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**Central Administrative Tribunal
Jodhpur Bench, Jodhpur**

Original Application No. 102/2004
Date of Decision : This the 17th December, 2004.

Hon'ble Mr. Kuldip Singh, Vice Chairman
Hon'ble Mr. G.R. Patwardhan, Administrative Member

Y. V. Jain s/o Shri Ishwardas Jain
R/o 4/88 SFS Agarwal Farm, Jaipur,
Superintending Engineer CWE(AF), Bikaner
(under suspension), Hqrs. at Jaipur.

.....Applicant.

[By Mr. Mahesh Bora, Advocate for applicant]

Versus

1. Union of India – through Secretary,
Ministry of Defence, Govt. of India
Raksha Bhawan, New Delhi.
2. Engineer-in-Chief, Engineer in Chiefs Branch,
Army Headquarters, Kashmir House, New Delhi.
3. Sri M.K. Ghosh, Commissioner for Departmental
Enquiries, Central Vigilance Commission
(Enquiry Officer), Satarkta Bhawan, Block A
INA, New Delhi.

.....Respondents.

[By Mr. Vineet Mathur, Advocate for respondents]



ORDER
[BY KULDIP SINGH, VICE CHAIRMAN]

The applicant has filed this Original Application seeking a direction to the respondents to keep departmental inquiry initiated against him vide Memorandum dated 10th March, 2003, in criminal proceedings with regard to the First Information Report (FIR) No. RC JDH/2001/A0010 in abeyance till disposal of criminal case.

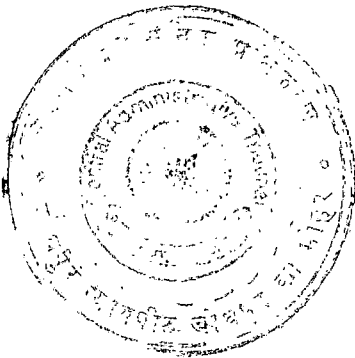
2. The brief facts as alleged by the applicant are that applicant while posted as Superintending Engineer, Military Engineering

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Service (Air Force), Bikaner, was issued a Chargesheet (Annex.A/1) under Rule 14 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 on the allegation that while functioning as public servant in the month of May 2001, he failed to maintain absolute devotion to the duty and committed gross mis-conduct inasmuch as he was caught red handed on 24th May, 2004 by the Central Bureau of Investigation (CBI), Jodhpur team in the presence of two independent witnesses while having demanded and accepted Rs. 25,000/- from Shri Surendra Walia, complainant, for granting the approval of extension of working period and passing the final bills. Thus, by the aforesaid act, he has contravened the Rule 3 (1) (i), (ii) and (iii) of the Central Civil Services (Conduct) Rules, 1964. Applicant alleges that a criminal FIR has also been registered against him on the complaint of said Shri Walia and after completion of investigation, a chargesheet was filed against him before the learned Special Judge, Jodhpur. However, it is stated that no charges have been framed as yet and matter is pending before it. It is further submitted that since the allegations in the departmental inquiry as well as in the FIR are same and same witnesses are to be examined by the departmental inquiry in the Court of learned Special Judge, the defence of the applicant is likely to be prejudiced if the applicant is called upon to give his explanation before the departmental inquiry, so it is prayed that this departmental inquiry be kept in abeyance.

3. The respondents have contested the O.A. and have pleaded that the applicant has approached this Tribunal for staying the

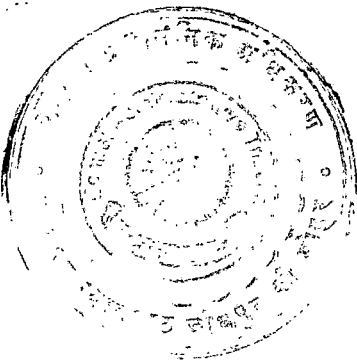
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departmental inquiry till completion of criminal proceedings pending before the learned Trial Court but, now it is a settled position of law that the departmental inquiry and criminal trial can proceed simultaneously as each is independent of the other. In view of the matter, this Tribunal should not interfere in the proceedings which are to be dealt with in accordance with law. It is further stated that the applicant had been involved in a serious case of accepting a bribe, therefore, such a responsible officer should not be allowed to continue in service and the departmental proceedings should not be kept in abeyance.

4. We have heard the learned counsel for the parties and gone through the records.

5. During the course of arguments, the learned counsel for applicant pointed-out that now, the case is listed before the learned Special Judge in January 2005 and part of the witnesses have also been examined and it is not likely to take much time, as such, if nine months time is provided staying the proceedings in the departmental inquiry, will be sufficient and that would serve the purpose and his criminal trial would not be prejudiced. In support of his contention, the learned counsel for the applicant has referred to a **Full Bench judgement** given by this very bench of the Tribunal in R.K. Vyas Vs. Union of India and Ors. and a batch [OA Nos. 285/2003, 19 and 37/2004 on 28th day of October, 2004 wherein, in a similar matter, the departmental proceedings were stayed for a period of six months. The relevant part of the operative portion reads thus :-



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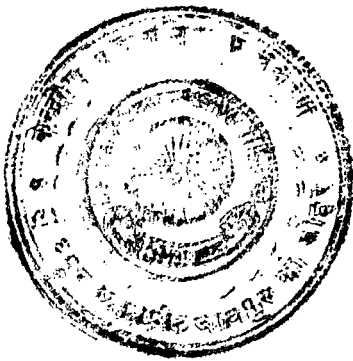
"b. If charges are framed, it is directed that in that event if trial does not conclude within six months from that date, respondents would be well within their rights to re-start the departmental proceedings."

6. Seeking support from the above quoted Full Bench Judgement of this Tribunal, the learned counsel for the applicant has submitted that in this case also, un-doubtedly, the facts involved in criminal trial before the learned Special Judge as well as before the inquiry officer in the departmental proceedings, are identical and the witnesses are also the same and it will unnecessarily prejudice the applicant if, he is called-upon to disclose his defence before the departmental inquiry. Hence, it is essential that the order rendered by the Full Bench should be followed and proceedings in the departmental inquiry should be stayed .

7. As against this, the learned counsel for respondents Mr. Vineet Mathur, submitted that after the Full Bench decision, a recent law has been laid down by Hon'ble the Supreme Court in the case of Kendriya Vidyalaya Sandgathan and Others Vs. T. Srinivas reported in 2004 [7] SCC 442, wherein also, a UDC was arrested by the CBI after a trap and was charged for offence punishable under Section 7 read with Section 13 (1) (d) of the Prevention of Corruption Act and while the case was pending, the Departmental decided to proceed with the departmental proceedings against the respondent and the charge memorandum framing several charges was issued to him. The respondent therein, challenged the said decision of the department to hold a departmental inquiry while a criminal trial on identical facts was pending before the criminal court before the Central

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Administrative Tribunal who passed an order the ultimate effect of which was that the disciplinary proceedings would stand stayed **almost till** the disposal of the trial before the criminal court. A Writ Petition was filed before Hon'ble the High Court who also agreed with the order of the Tribunal that the disciplinary proceedings should be stayed till the criminal trial is over. In those circumstances, Hon'ble the Supreme Court had allowed the appeal and set aside the impugned order of the Tribunal and the High Court. Relying upon this judgement, the learned counsel for the respondents submitted that in the case in hand also, where a bribe was demanded and accepted a sum of Rs. 25,000/- the applicant was dealt with under Section 7 Read with Section 13 of the Prevention of Corruption Act and a FIR had rightly been registered against him, so, the Court should not stay the proceedings in the matter.



8. We have given our anxious thought to the contentions raised by the rival counsels. At the outset, we may point-out that the case relied upon by Mr. Mathur, had also been looked into by the Full Bench while deciding the case of R.K. Vyas. (supra). The Full Bench in Para 26 also mentions about the latest decision of the Apex Court Kendriya Vidyalaya Sangathan & others Vs. T. Srinivasan (supra).

It is also pertinent to mention here that while deciding the case of Kendriya Vidyalaya Sangathan, Hon'ble the supreme court also relied upon on its earlier case of State of Rajasthan Vs. B.K. Meena & Ors. [(1996) 6 SCC 417] which has also been taken

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note of in the Full Bench decision of this very Bench in R.K.Vyas's case. In that also, a case had been registered under Section 7 read with Section 13 of the Prevention of Corruption Act and on identical facts, admittedly, the proceedings were initiated against the applicant therein and stay was granted by the Tribunal as was done in the case of KVS. The Tribunal specifically held that 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. This Bench further held that it would be in the fitness of things, to allow some time and keep the departmental proceedings in abeyance but inordinate delay cannot be permitted in the departmental proceedings as noted above. So the Tribunal then allowed the stay of departmental proceedings for a short period.

9. In this case also, it is pointed-out that the facts in the departmental as well as in the criminal trial, are identical which is inasmuch as has not been disputed by the respondents and the judgement of Hon'ble the Supreme Court which has been heavily relied upon by the learned advocate for respondents, only goes to show that if the departmental proceedings are to be kept in abeyance till conclusion in criminal trial, that is not good. But, if the applicant suffers prejudices in the criminal case when the witnesses are examined, the applicant should not be called-upon to disclose his defence before the departmental inquiry and in that circumstances, the proceedings can be stayed but not for a very




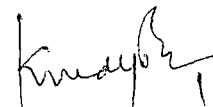
long period because the delinquent employee can not be retained on rolls for long period. Even in the case of M. Paul Anthony vs. Bharat Gold Mines Ltd and Another [Civil Appeal No. 1906 of 1999 on 30.3.1999] the department allowed to restrain the proceeding if undue delay is taken for the conclusion of trial before the criminal court.

10. In this case since as pointed-out by the learned counsel for applicant that trial has already started but, witnesses are being examined before the learned Special Judge so, we are of the view that the departmental proceedings can be directed to be kept in abeyance for a short period so that by that time witnesses in the criminal case are examined and the applicant is able to cross-examine them effectively and till that time, the respondents should not be called upon to disclose his defence before the departmental proceedings. In these circumstances, we allow this O.A. with the following directions :-

"The departmental proceedings shall be kept in abeyance for a period of eight months from today and thereafter, the respondents would be within their rights to re-start the departmental proceedings and thus, till then, departmental proceedings be kept in abeyance for such period."

11. The O.A. is accordingly allowed to a limited extent as above, however, there is no orders as to costs.


[G.R.Patwardhan]
Administrative Member


[Kuldip Singh]
Vice Chairman

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Part II and III destroyed
in my presence on 31/10/2013
under the supervision of
section officer (J) as per
order dated 18/10/2013

P. K. Sharma
Section officer (Record) 31.10.2013

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