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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**


ORIGINAL APPLICATION NO. 60 OF 2006
Cuttack, this the 24th day of April, 2009

A.K. Tripathy Applicants
Vs.
Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not?
2. Whether it be circulated to Principal Bench, Central Administrative Tribunal or not?


(C. R. MOHAPATRA)
ADMINISTRATIVE MEMBER


(K. THANKAPPAN)
JUDICIAL MEMBER

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ORIGINAL APPLICATION NOS. 60 OF 2006

Cuttack, this the 24th day of April, 2009

CORAM:

Hon'ble Mr. Justice K. Thankappan, Member (J)

Hon'ble Mr. C.R. Mohapatra, Member (A)

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A.K. Tripathy, aged about 50 years, S/o.Somnath Tripathy, Resident No.18, Unit No.III, PS: Kharavel Nagar, Bhubaneswar, Dist- Khurda, at present working as Mail Guard, East Coast Railways, Khurda Road, Dist-Khurda..... **Applicant**

By the Advocate(s) **M/s. P.N. Pattnaik,**
U.C. Behura,

Vs.

1. Union of India represented thorough General Manager, E.C. Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist-Khurda.
2. Senior Divisional Operations Manager-cum-Competent Authority, East Coast Railway, At/Po/Ps:Khurda Road, Dist.- Khurda
3. Divisional Railways Manager, East Coast Railways, At/Po/Ps: Khurda Road, Dist-Khurda.

..... **Respondents**

By the Advocate(s).....Dr. C.R. Mishra

O R D E R
(ORAL)

HON'BLE MR.JUSTICE K. THANKAPPAN, MEMBER(J)

This O.A has been filed by the applicant challenging the continuation of the departmental proceedings. The applicant has also prayed for restraining the Respondents from compelling the applicant to submit his statement of defence in the departmental proceedings till the finalization of the criminal proceedings.

2. The facts relevant to the O.A are as follows : While the applicant was working as Mail Guard in the Railways, on 23.03.04 a



criminal case under Section 3 of the Railways Properties (Unlawful Possession) Act, 1966, has been registered against him. It was alleged in the chargesheet that the applicant was found in possession of certain dress materials belonging to the Railways and he also connived with some miscreants who had stolen Railway property. The crime was also registered against the applicant as per 2(C) CC No.180/2004 on the file of S.D.I.M.(S), Cuttack. On the registration of the above crime against the applicant, the applicant was placed under suspension on initiation of disciplinary proceedings against him. The criminal case was pending against the applicant as well as other culprits in the case. The applicant was also arrested and subsequently granted bail by the Hon'ble High Court. But the disciplinary action taken against the applicant is proceeding. In the above circumstances, the applicant has filed this O.A with the above prayers.

3. The O.A has been admitted by this Tribunal on 19.01.06 and this Tribunal also issued an ad-interim order staying the departmental proceedings started against him. However, after passing of the said order, the counter has been filed for and on behalf of the Respondents and thereafter the matter came up for further consideration. This Tribunal vacated the stay order passed against the continuation of the disciplinary proceedings against the applicant.



4. Today this O.A came up for hearing. Neither the applicant nor the Ld. Counsel for the applicant was present. However, we heard Dr. C.R. Mishra, Ld. Counsel for the Respondents and have perused the records furnished before this Tribunal.

5. The main grounds urged in this O.A are that once the criminal case is registered against the applicant, it is not proper for the department to proceed against him under service law and it is only justifiable to stop the departmental proceedings or to keep it in abeyance till the completion of the criminal case pending against the applicant. The applicant further submits that as per certain principles of law, if a criminal case is pending which is not grave in nature, the department has to keep the disciplinary proceedings in abeyance and it cannot be continued together. It is further stated that the only allegation against applicant in the charge memo is that the applicant has committed gross misconduct in that while working in Train No.8409 UP on 22/23.03.04 ex.KGP to KUR he was involved in the theft of packages containing readymade garments from the luggage van from front compartment of rear SLR of the train and thereby committed a misconduct in contravention to Rule 3.1(i), (ii) & (iii) of Railway Servants (Conduct) Rule 1966. The charge memo shows how the applicant was involved in the commission of the said misconduct or how he was involved in the criminal case of theft of the railway property. It is further submitted that



until the criminal case is finalized, the disciplinary proceedings should be kept in abeyance.

6. Relying on the counter filed for and on behalf of the Respondents, the Ld. Counsel submits that it is settled law that both the criminal proceedings and disciplinary proceedings can continue simultaneously or even parallel level. Further the Counsel submits that the applicant had been charge sheeted along with other two persons in case No.05/04 dated 23.03.04 under Section 3(a) of the Railways Properties (Unlawful Possession) Act, 1966 which is punishable with imprisonment and fine. As the inquiry has already been started, as per the judgements of the Hon'ble Supreme Court, it is not necessary to keep in abeyance the disciplinary proceedings started against the applicant. The Ld. Counsel also brought to the notice of this Tribunal judgement reported in AIR 1997 SC 13 in the case of State of Rajasthan-Vrs-Veen & Others and the judgement reported in AIR 1997 SC 3232 in the case of Depot Manager, Andhra Pradesh State Road Transport Corporation-Vrs-Mohd. Yousuf Mijan. The Ld. Counsel further submits that the nature of evidence and the degree of proof in both the criminal cases and the disciplinary action are different and the procedures adopted are also different. In the above circumstances, the continuation of the disciplinary action is justifiable. That apart, the Counsel submits that

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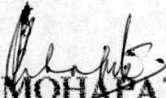
this Tribunal has already vacated the stay order issued by this Tribunal against the continuation of the disciplinary proceedings.

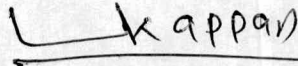
7. On considering all the aspects of this case and the averments contained in the O.A and the decisions cited by the Ld. Counsel for the Respondents, the question to be decided in this O.A is as to whether the continuation of the disciplinary proceedings is justifiable or not.

8. Admittedly, the departmental proceeding against the applicant has been initiated on 05.08.05 by issuing Annexure-A/3 chargesheet. That apart, in the criminal case registered against the applicant and other accused chargesheet has already been filed. If so, the pendency of the criminal case is not a reason to keep in abeyance the disciplinary proceedings started against the applicant. If the allegation levelled against the applicant in Annexure-A/3 is proved, it is a serious mis-conduct and the applicant can be punished with major penalty. Being a railway servant, the applicant should not have been involved in a case where theft of Railway property has been alleged. That apart, there is catena of judgements of the Hon'ble Supreme Court and Hon'ble High Courts that the pendency of the criminal case against an employee is not a reason to keep in abeyance a disciplinary proceeding till the criminal case is finally disposed of by a higher Court. It is the trite law that the evidence and the degree of proof in both the criminal case and the

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disciplinary proceedings are different. While in the criminal case onus of proof is beyond all reasonable doubts, the standard of proof is only preponderance of probability in the disciplinary proceedings. That apart, this Tribunal finds that as the disciplinary action was initiated during 2005, the applicant is not justified in approaching this Tribunal or keeping the application pending. In the above circumstances, we dispose of this O.A by directing the Respondents to complete the inquiry initiated against the applicant within a reasonable time, at any rate within 06 (six) months from the receipt of the copy of this order. The applicant is also directed to cooperate with the inquiry. It is further directed that the inquiry will continue as a day-to-day affair. Ordered accordingly. No order as to costs.


(C. R. MOHAPATRA)
ADMINISTRATIVE MEMBER


(K. THANKAPPAN)
JUDICIAL MEMBER