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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

O.A.No. 861 of 2004.
Cuttack, this the 23rd day of June, 2006.

Pratap Chandra Bhoi Applicant.

VERSUS

Union of India & Ors. Respondents.

FOR INSTRUCTIONS.

1. Whether it be referred to the reporters or not?
2. Whether it be circulated to all the Benches of CAT or not?


(B.B. MISHRA)
MEMBER(ADMN.)


(JUSTICE B. PANIGRAHI)
CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL CUTTACK BENCH CUTTACK.

O.A.No.861 of 2004.
Cuttack, this the 23rd day of June, 2006.

C O R A M:-

THE HON'BLE MR. JUSTICE B.PANIGRAHI, CHAIRMAN
AND
THE HON'BLE MR.B.B.MISHRA MEMBER(ADMN.)

PRATAP CHANDRA BHOI,
Aged about 56 years, S/o. Late Karunakar Bhoi,
Village: Kotakana, PS: Balianga, Dist.Khurda,
At present working as Senior Clerk in the Office of Section
Engineer(Permanent Way), East Coast Railway, Bhadrak.

..... APPLICANT.

By legal practitioner:- M/s. D. Narendra & K.L.Kar,Advocates.

VERSUS

1. Union of India represented through its General Manager, East Coast Railway, At Rail Vihar, Chandrasekharpur, Bhubaneswar-23.
2. Assistant Divisional Engineer, East Coast Railway, At/Po: Khurda Road, Dist. Khurda.
3. Senior Divisional Engineer (Co-Ordination), East Coast Railway, At/Po: Khurda Road, Dist. Khurda.

..... RESPONDENTS.

By legal practitioner:- Mr.P.C.Panda, Additional Standing Counsel for Railways.

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ORDER

MR.B.B.MISHRA, MEMBER(ADMINISTRATIVE):-

Short facts of this case are that the Applicant was working as Senior Clerk under S.E. (P.Way)/BHC in East Coast Railway. While working as Senior Clerk, there was an allegation that he demanded Rs. 5000/- from one Shri Bhukta Hembram, Retired Head Trackman out of which the Applicant wanted Rs. 2000/- to be paid to him in one or two days before issuing the Store Clearance Certificate and rest amount of Rs. 3000/- to be paid after receipt of the DCRG amount by Shri Bhukta Hembram.

2. Shri Hembram went to CBI who arranged a trap and the Applicant was caught red handed on 12-02-2002 while accepting the bribe amount of Rs.2000/- and accordingly, the CBI charge sheeted the Applicant under Section 7 and 13(2) R/w 13(1) (d) of the Prevention of Corruption Act, 1988 and the learned Spl. Judge,CBI, Bhubaneswar after taking cognizance has issued summon against the Applicant fixing 16-07-2002 for his appearance to answer the charges. Accordingly, the Applicant has appeared on the date fixed by the learned Spl. Judge, Bhubaneswar and received the charges .

3. In the meanwhile, the Respondents initiated departmental proceedings against the Applicant and on 08-10-2002 (Annexure-2) Memorandum of charges under Rule 9 of the Railway Servant (Discipline and Appeal) Rules, 1968 along with Article of Charges, Statement of Misconduct or Misbehaviour in support of Article of charge, list of documents by which the Article of Charge was framed and list of documents were supplied to the Applicant.

4. On 21-06-2004 i.e. two years after receipt of the aforesaid charge in the departmental proceedings, the Applicant came up with a representation to his authority praying to keep the said disciplinary proceedings in abeyance till the CBI/Criminal case against him is finalized. The said prayer of the Applicant having been considered and rejected under Annexure-3 dated 01-07-2004, the Applicant has approached this Tribunal with the following prayers:-

“(ii) to direct the Respondent not to proceed with the departmental proceeding/enquiry vide Annexure-5 dated 28-08-2004 till finalization of the Criminal case vide TR-15/2002 pending in the court of Special Judge, C.B.I., Bhubaneswar”.

5. In the counter, the Respondents do not dispute the facts mentioned by the Applicant but oppose the contention of the Applicant that the Departmental Proceedings cannot proceed when the criminal case is

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pending on self same set of charges. The Respondents have maintained that the competent authority after receipt of the explanation of the Applicant have gone ahead with the disciplinary proceedings in view of the Estt. Sl. No.38/2003 wherein it has been clarified that "there is no bar for initiation and conclusion of departmental action simultaneously with criminal proceedings on the same/similar charges". It has also been mentioned that the Applicant attended the enquiry on 07-09-2004 and has prayed for supply of certain documents which were also supplied to him on 23-11-2004. Respondents claiming support of their stand that there is no bar for running the both the proceedings simultaneously have drawn our attention to various judgments of the Hon'ble Supreme Court rendered in the cases of Bahadur Singh -Vrs.-Baij Nath Tiwari-1969 (I) SCR 134=AIR 1969 SC 30; State of Rajasthan -vrs. Veen and Others- AIR 1997 SC 13; Depot Manager, Andhra Pradesh State Road Transport Corporation -vrs. Mohd. Tousaf Mijan - ASIR 1997 SC 2232 and in the case of Cap. M. Paul Anthony - Vrs.-Bharat Gold Mines Ltd. and another - 1999(2) ATT SC I.

6. None has appeared for the Applicant. No request has also been made on his behalf for adjournment. This being an old case of 2004 and pleadings have been completed long ago, we have heard Mr. P.C. Panda,

learned Additional Standing Counsel appearing for the Respondents and with his aid and assistance perused the materials placed on record.

7. The contention of the Applicant is that the Respondents have started the Departmental Proceedings basing on self same set of fact as that of Criminal Case. In support of this averment, he has placed before us copies of the Charge Sheet submitted by CBI dated 31-05-2002 under Annexure-1 and Memorandum of Charges made by the Disciplinary Authority dated 078-10-2002 (Annexure-2). It is maintained that since the charges framed in Criminal/CBI case and Disciplinary Proceedings are on the self same set of facts, witnesses and documents relied on being same, disclosure of the defence of the Applicant in the disciplinary proceedings shall prejudice him in defending the criminal case. Again it is maintained that the disciplinary authority in such matters being quasi judicial body should wait till the final decision is taken by the judicial authority in order to avoid the possibility of prejudicing the latter. Hence having approached the Respondents to stay the Departmental proceedings and failed therein, the Applicant has approached this Tribunal to order staying further progress of the disciplinary proceedings till final decision is taken on the CBI/Criminal case pending against him. Per contra, learned Additional Standing Counsel reiterating the stand taken in the counter, has prayed for dismissal of this

Original Application since according to him law is well settled that departmental proceedings and criminal case can run parallel as progress of one does not ordinarily adversely influence the other one.

8. We have carefully examined both the charges keeping in mind the various judge-made-laws of Hon'ble Apex Court on the subject.

9. Now question arises as to whether in such a case where charges are almost same, departmental proceedings should be suspended awaiting conclusion of the criminal case. In order to ~~great~~ strength to resolve the issues, we have gone through the decisions of the Hon'ble Supreme Court reported in AIR 2005 SC 1406 (**HINDUSTAN PETROLEUM CORPORATION LTD. AND OTHERS VRS. SARVESH BERRY**) and reported in 2004 (5) SLR 729 (**KENDRIYA VIDYALAYA SANGATHAN & ORS -Vrs.- T.SRINIVAS**). Their Lordships observed not to issue direction to stay the departmental proceedings in each and every case where the employees is asked to face the departmental proceedings on the face of the criminal case on self same charges. Discretion has been left to the courts to examine in each case on different context. In this connection it is worthwhile to quote what has been observed by Their Lordship in the case of Kendriya Vidyalaya Sangathan (supra) which are as under:-

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“11. In the instant case, from the order of the tribunal as also from the impugned order of the High Court, we do not find that the two forums below have considered the special facts of this case which persuaded them to stay the departmental proceedings. On the contrary, reading of the two impugned orders indicates that both the tribunal and the High Court proceeded as if a departmental enquiry had to be stayed in every case where a criminal trial in regard to the same misconduct is pending. Neither the tribunal nor the High Court did take into consideration the seriousness of the charge which pertains to acceptance of illegal gratification and the desirability of continuing the appellant in service in spite of such serious charges leveled against him. This Court in the said case of State of Rajasthan (supra) has further observed that the approach and the objective in the criminal proceedings and the disciplinary proceedings is altogether distinct and different. It held that in the disciplinary proceedings the question is whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case maybe, whereas in the criminal proceedings the question is whether the offences registered against him are established and, if established, what sentence should be imposed upon him. The court in the above case further noted that the standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are distinct and different. On that basis, in the case of State of Rajasthan the facts which seems to be almost similar to the facts of

this case held that the tribunal fell in error in staying the disciplinary proceedings".

10. On examination of the matter, we find that the charges levelled against the Applicant pertain to acceptance of illegal gratification and are serious in nature. It is also the principles that every Govt. servant should maintain high standard of integrity and shall do nothing which is unbecoming on the part of a Government servant. No sympathy can be shown to any Government servant against whom allegation of demand and acceptance of illegal gratification is made and certainly it is not at all desirable to allow such Govt.servant to be in service during the investigation of the charges. Principle to stay the Departmental proceedings as criminal proceeding is pending on the self same charges should not be applied in the present case as the very integrity of the Applicant is under shadow.

11. That apart going by the parameter set by the Hon'ble Apex Court we review this case as under:

- (c) CBI case was initiated in the 11-02-2002 and charge sheet was filed on 31-05-2002;
- (d) Large number of witnesses and documents have been named and listed;

12. Their Lordship have also held in the case of Hindustan Petroleum Corporation (Supra) that 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, the administration may get rid of him at the earliest. In the present case since there has been considerable delay in disposal of CBI/Criminal case, similar delay cannot be allowed to occur in the disciplinary proceedings. The standard of proof of the Departmental Proceedings is quite different than the standard of proof in the Criminal case. The purpose of initiating Disciplinary proceedings is also different from taking legal action against the erring and offending employee. Besides it is also open to the Applicant to prefer appeal in case the result of the disciplinary proceedings goes against his interest. Applicant has also not brought any facts questioning the manner in which the disciplinary proceedings is being conducted. Presumably no irregularity is being committed in the manner in which proceedings is being conducted. We also do not find any irregularity, illegality or irrationality in the matter of initiation of the disciplinary proceedings. Since the case is quite old and departmental enquiry should not wait till finalization of the criminal case we find no justifiable reason to interfere in the matter. Hence this Original Application stands dismissed. There shall be no order as to costs.

B.B.M.
(B.B.MISHRA)
MEMBER(ADMN.)

JUSTICE B.PANIGRAHI
CHAIRMAN