

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
BENCH ALLAHABAD**

(THIS THE 11th DAY OF March 2011)

PRESENT:

HON'BLE MRS. MANJULIKA GAUTAM, MEMBER-A

HON'BLE MR. SANJEEV KAUSHIK, MEMBER -J

ORIGINAL APPLICATION NO. 11 OF 2007

(U/s, 19 Administrative Tribunal Act. 1985)

Moti Lal Kushwaha aged about 50 years, son of Shri Halkooram resident of near Subhash School, Pulia No. 9, Jhansi.

..... Applicant

By Advocate: Shri R.K. Nigam

Versus

1. Union of India through General Manager, North Central Railway, Allahabad.
2. Divisional Railway Manager, North Central Railway, Jhansi.

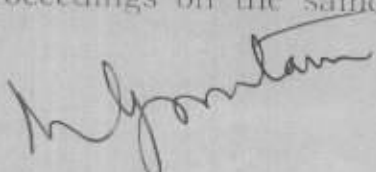
..... Respondents

By Advocate : Shri A. Tripathi/ Shri Vinod Kumar

ORDER

DELIVERED BY HON'BLE MRS. MANJULIKA GAUTAM, MEMBER-A

The applicant is working as Head T.T.E at Jhansi. Due to family property dispute, the applicant is facing criminal proceedings and criminal case is pending in the Court of Additional C.G.M, Jhansi. A complaint was made against the applicant that he had obtained employment in the Railways by producing false certificates of being 8th class pass. Accordingly, a chargesheet was issued to him on 2.8.2006. The applicant filed O.A. NO. 888/06 for staying the departmental proceedings, as he was already facing criminal proceedings on the same charges. The Tribunal, vide order



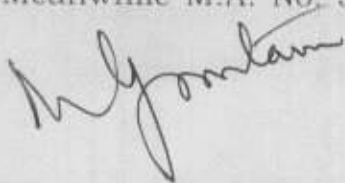
dated 15.11.2006, disposed of the O.A. with direction that in case the applicant gives a representation to the Disciplinary Authority or to the Enquiry Officer, the Authority concerned will consider and pass suitable orders in accordance with law and Rules within a period of one month from the date of such representation is given. The applicant accordingly submitted his representation dated 21.11.2006 (Annexure A-5) and respondent NO. 2 rejected the abovementioned representation vide order dated 18.12.2006 (Annexure A-1). Aggrieved by this, the applicant has filed the present O.A. seeking the following relief(s):-

- “(i) to issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 18.12.2006 (Annexure A-1).*
- (ii) to issue another writ, order or direction in the nature of Mandamus thereby commanding the respondents to stay the departmental proceedings in SF 5 dated 2.8.2006 until the outcome of the criminal proceedings in case crime No. 1881/02.*
- (iii) to issue any other suitable order in favour of the humble petitioner as deemed fit by this Hon’ble Tribunal in the facts and circumstances of the case.*
- (iv) To award cost of the petition in favour of the humble petitioner”.*

2. In support of his claim, the applicant has referred to D.O.P.Ts advice regarding simultaneous prosecution and departmental proceedings, which reads as under:-

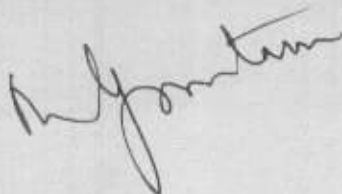
“There is no legal objection to initiate simultaneously departmental proceedings against Government servants against whom criminal proceedings are going on. However, keeping in view the possibility that steps which may be taken by disciplinary authority may prejudice the accused in his defence in the Court, it may be appropriate to wait the result of the criminal proceedings. In other words, while the proceedings may be initiated, it would be safer to stay”.

3. Vide order of the Tribunal dated 5.1.2007, the Departmental Proceedings against the applicant have been stayed. Meanwhile M.A. No. 315/07 was filed to implead the



sister of the applicant – Maya Devi as respondent NO. 3. The Tribunal in its order dated 7.8.2009 dismissed the above mentioned application.

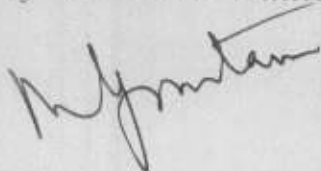
4. In the counter affidavit filed by the respondent, it is stated that sister of the applicant –Maya Devi has lodged the First Information Report against the applicant, that he has got service in the Railways by submitting fraudulent certificate of Class 8th. Thereafter, she has also submitted her representation before the General Manager, Railway Board. Counter affidavit categorically states that the criminal proceedings pending against the applicant in crime case No. 1881/02. The proceedings were initiated by the private persons i.e. the sister of the applicant and not by respondents i.e. Railways. As such there is no bar whatsoever to the respondents in initiating the departmental proceedings against the applicant. The facts in the criminal proceedings and in the departmental proceedings are also different but it is only by misrepresenting the fact that stay order was obtained from the Tribunal on 5.1.2007. The applicant has placed reliance on Rule 9. Rule 9 clearly states that if both proceeding are based on same charges in case of bribery, corruption and misappropriate of Government money in which criminal proceedings were initiated by the Authorities, Departmental proceedings may be stayed till the conclusion of criminal proceedings. According to the respondents, in the instant case, criminal case has been launched on the basis of F.I.R. lodged by the sister of the applicant- private person and



this is totally distinct from the departmental proceedings initiated by the respondents and, therefore, as clarified in the impugned order unless a stay order was granted by the Court, proceedings in the criminal case and departmental proceedings can proceed simultaneously.

5. This O.A. has been pending since the year 2007 and in spite of order of the Hon'ble High Court dated 22.2.2007 to decide the case at the earliest, the matter has been delayed on one ground or the other by the applicant in whose favour the interim stay is operating. When the O.A was listed for final hearing on 24.1.2011, counsel for the respondents - Shri A. Tripathi was present but learned counsel for the applicant - Shri R.K. Nigam had sent illness slip. Learned counsel for the respondents produced before us a statement in writing made by learned counsel for the applicant that he has no further instructions in this case. Accordingly, we heard learned counsel for the respondents and gave one week time to the learned counsel for the applicant to make his written arguments. But in spite of time being over, no submission has been made by the learned counsel for the applicant and, therefore, O.A. is being decided.

6. After perusing the facts of the case and hearing Shri A. Tripathi, learned counsel for the respondents, we are of the opinion that the material point in this O.A. is that criminal proceedings and departmental proceedings are not being initiated by the same Authority i.e. respondents. Criminal



proceedings against the applicant have been initiated by the sister of the applicant on her F.I.R. and are pending since the year 2001. Departmental proceedings have also been initiated on the complaint made by sister of the applicant. According to us, there is no bar to both the proceedings being carried on simultaneously and seeing that criminal proceedings have still not been finalized. It is very clear that departmental proceedings cannot be kept waiting indefinitely. On the basis of fact stated in the counter affidavit filed by the respondents, it is clear that there is no bar to continue with the departmental proceedings in this case and applicant has been given benefit of stay order because all the relevant facts were not placed before the Tribunal. The interim stay granted by the Tribunal is hereby vacated and O.A. is dismissed as being devoid of merit. In fact respondents are directed to complete the proceedings against the applicant at the earliest so that the matter may be decided.

7. O.A. is dismissed. No costs.

Member (J)

Member (A)

Manish/-