

प्र.स.स. (प्रक्रिया) नियमावली के नियम 22 के अन्तर्गत निःशुल्क प्रति

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH
(FULL BENCH)**

OA NO. 285/2003

OA NO. 19/2004

AND

OA NO. 37/2004

Jodhpur, this the 28th day of October, 2004

Hon'ble Shri Justice V.S. Aggarwal, Chairman
Hon'ble Shri Kuldip Singh, Vice Chairman (J)
Hon'ble Shri M.K. Misra, Member (A)

OA No. 285/2003

R.K.Vyas s/o Shri Sh. S.K. Vyas,
R/o Type V/2 Telecom Officers Colony,
Behind UIT, Jodhpur,
Present posted address Divisional
Engineer O/O GMTD, Jodhpur.

...Applicant

(By Advocate: Sh. Mahesh Bora with Sh. Bhagirath Bishnoi and
Sh. Kamal Singh Rathore)

-versus-



Union of India through

Secretary,
Ministry of Communication,
Government of India,
New Delhi.

Chairman,
Communication Commission,
New Delhi.

COMPARED &
INITIALED

3. Director (VT),
Ministry of Communication and
Information Technology,
Deptt. Of Communication,
West Block-1, Wing - 2,
R.K.Puram, New Delhi.

4. Assistant Director General (VT)
Ministry of Communication &
Information Technology,
Deptt. Of Communication,
West Block-1, Wing-2,
R.K. Puram, New Delhi.

...Respondents

(By Advocate: Sh. Vijay Bishnoi with Sh.B.L. Bishnoi)

OA No. 19/2004

G.R. Godhara s/o Shri Shriramji Godhara,
Sub Divisional Officer (Phones)
Balotra
R/o C/o Santosh w/o Sh. R. Dugat,
Near Mother Teresa School,
Balaotra.

...Applicant

(By Advocate: Sh. Mahesh Bora with Sh. Bhagirath Bishnoi and
Sh. Kamal Singh Rathore)

-versus-

Union of India through



Secretary,
Ministry of Communications,
Government of India,
New Delhi.

Chairman,
Communication Commission,
New Delhi.

3. General Manager,
Bharat Sanchar Nigam Limited,
Telecom District, Jodhpur,
Kamla Nehru Nagar,
Jodhpur.

...Respondents

(By Advocate: Sh. Vijay Bishnoi with Sh.B.L. Bishnoi)

OA No. 37/2004

S.S. Rawal s/o Shri Roop Singh Ji
 Junior Telecom Officer
 O/o GMTD, Pali, HQ Barmer
 (Under suspension).
 R/o C/o Kheta Ram Ji Sharma,
 Matharia Colony, Behind Jain Mandir,
 Dhani Bazar - Barmer (Rajasthan)

...Applicant

(By Advocate: Sh. Dinesh Sharma)

-versus-

Union of India through

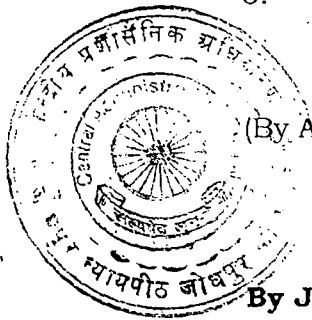
1. Secretary,
 Ministry of Communications,
 Government of India,
 New Delhi.
2. Chairman,
 Communication Commission,
 New Delhi.
3. General Manager (TMD),
 Bharat Sanchar Nigam Limited,
 Telecom District, Pali Marwar.

...Respondents

(By Advocate: Shri Jagdish Vyas)

ORDER (ORAL)**By Justice V.S. Aggarwal, Chairman:**

By this common order we propose to dispose of Original
 Application Nos. 285/2003, 37/2004 and 19/2004. They involve a
 common question and, therefore, can conveniently be decided
 together.



2. The Full Bench had been constituted to answer the question posed by a Bench of this Tribunal at Jodhpur. However, during the course of submissions, either side did not dispute that they were prepared on the merits. Therefore, to save the valuable time of this tribunal, we deem it necessary to decide the matter on its merits because we were addressed simultaneously even on the merits of the matter.

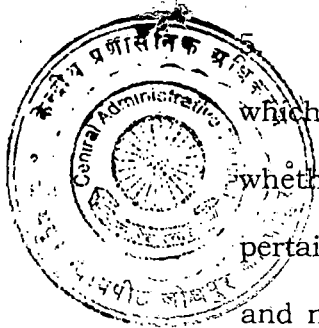
3. The Full Bench was constituted by a Bench of this Tribunal at Jodhpur posing the following question:

"Whether the Tribunal has jurisdiction on all service matter in respect of service matters of central government employees who are on deemed deputation to BSNL or only in respect of cause of action relating to their parent department e.g. disciplinary proceedings, retrial benefits, promotions in their departments etc. and not for the cause of action wholly arisen from BSNL e.g. transfer, promotion etc. by BSNL".



4. The admitted facts in all the three applications are that the applicants are facing departmental proceedings. In the case of S.S.Rawal (OA No. 37/2004), the articles of charge have been served by Bharat Sanchar Nigam Limited (for short, 'BSNL'). In the case of G.R. Godhara (OA No. 19/2004), the position is identical while in the case of R.K. Vyas (OA No. 285/2003), the articles of charge have been served by the Ministry of Communication/Union of India. It is not in dispute that a report under section 173 Code

of Criminal Procedure has already been submitted against each of the applicants before the Special Judge at Jodhpur. This pertains to offences punishable under Section 7 read with Section 13 of the Prevention of Corruption Act. It is also not in dispute that applicants are on deemed deputation with BSNL. They have not permanently been absorbed in BSNL. They seek stay of the departmental proceedings during pendency of the above said criminal cases before the Special Judge (Central Bureau of Investigation), Jodhpur.



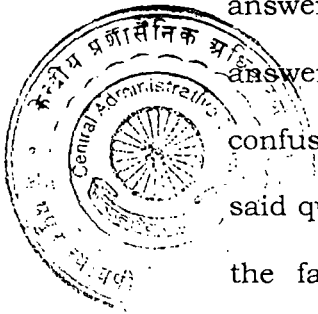
The learned Members of the Bench referring the question, which we have reproduced above, have further posed a question whether this Tribunal has jurisdiction in disciplinary proceedings, pertaining to retrial benefits, promotions in their departments, etc. and not for the cause of action that wholly arises from BSNL i.e. transfer, promotion etc. by BSNL.

6. In our considered opinion, the said questions do not arise for adjudication by this Bench. This is for the reason that under sub section 4(d) of Section 5 of the Administrative Tribunals Act, a Larger Bench can be constituted and the provisions unfold themselves in the following words:

“5(4)(d) – may, for the purpose of securing that any case or cases which, having regard to the nature of the questions involved, requires or require, in his opinion or under the rules made by the Central

Government in this behalf, to be decided by a Bench composed of more than (two members) issue such general or special orders, as he may deem fit"

The reproduced provisions of Section 5(4)(d) of the Administrative Tribunals Act clearly indicate that a Larger Bench can be constituted, having regard to the nature of questions involved. The expression 'questions involved' obviously draws its colour and strength from the facts of the case. Hypothetical questions, which do not arise from the facts of the case, need not, therefore, be answered because in that event abstract questions, which may be answered, may result in greater controversy and at times even confusion. Consequently, we are of the considered opinion that the said questions need not be answered. They can be gone into when the facts of a particular case so require. We are, therefore, confining ourselves to the controversy whether this Tribunal has jurisdiction on service matters when a person is on deemed deputation with BSNL and is a central government employee.



7. At this stage, it may be noticed that earlier a Full Bench of this Tribunal at Jaipur in OA No. 401/2002 entitled **B.N.Sharma vs. Union of India** has considered the question as to whether this Tribunal has the jurisdiction to hear matters of the employees who have permanently been absorbed in B.S.N.L. The answer given by the Full Bench of this Tribunal was in the negative.

8. The Administrative Tribunals Act has been enacted to provide for adjudication or trial by this Tribunal of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services. It is an alternative forum to provide expeditious disposal of the applications pertaining to service matters. The Act specifically provides as to under what circumstances this Tribunal will have the jurisdiction to hear those matters. Section 14 of the said Act reads:

"14. Jurisdiction, powers and authority of the Central Administrative Tribunal - (1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts (except the Supreme Court), in relation to -

- (a) recruitment, and matters concerning recruitment, to any All-India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services, being, in either case, a post filled by a civilian;
- (b) all service matters concerning-
 - (i) a member of any All-India Service; or
 - (ii) a person [not being a member of an All-India Service or a person referred to in clause (c)] appointed to any civil service of the Union or any civil post under the Union; or
 - (iii) a civilian [not being a member of an All-India Service or a person referred to in clause (c)] appointed to any defence services or a post connected with defence,



and pertaining to the service of such member, person or civilian, in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation owned or controlled by the Government;

(c) all service matters pertaining to a service in connection with the affairs of the Union concerning a person appointed to any service or post referred to in sub-clause (ii) or sub-clause (iii) of clause (b), being a person whose services have been placed by a State Government or any local or other authority or any corporation or other body, at the disposal of the Central Government for such appointment.

3(Explanation – For the removal of doubts, it is hereby declared that references to “Union” in this sub-section shall be construed as including references also to a union territory.]

(2) The Central Government may, by notification, apply with effect from such date as may be specified in the notification the provisions of sub-section (3) to local or other authorities within the territory of India or under the control of the Government of India and to corporations owned or controlled by Government, not being a local or other authority or corporation controlled or owned by a State Government:

Provided that if the Central Government considers it expedient so to do for the purpose of facilitating transition to the scheme as envisaged by this Act, different dates may be so specified under this sub-section in respect of different classes of or different categories under any class of, local or other authorities or corporations.

(3) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall also exercise, on and from the date with effect from which the provisions of this sub-section apply to any local or other authority or corporation, all the jurisdiction, powers and



authority exercisable immediately before that date by all courts (except the Supreme Court) in relation to -

(a) recruitment, and matters concerning recruitment, to any service or post in connection with the affairs of such local or other authority or corporation; and

(b) all service matters concerning a person [other than a person referred to in clause (a) or clause (b) of sub-section (1)] appointed to any service or post in connection with the affairs of such local or other authority or corporation and pertaining to the services of such person in connection with such affairs."

9. At the outset, it must be mentioned that this Tribunal is a creation of the Act of the Parliament. It draws its power and strength from the provisions of the Act. Section 3(q) of the Act further defines as to what is service matter in the following words:



"(q) "service matters", in relation to a person, means all matters relating to the conditions of his service in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India, or, as the case may be, of any corporation owned or controlled by the Government, as respects -

- (i) remuneration (including allowances), pension and other retirement benefits;
- (ii) tenure including confirmation, seniority, promotion, reversion, premature retirement and superannuation;
- (iii) leave of any kind;
- (iv) disciplinary matters; or
- (v) any other matter whatsoever."

10. Reading of Section 14 with Section 3(q) of the Act clearly shows that the Tribunal will have jurisdiction to deal with matters affecting the conditions of service in connection with the affairs of the Union. Section 3(q) does not refer to all other conditions mentioned and, therefore, clause(v) provides 'any other matter whatsoever'.

11. The question, as already referred to above, pertains to where a person is on deemed deputation. The expression 'deemed' is a common phrase, which occurs in many modern legislations. In the Stroud's Dictionary (Fourth Edition) it has been explained:-

"The word 'deemed' is used a great deal in modern legislation. Sometimes it is used to impose for the purposes of a statute an artificial construction of a word or phrase that would not otherwise prevail. Sometimes it is used to put beyond doubt a particular construction that might otherwise be uncertain. Sometimes it is used to give a comprehensive description that includes what is obvious, what is uncertain and what is, in the ordinary sense, impossible."



12. The Supreme Court has also considered this expression in the case of **State of Andhra Pradesh vs. Vallabhapuram Ravi**, AIR 1985 SC 870. It approved and referred the decision of the Appeal Cases in **East End Dwellings Co. Ltd. v. Finsbury Borough Council**, 1952 AC 132 wherein it has been mentioned:

"If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed must inevitably have flowed from or accompanied it. One of these in this case is emancipation from the 1939 level of rents. The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs."

Similarly in the case of **Dr. Baliram Waman Hiray vs. Mr.**

Justice B. Lentin and Others, AIR 1988 SC 2267, the same

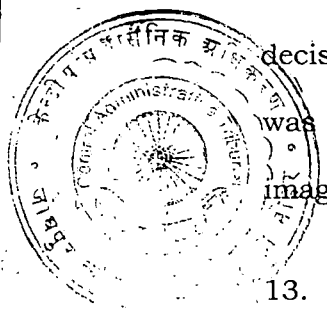
expression again came up for consideration. We are not going into

the facts of the case, which are not relevant. The above said

decision of the appeal cases, to which we have made a reference,

was again referred with advantage that one is bidden to treat an

imaginary state of affairs as real.




13. It appears that most of the applicants on the creation of BSNL were serving with it. They had not permanently been absorbed and are still, for all practical purposes, Government servants. Therefore, this expression 'deemed deputation' has been used in their case.

14. As regards the expression 'deputation', the Supreme Court has explained the same in the case of **State of Punjab & Ors. vs. Inder Singh & Ors.**, 1997(8) SCC 372. It clearly held that the

expression 'deputation' does not have the same connotation in service jurisprudence as ordinarily is taken not of. Consequently, we have no hesitation in concluding that when a person is on deemed deputation, his rights are not better than any other individual. He is, for all practical purposes, on loan. In other words, subject to the contract, his services have been lent to the borrowing department.

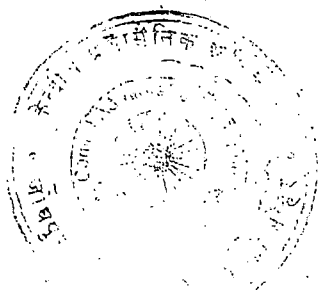
15. The learned Members of the Bench have taken pains to refer to a large number of precedents but we deem it unnecessary to go into the same. This is for the reason that the decision of the Supreme Court binds all the courts and this Tribunal. This question has already been settled by the Supreme Court and in face of that referring to all other precedents would be an exercise in futility.



16. The Supreme Court in the case of **Major M.R. Penghal vs. Union of India & Ors.**, JT 1988 (5) SC 624, has considered the said question. In the said case, the Post and Telegraph Services Selection Board had issued an advertisement inviting applications to fill up 1200 vacancies of Clerks. The appellant, before the Supreme Court, had applied and was successful. He was informed that Postal Department requires a number of Clerks for enrolment on deputation in the Indian Army Postal Service. It was clearly mentioned that from the date of his enrolment in the Army Postal

Service, he would be treated on deputation. The offer was accepted by the appellant before the Supreme Court. He earned some promotions therein. Later on, when dispute arose, he had filed one application in the Central Administrative Tribunal, Nagpur. The question for consideration was if the Central Administrative Tribunal has the jurisdiction to hear the matter or not? The Supreme Court set aside the order of the Central Administrative Tribunal and held that the Tribunal has jurisdiction to hear the matter because he was on deputation from the Postal Services. The findings of the Supreme Court read:

"9. As stated above, although the appellant was selected by the Postal Department for appointment to the post of Clerk, but he could not be given any appointment due to want of vacancy in the unit of his choice. Under such circumstances, the appellant was offered an appointment to work as a clerk in the Army Postal Service on the condition that he would remain a civilian employee on deputation in the Army. The appellant accepted the aforesaid offer and agreed to the conditions that he would revert to the civil appointment in Posts and Telegraphs Department on his release from the Indian Army Postal Service. With these conditions, the appellant continued to serve in the Army as a permanent employee of the Posts and Telegraphs Department on deputation and was promoted upto the rank of Major in the Indian Army. However, the appellant was only given a temporary commission and he worked as such till the date when his relinquishment was ordered. The aforesaid facts clearly demonstrate that the appellant has a lien with the Posts and Telegraphs Department working on deputation in the



Indian Army Postal Service and at no point of time the appellant became a full-fledged army personnel. Since the appellant was not a member of the Armed Forces and continued to work as a civilian on deputation to the Army Postal Service, his case was covered under Section 14(1)(a) of the Administrative Tribunals Act. In that view of the matter, the High Court was right in rejecting the writ petition filed by the appellant, whereas the Central Administrative Tribunal erroneously accepted the claim of the appellant that he is an army personnel. We, therefore, uphold the judgment and order of the High Court dismissing the writ petition filed by the appellant. Since the appellant while holding civil post was working in the Army Postal Service on deputation the Central Administrative Tribunal had jurisdiction to entertain and decide the original application filed by the appellant. We accordingly set aside the order dated 31.1.1997 passed by the Central Administrative Tribunal, Principal Bench, New Delhi and remand the case to it to decide expeditiously original application no. 1647 of 1996 of the appellant, on merits."



17. This answers the question in controversy that we have been called upon to adjudicate and resultantly we have no hesitation and we answer the question in the following terms:

A person who is on deputation/deemed deputation from the Central Government with B.S.N.L. falls within the ambit and jurisdiction of this Tribunal or in other words this Tribunal has jurisdiction to hear his application.

18. As already referred to above and we mention at the risk of repetition, the parties' counsel had conceded that merits of the

matter may also be adjudicated. The question that arises for consideration is whether when disciplinary proceedings and criminal proceedings involving identical questions are pending, the departmental proceedings could be stayed or not?

19. The Supreme Court in the case of **Delhi Cloth and General Mills Ltd. vs. Kushal Bhan**, AIR 1960 SC 806 held that if the case is of a grave nature or involves questions of fact or law, which are not simple, it would be advisable to stay the departmental proceedings. It was observed:-

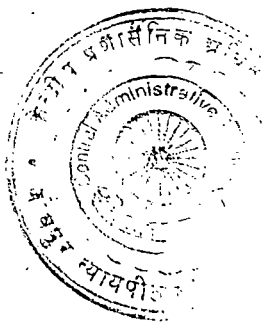


“(3) It is true that very often employers stay enquiries pending the decision of the criminal trial courts and that is fair; but we cannot say that principles of natural justice require that an employer must wait for the decision at least of the criminal trial court before taking action against an employee. In *Shri Bimal Kanta Mukherjee vs. Messers, Newsman's Printing Works*, 1956 Lab AC 188, this was the view taken by the Labour Appellate Tribunal. 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.”

Similarly, in the case of **Kusheshwar Dubey vs. Bharat Coking Coal Ltd.** (1988) 4 SCC 319, the Supreme Court held that there is 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. The principle in this regard, referred to above, has been put in the following words:-

"7. The view expressed in the three cases of this Court seem to support the position 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 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. For the disposal of the present case, we do not think it necessary to say anything more, particularly when we do not intend to lay down any general guide-line."



Identical was the view point expressed few years later in the case of

Food Corporation of India vs. George Varghese and Anr., 1991

Supp.(2) SCC 143 in the following words by the Supreme Court:-

"After the conviction the order of dismissal was passed but immediately on the respondents being acquitted the appellant fairly set aside that order and reinstated the respondent and initiated departmental proceedings by suspending him and serving him with the charge-sheet and the statement of allegations, etc. It cannot, therefore, be said that the appellant was guilty of delay. It

is true that between setting aside the order of dismissal and the service of the charge-sheet, there was a time gap of about eight months but we do not think that that can prove fatal.

3. In the Result, we allow this appeal, set aside the order of the High Court and direct that the appellant will proceed with the inquiry expeditiously and complete the same as far as possible within a period of six months or thereabout provided the respondent co-operates in the inquiry and does not delay the proceedings. If the respondent has not filed his written statement to the charges levelled against him, he may do so within two weeks from today. The appeal is allowed accordingly with no order as to costs."



20. Entire case law had been considered by the Supreme Court in the case of **State of Rajasthan vs. B.K. Meena & Ors.**, (1996) 6 SCC 417. In the cited case, the Central Administrative Tribunal had stayed the departmental proceedings till the conclusion of the criminal trial. The same question had come up for consideration and the Supreme Court noted that proceedings in criminal trial were going to take a long time and conclusion of the same was nowhere in sight. The Supreme Court noted in this regard:-

"16. Now, let us examine the facts of the present case. The Memo of charges against the respondent was served on him, along with the articles or charges, on 13.10.1992. On 9.2.1993, he submitted a detailed reply/defence statement, running into 90 pages, controverting the challan against him was filed on 15.5.1993 in the criminal court. The respondent promptly applied to the Tribunal and got the disciplinary proceedings stayed. They remain stayed till today. The irregularities alleged against the

respondent are of the year 1989. The conclusion of the criminal proceedings is nowhere in sight. (Each party blames the other for the said delay and we cannot pronounce upon it in the absence of proper material before us.) More than six years have passed by. The charges were served upon the respondent about 4 years back. The respondent has already disclosed his defence in his elaborate and detailed statement filed on 9.2.1992. There is no question of his being compelled to disclose his defence in the disciplinary proceedings which would prejudice him in a criminal case. The charges against the respondent are very serious. They pertain to misappropriation of public funds to the tune of more than rupees one crore. The observation of the Tribunal that in the course of examination of evidence, new material may emerge against the respondent and he may be compelled to disclose his defence is, at best, a surmise – a speculative reason.”



Thereupon, the conclusions drawn were that the disciplinary proceedings and criminal trial would proceed simultaneously. The stay of the disciplinary proceedings should not be a matter of course but a considered decision. Even if the disciplinary proceedings are stayed, the same could be reconsidered, if criminal trial gets unduly delayed. The findings in this regard read:-

“17. There is yet another reason. The approach and the objective in the criminal proceedings and the disciplinary proceedings is 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 him under the Prevention of Corruption Act (and the Indian Penal Code, if any) are established and, if established, what

sentence should be imposed upon him. 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."

Thereafter the Supreme Court had allowed the appeal and set aside the order of the Central Administrative Tribunal.

21. Similarly, in the case of **Depot Manager, A.P. State Road Transport Corporation vs. Mohd. Yousuf Miya and Others**, (1997) 2 SCC 699, the Supreme Court held that it would be expedient that disciplinary proceedings are conducted and completed expeditiously and the pendency of criminal trial is no ground to stay the disciplinary proceedings. The findings of the supreme Court read:-



"8. We are in respectful agreement with the above view. The purposes 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 lay down any guide-lines 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. There would be no bar to proceed simultaneously with departmental enquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law. Offence generally implies infringement of public (sic duty), as distinguished from mere private rights punishable under criminal law. When trial for criminal offence is conducted it should be in accordance with proof of the offence as per the evidence defined under the provisions of the Evidence Act. Converse is the case of departmental enquiry. The enquiry in a departmental proceedings relates to conduct or breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law."



22. Our attention was drawn towards a decision rendered by the Supreme Court in the case of **Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd. & Anr.**, in Civil Appeal No. 1906 of 1999 on 30.3.1999. Same question had come up for consideration. The Supreme Court after scanning through the various precedents, some of which have been referred to above, had drawn the conclusion:-

"22. The conclusions which are deducible from various decisions of this Court referred to above are:

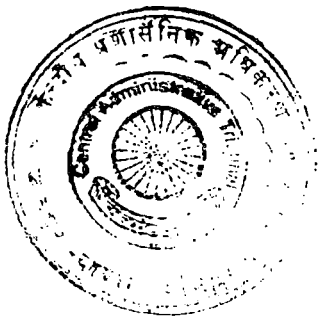
- (i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

(ii) 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, it would be desirable to stay the departmental proceeding till the conclusion of the criminal case.

(iii) 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.

(iv) The factors mentioned at (ii) and (iii) above 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.

(v) 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, administration may get rid of him at the earliest."



23. Learned counsel for the respondents had drawn our attention towards the Division Bench's decision of the Rajasthan

High Court in the case of **Govind Kalwani vs. Rajasthan High**

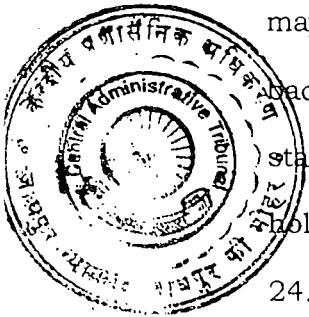
Court, Jodhpur, Civil Writ Petition 956/03 decided on 4.3.2003.

On the strength of the same, it was urged that it has already been

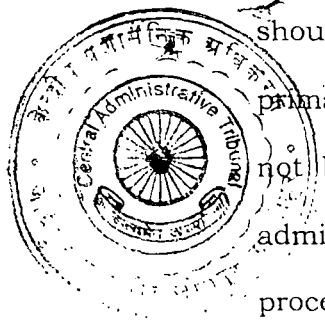
held that in such event departmental proceedings need not be stayed. We read with interest the decision of the Division Bench of the High Court. The Division Bench held that advisability, desirability or propriety, as the case may be, has to be determined in each case taking into consideration of facts and circumstances and no hard and fast and straight jacket rule can be provided. In fact, in the case of **Govind Kalwani** (Supra), there were no criminal proceedings pending and the same were only on the investigating stage. Challan even had not been filed. The Division Bench concluded that it is anybody's guess whether criminal challan has to be filed or not and how much time it would take. It may take some further time in framing of the charge. It was in this backdrop, held that the departmental proceedings need not be stayed. That is not the fact in the present case and, therefore, we hold that the said decision is distinguishable.

24. A feeble attempt was made on behalf of the respondents to contend that charge has yet not been made but in the peculiar facts, the plea raised will not attract the ratio deci dendi in the case of **Govind Kalwani**. The Special Judge has already taken cognizance and matter, as we were informed, is listed for consideration if charge has to be framed or not. Resultantly, this particular fact will not tilt the balance.

25. The basic principle that has to be taken note of has already drawn in the case of **Capt. M. Paul Anthony** (supra) to which we



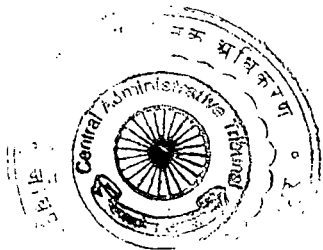
have referred to above. They require no repetition. Suffice to say that staying of disciplinary proceedings is a matter to be determined having regard to the facts and circumstances of a given case. No hard and fast rule can be enunciated. Normally, disciplinary proceedings can continue if criminal cases are pending but advisability, desirability or propriety has to be determined in each case taking into consideration of the facts and circumstances. No straight jacket formula can be provided. If disciplinary proceedings have to be stayed, the charge should be grave and should involve complicated questions of law or facts. One of the primary considerations is that the disciplinary proceedings should not be unduly delayed. This is for the reason that interest of administration and good governance demand that disciplinary proceedings should be decided expeditiously. The disciplinary proceedings are initiated to keep discipline in the department while criminal proceedings are to punish a person who has violated the law of land. It is these principles along with the principles referred to above already settled by the Supreme Court, which have to be kept in mind while deciding the above said questions but we hold that merely because on the same facts criminal case is pending does not in every case amount to staying disciplinary proceedings.



26. In all fairness to the learned counsel for the respondents, we must mention that he strongly relied upon the latest decision of the Apex Court in the case of **Kendriya Vidyalaya Sangathan &**

others vs. T. Srinivasan, (2004) 7 SCC 442. In that case also departmental proceedings had been initiated while he had been arrested. Hence charged for offence punishable under Section 7 read with Section 13(1)(d) of the Prevention of Corruption Act. The Supreme Court referred to the decision rendered in the case of **State of Rajasthan vs. B.K. Meena** (Supra) **and of Capt. M. Paul Anthony** (Supra) and held that in the facts of that case proceedings were not to be stayed.

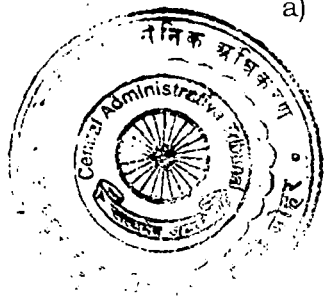
27. It has to be remembered that the cited decision is confined to the peculiar facts therein. The charge had already been framed and the Tribunal as well as the High Court of Andhra Pradesh had held that till the criminal trial continues, the disciplinary proceedings must remain in abeyance but the Supreme Court held that this was an erroneous approach and it concluded:



“14. We are of the opinion that both the Tribunal and the High Court proceeded on an erroneous legal principle without taking into consideration the facts and circumstances of this case and proceeded as if the stay of disciplinary proceedings is a must in every case where there is a criminal trial on the very same charges, in this background it is not necessary for us to go into the second question whether at least Charge 3 by itself could have been permitted to be decided in the departmental enquiry as contended alternatively by the learned counsel for the appellant.”

In fact, the Supreme Court added that each case has to be examined on its own facts.

28. In the present case before us we were informed that as yet the matter is fixed for 6.12.2004 before the learned Special Judge to consider if charge has to be framed or not. We also do not intend to hold that proceedings in the departmental matter must remain in abeyance irrespective of the fact that the criminal trial may continue for years together. Necessarily a balance in the peculiar facts of the present case has to be maintained. We are yet not aware if the charge would have been framed or not. It would be in the fitness of things, therefore, to allow some time and keep the departmental proceedings in abeyance but inordinate delay cannot be permitted in the departmental proceedings as noted above. Therefore, in the peculiar facts of this case, we direct:



- a) The matter is fixed before the Special Judge on 6.12.2004 at Jodhpur to consider if charges have to be framed or not. If the applicants are discharged, the departmental proceedings can be initiated, if deemed appropriate, thereafter;
- b) If charges are framed, it is directed that in that event if trial does not conclude within six months from that date, respondents would be well within their rights to re-start the departmental proceedings;

c) If the applicants are neither discharged nor charges are framed within nine months from today, the respondents again would be within their rights to re-start the departmental proceedings;

d) Till then, departmental proceedings may be kept in abeyance;

e) Nothing said herein should be taken as an expression of opinion on merits of the matter.



Sd/-
(M.K.MISRA)
MEMBER (A)

Sd/-
(KULDIP SINGH)
VICE CHAIRMAN

Sd/-
(V.S.AGGARWAL)
CHAIRMAN

/na/

CERTIFIED TRUE COPY
Dated 01-12-2004

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[Signature]
Section Officer (Judicial)
Central Administrative Tribunal
Jodhpur Bench Jodhpur

Part II and III destroyed
in my presence on 30/10/2013
under the supervision of
section officer (J) as per
order dated 18/10/2013

[Signature]
Section officer (Records) 30.10.2013