

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

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Allahabad : Dated this 2nd day February, 2000

Original Application No. 513 of 1999

District : Banda

CORAM :-

Hon'ble Mr. S. Dayal, A.M.

Hon'ble Mr. Rafiuddin, J.M.

A.P. Pandey, S/o Late Sri Ram Bahore Pandey,  
R/o Mohalla Bharatpuri,  
Karwi, Distt-Chitrakoot.

(Sri K.P. Srivastava, Advocate)

• • • Applicant

Versus

1. Union of India, through Secretary, Posts, Ministry of Communication, Govt. of India, New Delhi.
2. The Director of Regional Postal Services, Kanpur.
3. The Supdt. of Post Offices, Banda Division, Banda.

(Km. Sadhna Srivastava, Advocate)

• • • Respondents

ORDER

By Hon'ble Mr. Rafiuddin, J.M.

The applicant is holding the post of Postal Assistant and was posted at Postal Certificate Counter at Karvi Post Office, district Banda at the relevant time. The applicant has been placed under suspension for allegedly causing loss of Rs.5,70,000/- to the Postal Department while working as Personal Assistant/Supervisor at the aforesaid post office on 26-4-1997, 4-7-1997, 5-7-1997, and 7-8-1997. It is also alleged that the applicant failed to consult loss of the various Kisan Vikas Patras (KVP) mentioned in various circular letters issued by the CPMG U.P. Circle, Lucknow. The applicant has also been charged

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for having failed to send the advice of payment through Registered Post to the office of issue and to despatch the verification application (forged) to Banda Post Office alongwith discharged journal of KVPs. The applicant has also been charged for having made fraudulent payment of stolen KVPs on aforesaid dates valued at Rs.5,70,000/-. These charges have been framed against him by the Inquiry Officer, who has been conducting departmental enquiry against the applicant. Besides, a criminal case on the basis of a F.I.R. Registered at P.S. Karve, district Banda is also pending in the Criminal Court at district Banda under Sections 409/419/420/467/468/471 I.P.C.

2. By means of this OA the applicant seeks a direction to the respondents to keep in abeyance the disciplinary proceedings pending against the applicant during the pendency of the criminal cases in the Criminal Court at district Banda.

3. We have heard learned counsel for the parties and perused the record. The main question for determination in the present OA is whether the respondents <sup>may</sup> be directed to keep in abeyance the departmental proceedings being conducted against the applicant till the criminal cases are finally decided. It has been contended by the learned counsel for the applicant that since departmental proceedings as well as criminal proceedings have been initiated against the applicant on the basis of the same allegations and the evidence proved that the aforesaid allegation is also of the same nature, it is desirable that during the pendency of criminal proceedings the departmental proceedings should be stayed. In support of his contention the learned counsel for the applicant has relied upon the recent decision given by the Apex Court in Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd. and Another reported in (1990) 3 S.C.C 679. The

24

Apex Court in the case cited above has analysed the entire case law on the question whether the proceedings in a criminal case and departmental proceedings can go on simultaneously or not. The observation contained in para 13 of the above report has been relied upon in respect of this case on behalf of the applicant :-

".... on the basic principle that proceedings in a criminal case and the departmental proceedings can proceed simultaneously with a little exception. As we understand, the basis for this proposition is that proceedings in a criminal case and the departmental proceedings operate in distinct and different jurisdictional areas. Whereas in the departmental proceedings, where a charge relating to misconduct is being investigate the level of integrity of the delinquent or the other staff, the standard of proof required in those proceedings is also different than that required in a criminal case. While in the departmental proceedings proof is one of preponderance of the probabilities, in criminal case, the charge has to be proved by the prosecution beyond reasonable doubt. The little exception may be where the departmental proceedings and the criminal case are based on the same set of facts and the evidence in both the proceedings is common without there being a variance."

4. It is relevant to mention that the main question before the Apex Court in the case cited above was whether an acquittal coupled with other circumstances, especially ex parte proceedings, of the case, will have the effect on vitiating departmental proceedings or the order of the dismissal passed against the appellant. However, in the present case the criminal proceedings are still pending against the applicant. Therefore, the facts of both the cases are not identical.

5. It is important to consider whether in the present <sup>case</sup> the departmental proceedings as well as criminal cases are based on the same set of facts and evidence. However,

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However, the Apex Court has also observed that the departmental proceedings, cannot be unduly delayed. The nature of allegations contained in charge framed against the applicant during the departmental proceedings has been narrated above. The perusal of the charge sheet submitted against the applicant in criminal court, by police (Annexures-A-7 & A-8) indicates that in the charge sheet No.221 (Annexure-A-8), the applicant has been charge-sheeted for allegedly having committed offence of criminal misappropriation, cheating, preparing forged documents etc. Similarly, in the charge sheet No.222 (Annexure-A-7), the applicant has also been charge-sheeted for the offence punishable under Sections 409, 419, 420, 407, 468, 471, 120B I.P.C. alongwith other co-accused. It is also worth mentioning that the applicant has been charge-sheeted but the court has not formally framed charge against him.

6. In the departmental proceedings, the applicant has been alleged to have infringed various departmental rules and failed to maintain absolute integrity and devotion to his duties. As regards the nature of evidence relied upon in both the proceedings, we find that no doubt oral evidence is generally common but documentary evidence is of different nature in both the proceedings. In the case of Capt. M. Paul Anthony, the basis of criminal as well as departmental proceedings was the alleged recovery of gold sponge ball from the house of the delinquent employee. Both the proceedings were initiated on the basis of alleged recovery of illicit gold and in both the cases the set of witnesses was the same. Therefore, the facts of the present case and the case before the Apex Court are different in as much as in the present

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case the departmental proceedings are being initiated against the appellant inter alia on the basis of fraud and non-compliance of the circular letters and negligence in doing his official duties. In other words the criminal proceedings and departmental proceedings are not based on one set of evidence or allegations. The applicant has been departmentally proceeded on the allegation of non-compliance of departmental circular etc. also. We, therefore, do not find the present case covered by the exception that the departmental proceedings and criminal proceedings are based on the same set of facts and evidence. We, therefore, do not find any justification to keep in abeyance the departmental proceedings during the pendency of the criminal proceedings against the applicant.

7. In the result we do not find any force in the OA and the same is liable to be dismissed. The OA is accordingly dismissed with no order as to costs.

  
Member (J)      Member (A)

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