

## NOTES OF THE REGISTRY

## ORDERS OF THE TRIBUNAL

Order No.9, dated 15.1.2001

Advocates of both sides are absent. Even parties are absent. Advocates have been abstaining from attending this Bench and other Courts since 7.12.2000 expressing their protest against recent imposition of professional tax by the State Government. Earlier in anticipation of their resumption of attending courts, this Bench adjourned some cases listed for hearing. Thereafter cases where the parties themselves appeared in person with a request for expeditious disposal of cases,

were heard and disposed of even in the absence of the advocates. Now as things stand, this abstention of the advocates has become an indefinite affair. The Hon'ble Supreme Court in the case of Ramon Services Pvt.Ltd. v. Subhash Kapoor and others, 2000 AIRSCW 4093, strongly deprecated the action of courts in adjourning cases in the event of the advocates boycotting courts and even observed that courts adjourning cases, under the circumstances, would even be liable for contributing to the contempt of the Apex Court. Hence we are not inclined to adjourn the case in anticipation of appearance of advocates.

As earlier stated even the parties are not present. There being no prayer for adjournment, we have perused the records.

2. The applicant, a Junior Engineer under S.E.Railway, stationed at

Haridaspur, files this application praying for quashing Annexure-1, dated 15.1.1999, a charge memo served on him under Rule 9 of Railway Servants (Discipline & Appeal) Rules, 1968. Charges are grave in nature inasmuch as the allegations therein reveal that the applicant had misappropriated and forged the signatures of higher authorities and drawn excess Railway cement and steel to the tune of about Rs.30,00,000/- (Rupees thirty lacs) with connivance of one Shri B.B.Nanda, Railway Contractor.

The grievance of the applicant is that simultaneously the matter was referred to Central Bureau of Investigation for investigation, and the C.B.I. investigation is still pending, and as such this charge under Annexure-1, dated 15.1.1999, is no longer maintainable and has to be quashed.

3. Facts are not in dispute. The respondent-Railways in their counter vehemently opposed this prayer of the applicant on the ground that there is no legal bar for pendency of simultaneous cases, one registered by police, and the other through disciplinary proceedings. Further, their case is that the disciplinary proceeding has since been completed and the matter is being referred to the higher authority for advice, for taking action as per prescribed rule and as such, the prayer for quashing the disciplinary proceedings at this stage is premature and is also

infructuous.

No rejoinder has been filed.

4. Law is well settled that there is no legal bar for initiation of disciplinary proceedings even when criminal prosecution on the same subject-matter is in progress. In other words, there is no legal bar for pendency of simultaneous disciplinary proceedings and criminal proceedings, vide Jang Bahadur Singh v. Baij Nath Tiwari, AIR 1969 SC 30; Kusheshwar Dubey v. M/s Bharat Coking Coal Ltd., AIR 1988 SC 2118; State of Rajasthan v. B.K. Meena and others, AIR 1997 SC 13; and Depot Manager, Andhra Pradesh State Road Transport Corporation v. Mohd. Yusuf Miya, AIR 1997 SC 2232. Even in the recent case of Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. and another, JT 1999(2) SC 456, the Apex Court reiterated that departmental proceedings and proceedings in criminal case can proceed simultaneously and there is no bar for their being conducted simultaneously though separately. Even in this case the Apex Court observed that if the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they are stayed on account of the pendency of the criminal case, can be resumed and proceeded with and concluded so that if the delinquent employee is found not guilty, his honour may be vindicated, and in case he is found guilty, administration may get rid of him at

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the earliest.

In view of this legal position, we are not inclined to quash the charge memo under Annexure-1, dated 15.1.1999.

5. We do not see any merit in this O.A. which is accordingly dismissed. No costs.

*Somnath Som*  
(SOMNATH SOM)  
VICE-CHAIRMAN

*G. Narasimham*  
(G. NARASIMHAM)  
MEMBER (JUDICIAL)

Free copies of  
final order  
dt. 15.1.2001 given  
to both sides.  
2 (two) copies

16/1/01

*S. D.*  
S. D.