case as per observations made in para 7 by the Hon'ble Supreme Court in Kusheshwar Dubey's case (Supra) it was held, which we have already taken, that Kusheshwar Dubey's decision does not lay down the proposition that a parallel departmental disciplinary proceedings should not be conducted by the authority when on the same set of facts a criminal case is also pending. It is to be decided ~~that~~ on the facts and circumstances of each case whether ~~that~~ <sup>the</sup> departmental action should be proceeded ~~against~~ <sup>in</sup> public interest when criminal case is also pending in respect of the same matter. In the said case, the Division Bench took the view that;

" Only in extreme cases of high necessity, when it is satisfied that the conduct of departmental inquiry in disciplinary proceedings causes grave prejudice and gross injustice resulting in prejudice to the delinquent employee alone the question of courts or Tribunal's interference in the disciplinary action arises and that too in public interest to meet out justice in individual case. Otherwise, the public damage and disadvantage that results on account of such interference

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on disciplinary actions may be of great consequence to the department or the establishment which really wants to proceed with the inquiry."

12. A Full Bench of Karnatak High Court in a decision reported in 1975 (2) LLJ 553 T.V. Gauda Vs. State of Mysore has held that there is no bar for holding disciplinary proceedings even after acquittal in criminal case. This view has been confirmed by the Hon'ble Supreme Court in a case reported in 1984 S.C. 626, Corporation of the City of Nagpur Vs. R.G. Modak. The Ernakulam Bench in the said case observed; that:

" It would be difficult to hold when departmental inquiry is not barred even after acquittal, the same is barred before acquittal."

13. On a conspectus of the discussion hereinabove, we are not persuaded that a case for grant of the relief prayed for is made out. The O.A is liable to be dismissed. There will be no orders as to costs. The interim order passed earlier is vacated.

*h.s.*

Member (A)

*B.G. Dikshit*

Vice Chairman

Dated: November, 17, 1995

Uv/