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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.555 OF 2009

Cuttack this the 20th day of March, 2012

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Shri S.K.Agarwal...Applicant

-VERSUS-

Bharat Sanchar Nigam Ltd. & Ors....Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ?
2. Whether it be referred to C.A.T. PB, New Delhi or not ?

(C.R.MOHAPATRA)
ADMINISTRATIVE MEMBER

(A.K.PATNAIK)
JUDICIAL MEMBER

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ORIGINAL APPLICATION NO.555 OF 2009

Cuttack this the 20th day of March, 2012

CORAM:

**HON'BLE SHRI C.R.MOHAPATRA, ADMINISTRATIVE MEMBER
AND**

HON'BLE SHRI A.K.PATNAIK, JUDICIAL MEMBER

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Shri S.K.Agarwal, aged about 49 years, S/o. late Ram Kishan Agarwal, residing in Flat No.501, Radium Road, Trikut Apartment, Ranchi, at present working as General Manager (Admn/Human Resources), BSNL Office of the CGMT, BSNL, Ranchi, Jharkhanda

...Applicant

By the Advocates:M/s.A.K.Bose, P.K.Das & D.K.Mallick

-VERSUS-

1. Bharat Sanchar Nigam Ltd., represented through its Secretary to BSNL, Room No.915, Sanchar Bhawan, 20, Ashok Road, New Delhi-110 001
2. Union of India represented through its Secretary to Government of India, Ministry of Communications & IT, Department of Telecommunications, Room No.915, Sanchar Bhawan, 20, Ashok Road, New Delhi-110 001
3. The Director (Vig.I) to Government of India, Ministry of Communications & IT, Department of Telecommunications, 1112, Sanchar Bhawan, 20, Ashok Road, New Delhi-110 001
4. The Chief General Manager, BSNL, Orissa Telecom Circle, Bhubaneswar, Dist-Khurda
5. Shri U.N.Mahalik, General Manager, Telecom District, Bharat Sanchar Nigam Limited, Doorsanchar Bhawan, Unit-IX, Bhubaneswar, PIN-751 002

...Respondents

By the Advocates:Mr.S.B.Jena

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ORDER

A.K.PATNAIK, MEMBER(J):

Challenging the maintainability of Memorandum dated 26.10.2009 by virtue of which the prayer of the applicant for staying the departmental proceedings has been rejected, the applicant has moved this Tribunal in the

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instant Original Application with a prayer for quashing the said impugned Memorandum and to pass further orders as deem fit and proper.

2. The facts of the case in brief are that the applicant, while working as General Manager (CMTS) in the Office of C.G.M.T., BSNL, Orissa Telecom Circle had been trapped by the CBI, Bhubaneswar for having allegedly demanding and accepting illegal gratification amounting to Rs.1,00,000/- from one Sri Niranjan Sahoo, Managing Partner of M/s.Om Security and Services, Bhubaneswar for regularizing the contract for providing security personnel at different BSNL/Non-BSNL BTS sites and also for extension of contract and in effect, a CBI case was registered against him under the Prevention of Corruption Act, 1988 which is pending adjudication in the court of Special Judge, CBI, Bhubaneswar. Simultaneously, he has been issued with Memorandum of Charge dated 7.4.2008 in contemplation of initiation of disciplinary proceedings under Rule-14 of CCS (CCA) Rules, 1965, on the grounds that by the above stated act, the applicant has committed grave misconduct, failed to maintain absolute integrity, exhibited lack of devotion to duty and acted in a manner unbecoming of a Govt. servant and thereby violated the provisions of Rule 3(1)(i), (ii) & (iii) of CCS(Conduct), Rules, 1964 and asking him to submit his written statement of defence. Upon receipt of the above Charge Memo, the applicant submitted a representation dated 19.6.2009 to the President of India (Disciplinary Authority) praying therein to stall the disciplinary proceedings until a final decision in the Criminal Case pending before the CBI Court is taken. The prayer of the applicant having been turned down vide Memorandum dated 26.10.2009, this Original

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Application has been filed to quash the order of rejection i.e the said Memorandum dated the 26th. October, 2009.

3. The matter came up for admission before this Tribunal on 2.12.2009. This Tribunal, while admitting the O.A. and directing notice to the Respondents, as an interim measure, stayed the operation of the said Memorandum dated the 26th. October, 2009 (Annexure-A/5) for a period of 45 days. This interim order is in force as of date being extended from time to time.

4. In response to the notice issued by this Tribunal, Respondents have filed counter opposing the prayer of the applicant with a prayer for dismissal of the O.A being devoid of merit.

5. We have heard Shri A.K.Bose, learned counsel for the applicant and Shri S.B.Jena, learned counsel appearing on behalf of the Respondent-Department and perused the materials on record.

6. Shri Bose, learned counsel appearing on behalf of the Applicant contended that the proposed disciplinary proceedings having contained the self-same charge including the self-same relied upon documents and witness as in the criminal proceedings before the CBI Court, the disclosure of defence before the departmental inquiry would be fatal for the applicant in the criminal proceedings. His second plank of argument is that where the departmental proceedings and the criminal proceedings are based on the identical charges and the documents relied upon and witness are one and the same and that

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complicated questions of law and facts are involved to be determined, the departmental proceedings should be stayed till the criminal case is set at rest as per the well settled position of law. The third point urged by Shri Bose is that his prayer for staying the departmental proceedings has not been considered with due application of mind inasmuch as while rejecting his prayer vide Memorandum dated the 26th. October, 2009 (Annexure-A/5) no cogent reason has been assigned, instead, a bald and sketchy order has been issued in that behalf.

7. In response to this, Shri S.B.Jena, learned counsel appearing on behalf of the Respondent-Department submitted that there is no bar to simultaneously proceed with departmental proceedings and criminal proceedings. According to Shri Jena, departmental proceeding is aimed at inquiring into the alleged misconduct of an employee unbecoming on the part of a Government servant whereas in the criminal proceedings, the criminal liability is to be established and as such, both the proceedings are quite distinct and different from each other. In other words, Shri Jena submitted that the standard of proof required in the criminal case is beyond all reasonable doubt whereas in the departmental proceedings it is through preponderance of probability. As regards the sketchy order of rejection is concerned, Shri Jena submitted that while rejecting the prayer of the applicant vide Annexure-A/5 the reasons assigned therein has to be read in ~~harmony~~ ^{consonance} with DoPT O.M. dated 1.8.2007 and therefore, the submission of the applicant in this respect, holds no water. Lastly, Shri Jena submitted that there being no illegality in rejecting the prayer of the applicant for

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staying the departmental proceedings and that the inquiry having ~~been~~ commenced already wherein the applicant had participated, the Tribunal should not intercede in the matter.

8. We have given our anxious consideration to the arguments advanced at the Bar. We have perused the relevant rules/instructions and the decisions relied upon in support of the respective stand points besides going through the representation submitted by the applicant as well as very many decisions relied upon by the applicant in the rejoinder. In the matter of simultaneous action of prosecution in a court and initiation of departmental proceedings, DOP&T have issued Office Memorandum dated 1.8.2007 which is the triumph card of the Respondent-Department. It reveals from the said Office Memorandum that the said Office Memorandum has been issued in compliance with the directions issued from time to time by the Hon'ble Supreme Court right from the case of State of Rajasthan vs. B.K.Meena & Ors. Reported in (1996) 6 SCC 417 upto Noida Entrepreneurs Association vs. Noida reported in JT 2007(2) SC 620 laying down the principle as under.

"...that merely because a criminal trial is pending, a departmental inquiry involving the very same charges as is involved in the criminal proceedings is not barred. The approach and objective in the criminal proceedings and disciplinary proceedings are altogether distinct and different. 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 may be, whereas in the criminal proceedings, the question is whether the offences registered against the Government servant are established and if established, what sentence can be imposed on him. In serious nature of cases like acceptance of illegal gratification, the desirability of continuing the

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concerned Government servant in service in site of the serious charges leveled against him may have to be considered by the Competent Authority to proceed with departmental action.

However, if the charge in the criminal case is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case. This will depend upon the nature of offence and the evidence and material collected against the Government servant during investigation or as reflected in the charge sheet. If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were kept pending on account of 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, if the case so warrants.

In the case of Hindustan Petroleum Corporation Ltd. Vs. Sarvesh Berry (2004 (10) SCALE Page 340), it has been held in Para 9 that "it is not desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent officer. Each case requires to be considered in the back drop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental inquiry and that of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law".

It is, therefore, clarified that stay of disciplinary proceedings is not a must in every case, where there is a criminal trial on the very same charges and the concerned authority may decide on proceeding with the departmental proceeding after taking into consideration the facts and circumstances of each case and the guidelines given by the Hon'ble Supreme Court, as mentioned in the preceding paragraphs".

9. On a bare reading between the lines of the above instructions of the DOP& T(supra), we find that the order of rejection vide Memorandum dated the 26th. October, 2009 under Annexure-A/5 suffers lack of due application of mind for the following reasons.
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10. It is an admitted fact that the disciplinary proceedings and criminal proceedings are grounded upon self-same charge and the self-same relied upon documents and witness. It is also an admitted fact that regular sitting of the departmental inquiry commenced on 20.11.2009 wherein the applicant had participated. In this connection it is to be noted that while disposing of the representation of the applicant whether the charge in the criminal case is of a grave nature involving complicated questions of law and facts and whether in the instant circumstances it would be desirable to stay the departmental proceedings till the conclusion of the criminal case depending upon the nature of offence and the evidence and material collected against the Government servant during investigation or as reflected in the charge sheet, has not at all been examined.

11. Secondly, whether the criminal case is proceeding or its disposal is being unduly delayed so as to resume and/or proceeded with the departmental proceedings has not been taken into consideration by the Disciplinary Authority while dealing with the representation of the applicant.

12. Thirdly, whether disclosure of defence before the IO in the departmental proceedings would jeopardize the criminal proceedings too has not been examined by the Competent Authority while dealing with the matter.

13. In view of the above infirmities in the Memorandum dt.26/10/2009 under Annexure-A/5, the irresistible conclusion would be that the applicant has a genuine grievance which needs interference of this Tribunal. Accordingly, we



quash the impugned Memorandum dated 26.10.2009 vide Annexure-A/5, with a direction to the Respondents to reconsider the representation of the applicant dated the 12th. June, 2009 as at Annexure-A/4 having due regard to what has been discussed and observed as above and in that event, a reasoned and speaking order be passed within a period of sixty days from the date of receipt of this order.

Until a decision as directed above is taken, no further inquiry in the departmental proceedings shall be conducted.

Ordered accordingly.

The O.A. succeeds to the extent indicated above. No costs.


(C.R. MOHAPATRA)
ADMINISTRATIVE MEMBER


(A.K. PATNAIK)
JUDICIAL MEMBER