

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 180 OF 1986
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DATE OF DECISION 12-9-1986

KISHOR DEVSHIBHAI FATANIYA Petitioner

M.D. RANA Advocate for the Petitioner(s)

Versus

UNION OF INDIA & ANR. Respondent

J.D. AJMERA Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.H. TRIVEDI - VICE-CHAIRMAN.

The Hon'ble Mr. P.M. JOSHI - JUDICIAL MEMBER.

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *Yes*
4. Whether it needs to be circulated to other Benches of the Tribunal.

JUDGEMENT

Per : P.M. Joshi, Judicial Member.

The petitioner, Kishor Devshibhai Fataniya, serving as Extra Departmental Packer in the Postal Wing of the respondent - Union of India, in a Sub Post Office at Dhoraji, has filed this application under section 19 of the "Administrative Tribunals Act, 1985". He has challenged the action of the respondent - authority in initiating and conducting departmental enquiry, against him on the basis of the charge sheet dated 7.11.1985. He has assailed the said impugned action of the respondent on the sole ground that a criminal complaint has been registered against him and the subject matter of the charge-sheet is the subject matter of the criminal complaint. The respondent, however, has opposed the application contending that there is no statutory bar in holding the departmental action against the petitioner merely because a criminal complaint is filed against him.

In view of the rival contentions, the question that arises for our consideration is whether the respondents are bound to wait for the result of the trial in Criminal case and as such, should not proceed departmental enquiry against the petitioner. While relying on the case of Project Manager, O.N.G.C. v/s. Lalchand Vitarchand (1981 - 22 GLR P.803) and the Government of India's instructions appearing at page 70 in Swamy's compilation of CCS CCA rules, it is strenuously urged that a

parallel departmental proceedings should be stayed as it is likely to cause prejudice to the defence in criminal case pending against him. Now, before advertiring to the contentions canvassed in this regard, it will be desirable to turn to the charge-sheet dated 7.11.85 (Annexure 'B'), wherein it is alleged that (i) he had temporarily misappropriated a sum of Rs.3500/- for a period of four days only i.e., from 20-8-85 to 24-8-85 with (ii) he tampered/ the record of the Post Office and (iii) he misused the Government record and thereby misconducted himself.

It is not the case of the petitioner that any investigation by the police is pending. As a matter of fact, police has already registered C.R.No. 162/85 on 27.11.85 for the offence punishable under section 409, 464, 471 of I.P.C. It is borne out from the reply filed by the respondent that the petitioner has already offered his explanation regarding the alleged act of temporary misappropriation in his written statement dated 25.11.75 before the Superintendent of Post Office, Gondal Division, Gondal. Hence there is no cause of any prejudice to the defence of the petitioner in criminal case because a parallel departmental proceedings is held by the respondent. The rest of the two accusations made against the petitioner in the chargesheet do not pertain to the loss of public funds. Even the first accusation referred to above is not in respect of the loss of funds, inasmuch as the amount has been already deposited by him on 24.4.85. The Government instructions relied upon by the learned Counsel for the petitioner, therefore, do not apply to

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the case on hand. The Government instructions do not lay down any bar against holding departmental enquiry simultaneously with the trial before the criminal court.

While referring to the case of Project Manager, O.N.G.C. (Supra), it will be pertinent to note that no dictum or principle has been laid down as submitted by the learned counsel for the petitioner. It was an appeal before the Division Bench against the interim relief granted by the learned Single Judge maintaining status quo during the pendency of the petition. Precisely, the question regarding the scope of Rule 2 (9 B) clauses (b)&(c) of the High Court Appellate Side Rules, 1960, came up for decision. In Jagdish Prasad Khatri V/s. The State of Rajasthan & Ors. (1980(1) S.L.R. P.225) cited by the learned counsel Mr. J.D. Ajmera for the respondent, it has been laid down that disciplinary proceedings against the Government servant need not always be stayed in respect of a charge, pending the trial of a criminal case regarding the same charge.

Parallel enquiries by domestic tribunal and court in respect of a misconduct of an employee, came to be considered by their Lordships of the Supreme Court in Jang Bahadursingh V/s. Baijnath (A.I.R. 1969 S.C. P.30). In para 3 of the report, it was observed :

"The issue in the disciplinary proceedings is whether the employee is guilty of the charges on which it is proposed to take action against him. The same issue may arise for decision in a civil or criminal proceeding pending in a court. But the pendency of the court proceeding 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 intention and continuation of disciplinary proceedings in good faith is not calculated to obstruct or interfere with the course of justice in the pending court proceeding".

In view of the aforesaid discussion and especially having regard to the facts and circumstances of this case the petitioner's request to stay the disciplinary proceedings initiated against him by the respondent, merits no consideration. The petition, therefore, stands dismissed. The parties are left to bear their own costs in this petition.

Ranbir
(P.H. TRIVEDI)
VICE CHAIRMAN.

Singer
(P.M. JOSHI)
JUDICIAL MEMBER