

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

NO
Departmental
Inquiry.

O.A. No. 66 OF 1989.

~~Ex. No.~~

DATE OF DECISION 22.2.1993.

D.H. Jhala, Petitioner

Mr. R.V. Deshmukh, Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent_s

Mr. Akil Kureshi, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. R.C. Bhatt, Judicial Member.

The Hon'ble Mr. V. Radhakrishnan, Admn. Member.

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

D.H. Jhala,
Senior Clerk,
Residing at Diwanpara,
Vankaner,
Dist: Rajkot.

.... Applicant.

(Advocate: Mr. R.V. Deshmukh)

Versus.

1. Union of India,
(Notice to be served through
The Secretary, Ministry of
New Delhi)

2. Deputy Superintendent of
Post Offices,
Vadodara Division,
Vadodara.

3. The Superintendent of
Post Offices,
Gondal Division,
Gondal, Dist: Rajkot.

..... Respondents.

(Advocate: Mr. Akil Kureshi)

J U D G M E N T

O.A.No. 66 OF 1989

Date: 22-2-1993.

Per: Hon'ble Mr. R.C.Bhatt, Judicial Member.

Heard Mr. R.V. Deshmukh, learned advocate for
the applicant and Mr. Akil Kureshi, learned advocate
for the respondents.

2. The applicant in this case has challenged the
action of the respondents in proceeding with the
departmental enquiry for the charges for which the
pending
criminal case is / in the Court of learned Chief
also for similar charges
Judicial Magistrate, Rajkot and for which the trial
criminal
is pending before / Court. The applicant is working
as Sr. Clerk with the respondents, Postal Department.

It is alleged by the applicant that at the relevant time when he was working as Sub Post Master Gondal, College Chowk, Gondal, the respondents issued a charge sheet, Ann.A-1 dated 15th March, 1982 alleging that the applicant has allowed withdrawal of the amounts from the SB/A/c. details of which are mentioned in the articles of charges, in contravention of Rule No.425(1)(5) of P&T Manual Vol.VI Part II (6th Edition) and passed the warrent of payment of the said amount in contravention of Rule 425(2) and 425(5)(i)(a) of P&T Manual Volume VI Part II and thus has failed to maintain absolute integrity and devotion to duty in contravention of Rule 3 of CCS(Conduct) Rules, 1964 between the period from 21st July, 1981 to 11th December, 1981. Annexure-II with the memorandum vide Ann.A/1 is the statement of imputations of misconduct in support of each articles of charge framed against the applicant. It is alleged by the applicant that on 14th July, 1982 the respondents filed FIR against the applicant for the same incidents and on the basis of the FIR, after completion of the investigation, the police has submitted a charge sheet in Criminal Case No. 1584/84 in the Court of learned Chief Judicial Magistrate, Rajkot on 8th February, 1984. It is alleged by the applicant that in the said charge-sheet an offences registered against the applicant are under section 409, 465, 468 of the Indian Penal Code. Annexure A-III is the copy of the charge sheet filed by the police against the applicant. It is alleged by the applicant that after issuance of this

charge sheet, the departmental proceedings were almost dormant for over four years and seven months i.e. upto 19th of September, 1988. Thus from 8th February 1984 till 19th September, 1988, there was a lull regarding the departmental enquiry, but on 19th September, 1988 vide Annexure A-4, the respondents decided to proceed further with the departmental enquiry. On 19th January, 1989 the applicant submitted an application, Annexure A-5 to the Inquiry Officer to stay the inquiry till the outcome of the criminal proceedings but the order is passed on 19th January, 1989 vide Annexure A-6 that the departmental enquiry could not be stayed and the applicant must go ahead with the departmental enquiry. The applicant, therefore, filed this application seeking the relief to quash and set aside the action of the respondents in proceeding ahead with the departmental enquiry pursuant to the departmental charge sheet dated 15th March, 1982 and to quash and set aside the order dated 19th September, 1988 or in the alternative to direct the respondents to stay the departmental enquiry proceedings till the outcome of the criminal case filed against the applicant.

3. The respondents have filed reply contending that the applicant was working as Sub Post Master, Gondal College Chawk, Gondal, Town Sub Post Master for the period from 23rd April, 1981 to 30th April, 1981 and during the period from 21st July, 1981 to

November 1981 he is alleged to have misappropriated the Government money amounts to Rs. 87,680/- from various Saving Bank Accounts and hence police complaint was lodged on 14th July, 1982 to Gondal Police Station vide Annexure R-I. The respondents have contended in the reply that after completion of the investigation the police authority forwarded the case to the learned Judicial Magistrate(F.C.) Gondal and the case was registered as Criminal Case No. 579/82 against the applicant for the offences punishable under section 409, 465, 468 of Indian Penal Code and the said criminal case was transferred to the Court of learned Chief Judicial Magistrate, Rajkot, which is pending. The learned Chief Judicial Magistrate has framed the charge, the copy of which is produced at Annexure R-II.

4. It is contended by the respondents that the applicant was served with the memorandum of charges by the Superintendent of Post Offices, Gondal Division Gondal, vide his memo, Annexure A/1 dated 15th March, 1982 in which eight articles of charges have been levelled against the applicant namely that he has violated Rule 425(1)(5) of P&T Manual Vol.VI Part II, Rule 425(2) and 425(5)(1)(a) of P&T Manual Vol.VI Part II and Rule 425(1)(5) of P&T Manual Vol.VI Part II and it was alleged that because of the said violation of different rules, the applicant had failed to maintain absolute integrity and devotion of duty

in controvention of Rule 3 of CCS(Conduct) Rules, 1964. It is contended that during the course of this enquiry proceedings by the inquiry officer on 12th April, 1982, the applicant denied the charges and therefore, the enquiry officer had fixed the date of enquiry on 31st July, 1982. It is contended that thereafter Post Master General, Gondal Circle, Ahmedabad addressed a letter to the SPO's Gondal dated 26th June 1982 informing him that the departmental proceedings initiated against the applicant under Rule 14 of CCS(Conduct) Rules, 1964 may be freezed and therefore the SPO's Gondal had freezed the departmental enquiry against the applicant until further orders vide his order dated 12th July, 1982. It is further contended that ultimately the Director General, F&T, New Delhi by circular letter intimated that there was no bar to departmental action being initiated simultaneously with the lodging the criminal prosecution in the Court, the copy of which dated 18th January, 1983 is produced at Ann. R-3. It is contended that, thereafter, on 30th June, 1983, the SPO's Gondal informed the inquiry officer to commence the enquiry against the applicant. It is contended that again another circular dated 16th April, 1986 was received from the Ministry of Communication Department of Post, New Delhi, regarding the departmental/disciplinary case and criminal trial.

5. The respondents have contended that the proceedings before the criminal court and before department are not identical and the charges are also different. It is contended that the allegations against the applicant in the departmental proceedings are that he has contravention of various rules of P&T Manual Vol.VI, Part II whereas the charges levelled against the applicant regarding the misappropriation of the amounts and therefore no breaches would be caused to the applicant if the departmental proceedings continued. It is further contended that Rule 80 of P&T Manual, Vol. III has been substituted, a copy of which is produced at Annexure R-4 which says that there will be no bar for initiation of departmental/disciplinary proceedings on the same and/or similar charges even if the police enquiries before the issue of prosecution has been lodged on the same charges.

6. The applicant has filed rejoinder controverting the contention taken by the respondents in the reply.

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7. The main submission of the learned advocate for the applicant is that if the articles of charges and imputation of misconduct in support of each charge framed against the applicant by the department are perused, it would be found that the department has started departmental enquiry against the

- 8 -

alleging that in applicant / the applicant has / contravention of various Rules of the P&T Manual Vol. VI Part II passed the warrant of payment of the account mentioned therein without comparing of the signature with the specimen signature on record and allowed the withdrawal of the amount mentioned therein between the period from 21st July, 1981 to 11th December, 1981 as per details given in eight articles of charges. He submitted that if the charge framed by the learned Judicial Magistrate, First Class, Gondal framed against the applicant in Criminal Case No. 579/84 produced by the respondents is perused, the same amounts are shown during the period from 21st July, 1981 to 11th December, 1981 for which the applicant is charged for and criminal breach of trust. misappropriation / There is also the charge of cheating by preparing false documents and by preparing forged documents as genuine .

He submitted that though the wording in the charges framed by the department and in the criminal case are different, the substance is the same. He submitted that both the charges are framed alleging the same facts regarding the ^{same} period, ^{same} amounts and the witnesses and the documents are also to be the same in both the proceedings. He, therefore, submitted that the departmental proceedings should be stayed till the criminal proceedings ^{are} over.

8. We have heard the learned advocate for the parties and we have perused the documents on record.

9. The learned advocate for the applicant submitted that having regard to the same transaction from which the articles of charge have been framed ^{in departmental inquiry} and the charge in the criminal case, the departmental enquiry should be stayed. He relied on a decision in D.C. Choudhary V/s. Senior Superintendent of Post Offices, (Jabalpur), ATR 1987(1) CAT(Jabalpur) page 101, in which it is held that "Where the charges in a departmental and criminal trial are not parallel and the criminal charges are of grave nature involving questions of fact and law which are not simple and where the departmental enquiry was not started shortly after lodging the FIR and was initiated nearly four years later then it would be appropriate to await the decision of the criminal case by keeping further proceedings in abeyance pending decision of the criminal case against the delinquent". The learned advocate for the applicant submitted that in the instant case the charge sheet was issued to the applicant on 15th March, 1982, but then the departmental proceedings were almost dormant for over four years and seven months i.e. upto 19th September, 1988 and then during the pendency of the criminal proceeding on similar charge, the respondents decided to proceed further with the departmental enquiry vide Annexure A-4 dated 19th September, 1988. He submitted that the learned Judicial Magistrate, First Class, Gondal framed the charge against the applicant in criminal case No. 579/84 on

13th September, 1984 which is pending. The learned advocate for the respondents submitted that the departmental proceedings, was not continued against the applicant because of the letter dated 26th June, 1982 of Post Master General, Gujarat Circle, Ahmedabad, but it was started because of his circular letter dated 18th January, 1983 from the Director General, P&T New Delhi and due to other letter dated 30th June 1983 and another circular letter dated 16th April, 1986. He also submitted that the proceedings before the criminal court ^{and} / before the department are not identical but the charges levelled against the applicant before the departmental enquiry and before the court are also different. There is a recent decision in the case of D.N. Patil V/s. Senior Superintendent of Post Offices and another, reported in 1991(2) ATJ page 36 by the Bangalore Bench of CAT consisting of Hon'ble the then Chairman Mr. Amitav Banerjee and Hon'ble Administrative Member Mr. M.P. Srinivasan in which also the statement of facts set out in the departmental enquiry charges and the criminal case which was pending arose out of the same set of incident. In the criminal case, the applicant had to answer the charge that by receiving the two amounts of Rs. 50,000/- and Rs. 2,000/- respectively and failing to credit the same in the Post Office accounts, the applicant had misappropriated Government funds. In the departmental inquiry in that case, the

delinquent was asked to answer the charge that he had committed procedural irregularities in not crediting the amount in the Post Office books, allotting account numbers improperly, not collecting required documents from the depositor and failing to make necessary entries in the relevant log books, lodgers, specimen signature books and sub-office accounts. Thus, in that case it was alleged against the delinquent that he had ^{not} followed the procedure laid down in Rule 418, 420(d) read with Rule 525/2 of P&T Manual, Vol. VI, Part II and Rule 4(1) of PHB Vol. I and had thereby failed to maintain absolute integrity and devotion of duty in terms of Rule 3 of CCS (Conduct) Rules, 1964, while in the criminal case against the delinquent relating to the same incidence, the substance of the allegation in the FIR was of misappropriation of Government funds in respect of the two amounts set to have been received by the applicant the Tribunal in that case held as under:

4. We have considered the matter carefully. Though formally, the charges levelled against the applicant in the departmental inquiry are different in that he has been accused only of procedural irregularities, these irregularities directly relate to the transactions of 2 money receipts of Rs. 50,000 and Rs. 2,000 and in respect of these very transactions he is being accused of misappropriation in the criminal case. The two sets of charges, one levelled in the departmental inquiry and the other in the criminal case are so closely inter-linked that they cannot be separated from each other. If the applicant is absolved of the charge of misappropriation in the criminal case, the

question of any procedural irregularity may not arise at all. On the other hand, if the departmental inquiry is allowed to go on, the applicant may be forced to disclose his defence in respect of the charge faced by him in the criminal case and that would certainly prejudice him in the criminal case. We may at this juncture recall the observations of the Supreme Court in *Tata Oil Mills v. Workmen* (AIR 1965 SC 155 at page 160:

"..... As this Court has held in the *Delhi Cloth and General Mills Limited v. Kaushal Bhan*, 1960(3) SCR 227:(AIR 1960 SC 806) it is desirable that if the incident giving rise to a charge framed against a workman in a domestic enquiry is being tried in a criminal court, the employer should stay the domestic enquiry pending the final disposal of the criminal case. It would be particularly appropriate to adopt such a course where the charge against the workman is of a grave character, because in such a case, it would be unfair to compel the workman to disclose the defence which he may take before the criminal court."

The facts of the present case before us are somewhat similar to the facts involved in that case and therefore, in our opinion the present application regarding the stay of the departmental proceedings till the criminal proceedings is over requires to be granted.

10. The learned advocate for the respondents submitted that the amended rule 80 of the P&T Manual also shows that there is no bar to initiation of the departmental/disciplinary proceedings on the same and/or similar charges even if the criminal case is under investigation or the criminal prosecution is

lodged and therefore also the stay of the departmental proceedings should not be granted. This point is also covered in the said judgment of D.N. Patil (supra) and it is held that this para 18 merely contemplates initiating departmental proceedings not in every case where a criminal prosecution has been launched, but only in such cases where the competent authority thinks it necessary to do so. The Bench has held that when the charges levelled against the delinquent in the departmental proceedings have such a close and intimate connection with the charges faced by him in the criminal case that a decision in respect of one set of charges will have an inevitable bearing on the decision on the other set of charges, then the departmental enquiries has to be stayed till the criminal case is heard and disposed of in terms of the observations of the Hon'ble Supreme Court in Tata Oil Mills' case. In the instant case, even though the charge framed by the learned Judicial Magistrate against the applicant in Criminal Case No. 579/84 is with regard to the alleged offence under section 465, 464, 461 and 409 of I.P.C and though the articles of charges against the applicant in the departmental enquiry are about the contravention of the various rules of P&T Manual Vol.VI Part II, we after perusing the same hold that the charges levelled against the applicant in the departmental proceedings have such a close and intimate connection

with the charges faced by him in the criminal case that a decision in respect of one set of charges will have an inevitable bearing on the decision on the other set of charges. In this view of the matter we are of the view that on facts of this case the departmental enquiry will have to be stayed till the criminal case is heard and disposed of. The learned advocate for the respondents submitted that the criminal case though is very old is not disposed of and in such a case the departmental enquiry can not be postponed to an indefinite future date and the respondents should not be obliged to retain the applicant in service. We are of the view that in such a case both the parties should make their best efforts to see that the Trial Court takes up the matter as early as possible and gives its final judgment early in the public interest and the applicant also should co-operate with the respondents in every way to get the criminal case heard and disposed of expeditiously which would safeguard the interests of both the parties. Hence, we pass the following order:

ORDER

Application is partly allowed. The respondents are directed to stay the departmental enquiry proceedings against the applicant till the decision of the criminal case No. 579/84 by the learned Judicial Magistrate (First Class) Gondal. We had already

(23)

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given an interim relief to the applicant and hence
the rule is made absolute. Application is disposed
of with no order as to costs.



(V. Radhakrishnan)
Member (A)



(R. C. Bhatt)
Member (J)

vtc.

Date

Office Report

O R D E R

(24)

30.11.2000

Ms.Sheth says that efforts were made to serve MA St.645/2000 on the other side. We waive office objection. Registry to give a regular number.

2. We have heard Ms.Sheth on MA 708/2000. This MA seeks reconsideration of the Tribunal's orders dated 22.2.93 while disposing of O.A.66/89. The applicant in that OA had challenged the action of the respondents to proceed with the departmental enquiry for the charges in respect of which a criminal case was pending. After detailed consideration the Tribunal directed the respondents to stay the departmental enquiry till the ^{disposal} ~~dismissal~~ of the criminal case. In the present M.A. the reconsideration of such a decision is sought for on the ground that the supreme court in the case of Capt. M. Paul Anthony v/s. Bharat Gold Mines Ltd., & Anr. 1999(1) SC SLJ, 429, had held that there is no bar for departmental enquiry to proceed simultaneously with the criminal case and has ~~to~~ laid down some guidelines in this regard. The MA therefore, seeks recall of the Tribunal's earlier order and to permit the respondents to proceed with the departmental enquiry.

3. It is clear that the MA is in the nature of a review application. The decision in the

Date

Office Report

O R D E R

case of Capt. M. Paul Anthony, referred to supra, was rendered much after the disposal of OA 66/89 on 22.2.93. If the respondents were aggrieved by the Tribunal's decision, they should have ~~been~~ carried ~~out~~ the matter on appeal to the higher forum but they have not done so. Instead they are now seeking a review of the earlier decision on the basis of the decision of the supreme Court rendered much later. Clearly this is not a ground for reviewing the earlier decision. As such MA is rejected.

DN

(P.C.Kannan)
Member(J)

V.Ramakrishnan

(V.Ramakrishnan)
Vice Chairman

vtc.

Date

Office Report

O R D E R

(25)

30.11.2000

M.A.ST. 645/2000 in O.A. 66/89

Ms. Sheth says that efforts ^{was} made to serve MA St. 645/2000 on the other side. We waived office objection. Registry to give a regular number.

2. We have heard Ms. Sheth on MA 708/2000. This MA seeks reconsideration of the Tribunal's orders dated 22.2.93 while disposing of O.A. 66/89. The applicant in that OA had challenged the action of the respondents to proceed with the departmental enquiry for the charges in respect of which a criminal case was pending. After detailed consideration the Tribunal directed the respondents to stay the departmental enquiry till the decision ^{decision} of the criminal case. In the present M.A. the reconsideration of such a decision is ^{S. 114} called for on the ground that ~~by~~ the Supreme Court while disposing of orders in the case of Cap. Paul Antony, had held that there is no bar for departmental enquiry to proceed simultaneously ^{with} the criminal case ^{and for} ~~subject to~~ ^{subject to} ~~settlement of~~ ^{some} guidelines. The MA therefore, seeks recall of the Tribunal's earlier order ^{and} permitted the respondents to proceed with the departmental enquiry. ³ It is clear that the MA is in the nature of ^{application} review ~~petition~~. The decision in the case of Cap. Raul Antony, referred to supra was

Date

Office Report

ORDER

rendered much after the disposal of OA 66/89
on 22.2.93. If the respondents were aggrieved
by the decision, they have ^{here} done so, instead
they have now seeking a review of the earlier
decision on the basis of the decision of the
Supreme Court rendered much later. Clearly
this is not a ground for reviewing the earlier
decision, As ^{regard} such MA is dismissed.

etc.

(26)

Sr. No. 921

Dated: 10/05/02

Submitted : Hon'ble Vice Chairman (Vacant Post)

Hon'ble Mr. A.S. Sanghavi, Member (J) On leave

✓ Hon'ble Mr. G.C. Srivastava, Member (A)

Certified Copy of order dated _____ in CA/

Spt. C.A. No. 7044 of Civil passed by the
~~Supreme Court/High Court~~ against the Judgment/Oral

Order passed by this Tribunal in CA/66/88 is placed
for perused please.

Ambedkar
S.D.(J) K. G. G. G.

DA
D.R.(J) 13/6

11/06
13/6
Registrar

Hon'ble Vice Chairman (Vacant Post)

Hon'ble Mr. A.S. Sanghavi, Member (J) On leave

✓ Hon'ble Mr. G.C. Srivastava, Member (A)

✓ Hon'ble Mr. J.K. Kaurshik, Member (J)

10/12/06

13/6



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(27)

Decree Despatch No.

Date

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

Special Civil Application No 7024 of 2001
(Under Article(s) 226/227 of the Constitution of India)

1. UNION OF INDIA & ORS.

Petitioners

Vs

1. DH JHALA,

SENIOR CLERK,

Respondent

To

1. UNION OF INDIA

2. DY SUPERINTENDENT OF POST

OFFICES

THROUGH SECRETARY
MINISTRY OF NEW DELHI

VADODARA DIVISION,
VADODARA

3. SUPERINTENDENT OF POST
GONDAL DIVISION,
GONDAL,
DIST RAJKOT

OFFICES

4. THE MEMBER

C.A.T., OPP. S.P. STADIUM, A'BAD.

[REF: MA NO. 708 OF 2000 DTD.

30-11-00; CRI. CASE NO. 579/1984

DT. 22-12-93 IN OA NO. 66/89].

Upon reading the petition of the above named Petitioners presented to this High Court of Gujarat at Ahmedabad on 27/08/2001 praying to grant the prayers and etc...

And whereas upon the Court ordered 'Rule' to issue on 29/08/2001

And Whereas Upon hearing
MS PAURAMI B SHETH for the Petitioner no. 1-3
RULE SERVED BY DS for the Respondent no. 1

Court passed the following order :-

CORAM : D.M. DHARMADHIKARI, C.J. & D.A. MEHTA, J
DATE : 07/02/2002

"1. The Petition has been filed under.....
..absolute. There shall be no order as to costs."

(COPY OF THE ORDER/JUDGEMENT IS ATTACHED HERewith)

19/6
Put up on 8/8
DRW/Recon
10/2002

10/6
DRW
MPC
7/2
10/6

NATIONAL INFORMATICS CENTRE

GUJARAT HIGH COURT



Decree Despatch No.
Date

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

Special Civil Application No 7024 of 2001
(Under Article(s) 226/227 of the Constitution of India)

1. UNION OF INDIA & ORS.
Vs
1. CH JHALA,
Respondent
SENIOR CLERK,
Petitioners

1. UNION OF INDIA
THROUGH SECRETARY
MINISTRY OF NEW DELHI
2. BY SUPERINTENDENT OF POST
OFFICES
AHMEDABAD DIVISION
AHMEDABAD

3. SUPERINTENDENT OF POST
GONDAL DIVISION
GONDAL
DIST RAJKOT
OFFICES

4. THE MEMBER
C.A. 11-001-2, STATION, AHMEDABAD
[REF: NO. 708 OF 2000 DT
30-11-00; CRT CASE NO. 573/1984
DT 22-12-93 IN OA NO. 66/80]

Upon reading the petition of the above named Petitioners presented to this High Court of Gujarat at Ahmedabad on 27/08/2001 praying to grant the prayers and etc...

And whereas upon the Court ordered "Rule" to issue on 29/08/2001

And whereas Upon hearing
MS PARVATI B SHETI for the Petitioner no. 1-3
RULE SERVED BY DS for the Respondent no. 1

Court passed the following order :-

CORAM : D.M. DHARMADHIKARI, C.J. & D.A. MENTHA, J.
DATE : 07/02/2002

"1. The Petition has been filed under...
absolute. There shall be no order as to costs."

(COPY OF THE ORDER/JUDGMENT IS ATTACHED HERewith)

Witness DEVDATTA MADHAV DHARMADHIKARI, Esquire Chief Justice at Ahmedabad
aforesaid this 07th day of Feb, 2002.

5752

(28)

By the Court

For Deputy Registrar
This day of Feb 2002

Note : This writ should be returned
duly certified within 2 weeks.
(570) 200220

349024/01.

NATIONAL INFORMATICS CENTRE



GUJARAT HIGH COURT

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7024 of 2001

29

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI

and

Hon'ble MR.JUSTICE D.A.MEHTA

sd/-

sd/-

UNION OF INDIA
Versus

DH JHALA,

SENIOR CLERK,

Appearance:

1. Special Civil Application No. 7024 of 2001
MS PAURAMI B SHETH for Petitioners No. 1-3
RULE SERVED BY DS for Respondent No. 1

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI

and

MR.JUSTICE D.A.MEHTA

Date of decision: 07/02/2002

ORAL JUDGEMENT

(Per : CHIEF JUSTICE MR DM DHARMADHIKARI)

1. The Petition has been filed under Article 227 of the Constitution of India by the Union of India representing the Postal Department. The challenge made is to the order dated 22-02-1993 passed by the Central Administrative Tribunal, Ahmedabad Bench and the subsequent order dated 30-11-2000 rejecting the application for review of the earlier order of the Tribunal.

2. Under the orders impugned, the departmental proceedings pending against the respondent-employee have been stayed until decision of Criminal Case No. 579 of 1984 pending against him in the Court of Judicial Magistrate (First Class) Gondal.

3. Learned counsel appearing for the Union of India relies on the decision of the Supreme Court in the case of Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. reported in AIR 1999 SC 1416. Attention of the Court is drawn to the following conclusion in subparagraph 5 of paragraph 22:

"22. The conclusions which are deducible from various decisions of this Court referred to above are:

(i) to (iv) xx xx xx

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, administration may get rid of him at the earliest."

4. Learned counsel then pointed out the relevant facts. The respondent employee as Sub Post Master was alleged to have committed various financial irregularities in the

year 1981. After conducting preliminary investigation, a charge sheet was issued to him on 15-03-1982. However, departmental proceedings were kept in abeyance as a criminal complaint was filed by the Department against the employee on 14-07-1982. After investigation, the police registered a Criminal Case No. 579 of 1982 for offences under Section 409, 465 and 468 of the IPC which is pending in the Court of Judicial Magistrate (First Class) Gondal and now transferred to Judicial Magistrate (First Class) Rajkot. The respondent employee approached the Central Administrative Tribunal for stay of the departmental proceedings. By order made on 22-02-1993, the Tribunal stayed the departmental proceedings. Since the Criminal Case is pending for an unduly long period of time, the Department made an application for recalling the order of stay of the departmental proceedings. The said application was rejected by the Tribunal by the impugned order dated 30-11-2000.

5. On this Petition, notice was issued to the respondent employee. Despite service, he has chosen not to appear and contest this case. The observations of the Supreme Court in the case of Capt. M. Paul Anthony (supra) support the submissions made on behalf of the Department that as the proceedings in the Criminal Case have been unduly delayed, the departmental proceedings cannot be stayed for an indefinite period.

6. Consequently, we allow this Petition and set aside the impugned orders of the Tribunal dated 22-02-1993 and 30-11-2000. As a result of setting aside of the aforesaid orders, the petitioner-Department may now proceed with the departmental proceedings.

Rule is made absolute. There shall be no order as to costs.

True copy
able
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sp/02

sd/-
(D.M. DHARMADHIKARI, C.J.)

sd/-
(D.A. MEHTA, J.)

[sndeavu]

BY ORDER OF THE COURT

DEPUTY REGISTRAR

KSP
15/02/02
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GUJARAT HIGH COURT

TRUE COPY

11.3.02

ASSISTANT
THIS

REGISTRAR
DATE

(a)

sd/-
22/02/02
5307

Sr. No. 39

Dated: 24/6/03.

Submitted : Hon'ble Vice Chairman &

Hon'ble Mr. A.S.Sanghavi, Member (J)

Hon'ble Mr. G.C. Srivastava, Member (A)

Certified Copy of order dated 25/4/03 in CA/

Spt. C.A. No. 7024 of 2001 passed by the

Supreme Court/High Court against the Judgment/Oral

Order passed by this Tribunal in CA/65/69. is placed
for perused please.

S.J.(J) on leave

D.R.(J) 25/6
Registrar

Hon'ble Vice Chairman

Hon'ble Mr.A.S.Sanghavi, Member (J)

Hon'ble Mr. G.C.Srivastava, Member (A)

Hon'ble Mr. Shankarprasad, Member (A)

39
19/0

Misc.Civil Applicat in

in

Special Civil Appli

VS

1. UNION OF INDIA & ORS.

To

1. UNION OF INDIA

THROUGH SECRETARY
MINISTRY OF COMMUNICATION
NEW DELHI

3. SUPERINTENDENT OF POST
GONDAL DIVISION,
GONDAL,
DIST RAJKOT

4. ~~THE~~ MEMBER

C.A.T., OPP. S.P. STADIUM, A'B
[REF: MA NO. 708 OF 2000 DTD
30-11-00; CR. CASE NO. 579/
DT. 22-12-93 IN OA NO. 66/89

Upon reading the petition of the ab to this High Court of Gujarat at Ah praying condone the delay and to re passed in Special Civil Application

And whereas upon the Court ordered

And Whereas Upon hearing
MR UTPAL M PANCHAL for the Petitioner
MS PAURAMI B SHETH for the Responder

Court passed the following order :-

CORAM : A.R.DAVE & D.A.MEHTA, JJ
DATE : 25/04/2003

"This is an application seeking review
.....accordingly requires to be

(COPY OF THE ORDER/JUDGEMENT IS ATTACHED)

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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

MISC. CIVIL APPLICATION No 954 of 2003

in

SPECIAL CIVIL APPLICATION No 7024 of 2001

DR JHALA, SENIOR CLERK,
Versus
UNION OF INDIA

Appearance:

1. Misc. Civil Application No. 954 of 2003
MR UTPAL M PANCHAL for Petitioner No. 1
MS PAURAMI B SHETH for the Respondents.

CORAM : MR. JUSTICE A.R.DAVE
and
MR. JUSTICE D.A.MEHTA

Date of Order 25/04/2003

ORAL ORDER
(Per : JUSTICE D.A.MEHTA)

This is an application seeking review of an order dated 7.2.2002 passed in Civil Application No. 7024 of 2001 by a Division Bench of this Court constituted by D.M. Dharmadhikari, J. (as His Lordship then was) and one of us (D.A. Mehta, J.).

2. Heard Mr. U. Panchal, learned advocate for the applicant. It is submitted by him that the applicant has a very good case on merits and the order dated 7.2.2002 may be recalled so as to permit the applicant to conduct the Special Civil Application on merits of the matter. On the ground of delay, it is submitted that the applicant was not aware that the impugned order was made and it was only when the applicant received a notice from the Department of Posts that the applicant became aware of the order having been passed.

3. Even if the delay is condoned on the ground stated, we do not find any reason to recall the impugned order dated 7.2.2002 or review the same as there is no valid ground made out for undertaking the said exercise. Without entering into the aspect as to whether a review would lie, even on the assumption that a review would be permissible, it is apparent that, by virtue of the impugned order, no prejudice is caused to the applicant. On the basis of the decision of the Apex Court in the case of Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. and another, AIR 1999 SC 1416, the court has only permitted that the departmental proceedings, which were kept pending, shall be proceeded with.

4. In these circumstances, as stated hereinbefore, no case is made out for either recalling or review of the impugned order, and this application accordingly requires to be rejected and is rejected.

sdl
(A.R. Dave, J.)

sdl
(D.A. Mehta, J.)

(hn)

TRUE COPY

P.S. J. J. JUDGE
HIGH COURT OF GUJARAT.

TRUE COPY

Assistant Registrar

The _____ day of _____ 200