

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

OA 1079 OF 1996

Present : Hon'ble Mr. Justice S. N. Mallick, Vice-Chairman

Hon'ble Mr. S. Dasgupta, Member (A)

G. JAGANNADHAM

VS

1. Union of India through the
General Manager, S.E.Rly.
Garden Reach, Calcutta-43
2. Divisional Railway Manager,
S.E. Railway, Kharagpur,
3. Sr. Divl. Commercial Manager,
S.E. Railway, Kharagpur.

..... Respondents

For the applicant : Mr. B.C.Sinha, Counsel

For the respondents : Mr. S.Chowdhury, Counsel

Heard on : 11.6.98 : Order on : 18.6.98

O R D E R

S.Dasgupta, A.M.:

The applicant while working as Chief Typist in the South Eastern Railway at Kharagpur was arrested on 11.5.94 on the basis of a complaint submitted by the O.C., RPF, East Coast, Kharagpur. He was placed under suspension with effect from the date of his detention. Thereafter, he was granted bail and thereupon his suspension was revoked with effect from 24.6.94. The applicant is now aggrieved by the fact that a charge-memo for major penalty dated 28.8.96 was served on him and the ~~same~~ charge is based on the same set of facts on which he is facing a trial in the criminal court. He has accordingly prayed that the impugned charge-memo dated 28.8/96 be quashed and the respondents be directed to treat the entire period of his suspension as period spent on duty with full pay and allowances.

2. The main ground taken by the applicant in this application is that since the criminal proceeding is already pending against him, a disciplinary proceeding could not have

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been initiated against him on the same set of facts. He has in this regard relied on the Railway Board's letters dated 28.10.64 and 22.3.82. He has also sought reliance on the decision of the Hon'ble Supreme Court in the case of Delhi Cloth & General Mills Ltd. -vs- Kushal Bhan, AIR 1960 SC 806.

3. The respondents have contested the case by filing a reply in which the ^factual position has been admitted. They have, however, taken the stand that there is no legal bar to the initiation of departmental disciplinary action where a criminal prosecution is already in progress, ~~in~~ the ingredients of delinquency or misconduct in a criminal proceedings and the departmental proceedings as well as the standard of proof required in both the cases not being identical.

4. We heard the learned counsel for both the parties and perused the pleadings on record.

5. The short point for consideration is whether the action of the respondents in initiating disciplinary proceedings against the applicant when criminal proceedings are pending against him on the basis of same set of ^{facts} ~~charge~~ is bad in law.

6. Let us first consider the Railway Board's circulars relied upon by the applicant. The extract of the Railway board's circulars dated 28.10.64 and 22.3.82 finds place in M.L.Jand's Compilation on Railway Servants (Discipline & Appeal) Rules, 1968 (5th Edition) below rule 9 of the said Rules. The relevant portion reads as follows :

"2. In modification of the above instructions, the Board have decided that prosecution should be the general rule in all those cases which are found fit to be sent to Criminal Court after investigation and in which the offences are of bribery, corruption or other criminal misconduct involving loss of substantial

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public funds. In such cases, departmental action should not precede prosecution. In other cases involving less serious offences or involving malpractices of a departmental nature, departmental action only should be taken and the question of prosecution should generally not arise. Whenever, however, there is unresolved difference of opinion between the Central Bureau of Investigation and the administrative authority concerned as to whether prosecution in a court or departmental action should be resorted to in the first instance, the matter should be referred to the board who will consult the Central Vigilance Commission for advice."

7. It will be seen from the above that the instructions contained in the Railway Board's orders relied upon by the applicant are in the nature of guidelines and do not debar the disciplinary authority from initiating departmental proceedings when criminal proceedings are pending against a railway servant. Moreover, there are other circulars which are extracted in the same Compilation which specifically stated that it is not necessary to stay proceedings only because a criminal case is pending in a court of law on the same charges. The extract of Railway board's letter dated 6.6.74 which also finds place in the said Compilation is quoted below :

" It is not necessary to stay proceedings only because a criminal case is pending in a court of law on the same charges. Each case can be considered individually on its facts and circumstances. However, if the employees obtain a stay order of proceedings from the court, the proceedings are to be suspended."

8. We are, therefore, of the view that various Railway Board's circulars relied upon by the applicant do not come to

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his assistance.

9. We shall now take up the position of law as enunciated by the apex court in various judgements rendered from time to time. The applicant himself has relied on the decision of the Hon'ble Supreme Court in the case Delhi Cloth & General Mills -vs- Kushal Bhan, AIR 1960 SC 806. In this case, the apex court considered the validity of departmental proceedings simultaneously with criminal proceedings. It was inter alia observed :

"we cannot say that principles of natural justice require that an employer must wait for the decision at least of the criminal trial court before taking action against an employee.

We may, however, add that if the case is of a grave nature or involves questions of fact or law, which are not simple, it would be advisable for the employer to await the decision of the trial court, so that the defence of the employee in the criminal case may not be prejudiced."

10. The law laid down in the aforesaid case has been consistently followed in subsequent decisions of the apex court. In the case of Kusheshwar Dubey -vs- M/s Bharat Coking Coal Ltd., AIR 1988 SC 2118, the same issue relating to simultaneity of departmental and criminal proceedings came up for consideration before the Hon'ble Supreme Court. It has been held that -

" while there could be no legal bar for simultaneous proceedings being taken, yet there may be cases where it would be appropriate to defer disciplinary proceedings awaiting disposal of the criminal case. In the latter class of cases it would be open to the delinquent-employee to seek such an order of stay or

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injunction from the Court. Whether in the facts and circumstances of a particular case there should or should not be such simultaneity of the proceedings would then receive judicial consideration and the court will decide in the given circumstances of a particular case as to whether the disciplinary proceedings should be interdicted, pending criminal trial. As we have already stated that it is neither possible nor advisable to evolve a hard and fast, straight-jacket formula valid for all cases and of general application without regard to the particularities of the individual situation."

11. The aforesaid issue came up again before the Hon'ble Supreme Court in the case of State of Rajasthan -vs- B.K.Meena & Ors, 1996 SCC (L&S) 1455. After considering the series of earlier decisions rendered by the apex court, there lordships, inter alia observed :

" It would be evident from the above decisions that each of them starts with the indisputable proposition that there is no legal bar for both proceedings to go on simultaneously and then say that in certain situations, it may not be 'desirable', 'advisable', or 'appropriate' to proceed with the disciplinary enquiry when a criminal case is pending on identical charges. The staying of disciplinary proceedings, it is emphasised, is a matter to be determined having regard to the facts and circumstances of a given case and that no hard and fast rules can be enunciated in that behalf. The only ground suggested in the above decisions as constituting a valid ground for staying the disciplinary proceedings is that "the defence of the employee in the criminal case may not be prejudiced". This ground has, however, been hedged in

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by providing further that this may be done in cases of grave nature involving question of fact and law. In our respectful opinion, it means that not only the charges must be grave but that the case must involve complicated questions of law and fact. Moreover, 'advisability', 'desirability', or 'propriety', as the case may be, has to be determined in each case taking into consideration all the facts and circumstances of the case."

It was also observed that -

"The disciplinary proceedings are meant not really to punish the guilty but to keep the administrative machinery unsullied by getting rid of bad elements. The interest of the delinquent officer also lies in a prompt conclusion of the disciplinary proceedings. If he is not guilty of the charges, his honour should be vindicated at the earliest possible moment and if he is guilty, he should be dealt with promptly according to law. It is not also in the interest of administration that persons accused of serious misdemeanour should be continued in office indefinitely i.e. for long periods awaiting the result of criminal proceedings. It is not in the interest of the guilty and dishonest."

The Hon'ble Supreme Court went on to observe :-

"The standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are entirely distinct and different. Staying of disciplinary proceedings pending criminal proceedings, to repeat, should not be a matter of course but a considered decision. Even if stayed at one stage, the decision may require reconsideration if the criminal case gets unduly delayed."

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12. We shall lastly refer to the decision of the Hon'ble Supreme Court in the case *Deport Manager, A.P.Road Transport Corporation -vs- Mohd. Yousuf Miya and others*, 1997 SCC (L&S) 548. In this case also the earlier decisions of the apex court in *Delhi Cloth & General Mills Ltd.* (AIR 1960 SC 806), *Kusheshwar Dubey* { 1988 SCC(L&S) 950} and *State of Rajasthan -vs- B.K.Meena*, (1996) 6 SCC 417, and several other decisions were considered. Agreeing with the decision in *B.K.Meena*, their lordships made the following observations :

" The purpose of departmental enquiry and of prosecution are two different and distinct aspects. The criminal prosecution is launched for an offence for violation of a duty, the offender owes to the society or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to law 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 backdrop of its own facts and circumstances."

13. We have considered the validity of the proceedings against the applicant departmentally simultaneously with criminal proceedings. No doubt, both the proceedings are grounded on the same set of facts. However, the allegation is that the applicant had fraudulently obtained a blank railway pass and allowed it to be used by his own son. We are of the

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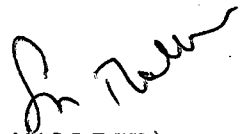
view that this case does not involve such complicated question of facts and law, so as to cause any prejudice to his defence at the trial in the criminal case, if the departmental proceeding is allowed to proceed simultaneously.

1. In view of the foregoing, we find no merit in this application and the same is dismissed leaving the parties to bear their own costs.



(S.DASGUPTA)

MEMBER(A)



(S.N.MALLICK)

VICE CHAIRMAN