

12

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 06 OF 2000
Cuttack this the 4th day of October, 2004

Subash Chandra Agarwala ... Applicant(s)

- VERSUS -

Union of India & Ors. ... Respondent(s)

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? *NO*
2. Whether it be circulated to all the Benches of *NO*
the Central Administrative Tribunal or not ?

M.R. Mohanty
(M.R. MOHANTY)
MEMBER (JUDICIAL)

B.N. Sircar
(B.N. Sircar)
VICE-CHAIRMAN

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

ORIGINAL APPLICATION NO. 06 OF 2000
Cuttack this the 4th day of October, 2004

CORAM:

THE HON'BLE SHRI B.N. SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI M.R.MOHANTY, MEMBER(JUDICIAL)

Subash Chandra Agarwal, aged about 48 years,
Son of late Nanak Chandra Agarwal,
Dist.Engineer, Telecom Civil Sub-division
Cuttack

By the Advocates ... Applicant
M/s.K.C.Kanungo
S.Behera

— VERSUS —

1. Chief General Manager, Telecom,
Orissa Circle, Bhubaneswar-1,
Dist-Khurda
2. Divisional Engineer (Departmental Enquiry)
Department of Telecom, Office of the Chief
General Manager, Telecom, Orissa Circle,
Bhubaneswar-1, Dist-Khurda

...
Respondents
Mr. A. K. Rose

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O R D E R

MR.B.N.SQM, VICE-CHAIRMAN: Applicant (Shri S.C.Agarwala) has filed this Original Application under Section 19 of the A.T.Act,1985, praying for stay operation of the disciplinary proceeding initiated against him by the Respondents-Department till the finalization of the criminal case initiated against him in the Court of Special Judge, Bhubaneswar.

2. The Respondents-Department have filed their counter opposing the prayer of the applicant.

3. We have heard the learned counsel for the parties and perused the materials placed before us.

4. In course of hearing the learned counsel for the Respondents drew to our notice the decision of this Tribunal in O.A.No.1045/2000 - disposed of on 5.1.2004, wherein the applicant had prayed for staying the departmental proceeding till the disposal of the criminal case. This Tribunal after going through the materials placed on record and by referring to the decision of the Hon'ble Supreme Court in the case of Capt.M.Paul Anthony v. Bharat Gold Mines Ltd. and Ors. (reported in AIR 1999 SC 1416) held as under :

" There is no doubt that right of silence is available to a citizen/Govt. servant to be exercised in the matters like the present one; but before claiming such right of silence, one has to prove that disclosure of his defence in the disciplinary proceedings would in any way be fatal to the conclusion of the Criminal case pending against him. Law is well settled in a plethora of judicial pronouncements that departmental proceedings and proceedings in a criminal case can proceed simultaneously, as there is no bar in their being conducted simultaneously, though separately; but if the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, then it would be desirable to stay the departmental proceedings till the conclusion of the criminal case. It is to be noted here that whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge-sheet. This also cannot be considered in isolation to stay the departmental proceedings but due regard has to be given

to the fact that the departmental proceedings cannot be unduly delayed for long, and 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 proceed 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."

We have also gone through the order dated 18.12.1996 passed by this Tribunal in Misc. Application No. 703/96 (arising out of O.A.No.36/93) annexed as Annexure-R/1 to the counter. In that order, this Tribunal took note of the decision of a three-judge Bench of the Hon'ble Supreme Court in the case of Nelson Motis v. Union of India & Ors. (reported in JT 1992(5)SC 511), wherein their Lordships held as under :

"...even after acquittal of an employee in a criminal case, disciplinary proceedings against him for the same misconduct could be continued because nature and scope of a criminal case are different from departmental disciplinary proceedings. An order of acquittal cannot conclude departmental proceedings."

In a Full Bench decision of the Karnataka High Court reported in (1975) 2 LLJ 513 (T.V.Gauda v. State of Mysore) it was held as under :

"... There is no bar for holding disciplinary proceedings during the pendency of a criminal trial though the basis or subject matter of the charge in both the proceedings is one and the same."

5. Having regard to what has been discussed above and in view of the fact that this Bench has been adhering to a consistent view, as referred to above, in the matter of staying the departmental proceeding

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- 4 -

till the finalization of the criminal case, we see no justifiable reason to stay the departmental proceeding as prayed for by the applicant in the instant O.A. In the circumstances, the O.A. fails.

No costs.

S. C.
04.10.04
(M.R. MOHANTY)
MEMBER (JUDICIAL)

BJY

W.S.
(B.N. SCM)
VICE-CHAIRMAN