के.प्र.अ. (प्रक्रिया) नियमावली के नियम 22 के अन्तर्गत निः शुल्क प्रति

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH

...

OA.Nos.159/2007, 160/2007, 305 /2007, 306/2007, 321/2007 & 10/2008
Jodhpur, this the 26th day of September, 2008

...

CORAM: HON'BLE MR.K.V.SACHIDANANDAN, VC(J)
HON'BLE MR.TARSEM LAL, MEMBER(A)

...

i)OA No.159/2007:

D.N.Gupta son of Shri Radhey Shyam Gupta, aged 58 years, Chief Pharmacist, Health Unit, North Western Railway, Phalodi, r/o D 29, Sector D, Saraswati Nagar, Basani, Jodhpur

...APPLICANT

BY ADVOCATE: SHRI VIJAY MEHTA

VERSUS

1. Union of India, through the General Manager, North Western Railway, Jaipur.
2. Senior Divisional Medical Officer, North Western Railway Hospital, Jodhpur.

...RESPONDENTS

BY ADVOCATE: SHRI MANOJ BHANDARI

...

ii)OA No.160/2007:

Manohar Lal son of Shri Shanker Dayal, aged 57 years, Chief Pharmacist, Health Centre, North Western Railway, Merta Road, r/o 195C, Saraswati Nagar, Basani, Jodhpur

...APPLICANT

BY ADVOCATE: SHRI VIJAY MEHTA

VERSUS

1. Union of India, through the General Manager, North Western Railway, Jaipur.

2. Senior Divisional Medical Officer, North Western Railway Hospital, Jodhpur.

...RESPONDENTS

BY ADVOCATE: **SHRI MANOJ BHANDARI**

...

iii)OA No.305/2007:

D.N.Gupta son of Shri Radhey Shyam Gupta, aged 58 years, Chief Pharmacist, Health Unit, North Western Railway, Phalodi, r/o D 29, Sector D, Saraswati Nagar, Basani, Jodhpur

...APPLICANT

BY ADVOCATE: **SHRI VIJAY MEHTA**

VERSUS

1. Union of India, through the General Manager, North Western Railway, Jaipur.

2. Senior Divisional Medical Officer, North Western Railway Hospital, Jodhpur.

...RESPONDENTS

BY ADVOCATE: **SHRI MANOJ BHANDARI**

...

iv)OA No.160/2007:

Manohar Lal son of Shri Shanker Dayal, aged 57 years, Chief Pharmacist, Health Centre, North Western Railway, Merta Road, r/o 195C, Saraswati Nagar, Basani, Jodhpur

...APPLICANT

BY ADVOCATE: **SHRI VIJAY MEHTA**

VERSUS

1. Union of India, through the General Manager, North Western Railway, Jaipur.

2. Senior Divisional Medical Officer, North Western Railway Hospital, Jodhpur.

...RESPONDENTS

BY ADVOCATE: **SHRI MANOJ BHANDARI**

...

v)OA No.321/2007:

Madan Lal Vaidhya son of Shri Kishan Ram, aged 43 years, Pharmacist, Health Unit, North Western Railway, Samdari, District Barmer c/o C 90, Saraswati Nagar, First Phase Basani, Jodhpur.

...APPLICANT

BY ADVOCATE: **SHRI VIJAY MEHTA**

VERSUS

1. Union of India, through the General Manager, North Western Railway, Jaipur.

2. Senior Divisional Medical Officer, North Western Railway Hospital, Jodhpur.

...RESPONDENTS

BY ADVOCATE: **SHRI MANOJ BHANDARI**

...

vi)OA No.10/2008:

Madan Lal Vaidhya son of Shri Kishan Ram, aged 43 years, Pharmacist, Health Unit, North Western Railway, Samdari, District Barmer c/o C 90, Saraswati Nagar, First Phase Basani, Jodhpur.

...APPLICANT

BY ADVOCATE: **SHRI VIJAY MEHTA**

VERSUS

1. Union of India, through the General Manager, North Western Railway, Jaipur.

(12)

2. Senior Divisional Medical Officer, North Western Railway Hospital, Jodhpur.

...RESPONDENTS

BY ADVOCATE: SHRI MANOJ BHANDARI

ORDER

...

HON'BLE MR.K.V.SACHIDANANDAN, VC(J):-

As common issues are involved in all these O.As, with consent of the ld. Counsel for the parties, these are being disposed of by this common order.

2. Briefly, the facts are that an identical charge sheet has been issued to the applicants in these cases on the imputation that they had committed some mal-practice for supply of medicines through local purchase. Non-available medicines were shown to have been supplied by the Medical Stores which were received by the applicants and entries of receipt were made by them. It was alleged that the applicants had entered into a conspiracy with some other officials due to which they caused wrongful loss to the Railways. Simultaneously, criminal cases, on the allegations mentioned in the charge sheets, were also registered in the CBI Court, Jodhpur.

3. On receipt of the chargesheets, applicants made a representation to the authorities requesting them to keep the proceedings in abeyance since a criminal case had already been lodged against them on the plea that in

(13)

case the disciplinary proceedings are progressed, the applicants will be constrained to disclose their defence which will prejudice their criminal trial. The representations made by the applicants were rejected by the respondents by order dated 8.1.2007.

4. Aggrieved by the above action of the respondents, applicants have filed the present O.As. seeking identical reliefs in all the cases that the impugned orders of rejection of their representations be quashed and the departmental proceedings initiated against them may be stayed or kept in abeyance till pendency of the criminal cases.

5. Respondents have filed a detailed counter statements submitting that the O.As. are not maintainable. They have further contended that the departmental inquiry and the pendency of the criminal trial, both, are independent of each other and departmental enquiry proceedings cannot be stayed. They have further averred that charges against the applicants are grave and the applicants are trying to escape the enquiry proceedings and want to drag the matter because, normally, the criminal cases take much longer time as such cases entail a very lengthy procedure. The departmental enquiry has nothing to do with the pending criminal cases as both are independent of each other. The law is also settled that the Courts should not interfere in the departmental proceedings which should not be stayed at the instance of the applicants.

(14)

6. Applicants have filed rejoinders contending that as admitted by the respondents, the charges alleged against them are of a very serious and grave nature and, therefore, the departmental proceedings need to be stayed.

7. We have heard ld. Counsel for the parties appearing in these cases and have examined the record.

8. Ld. Counsel appearing for the applicants submit that in case the departmental proceedings are continued, the proceedings pending in the criminal court would highly prejudice their defence in those proceedings. Both the proceedings are grounded on the same facts and documents. Identical questions of facts and law are involved in the proceedings and the impugned orders are unreasonable and deserve to be stayed or kept in abeyance.

9. Ld. Counsel appearing on behalf of the respondents, on the other hand, submit that no prejudice will be caused to the applicants if both proceedings-departmental as well as criminal, proceed simultaneously.

10. We have given due thought and consideration to the rival arguments addressed on both sides, the evidence adduced and the documents placed on record. The impugned order, dated 8.1.2007, is to the following effect and is reproduced here under for a ready reference:-

"Sub: Dropping of departmental proceedings in CVC case.

(15)

Ref:Your letter dated 5.1.2007 to the undersigned and copy to SDGM/JP.,

In reference to your letter under reference, it is stated that the prosecution relates to the criminal aspect of the case comprising misconduct and IPC offences and the disciplinary proceedings are initiated for commission of misconduct under Disciplinary and Appeal Rules. Both proceedings can go on simultaneously. In view of this, departmental proceedings cannot be dropped at this juncture.

11. The short issue involved in this case is that can the disciplinary proceedings be stayed when the criminal proceedings are pending before the criminal court ? When the matter came up for hearing, the ld. Counsel appearing for the applicants, with reference to the decision, placed at Annexure A-5, given by this Tribunal on 2.3.2007 in OA No.149 of 2006, titled Naresh Kumar vs. Union of India & another, wherein the Administrative Member herein was also a party to the decision, urged that similar relief as given in that O.A. may be granted to the applicants in these cases as well. On going through the said order, we find that the issues involved in the present cases are the same and on going through the observations, findings and directions given in the said order, we are in respectful agreement with the said order. Without giving the detailed observations, the reasoning and the findings recorded in that order, we feel suffice it to say that the issues involved in the present cases are similar to the above case and these cases are squarely covered by that decision. We further observe that in the said order, as a measure of

precaution, two years' time was granted to the authorities for examination of the witnesses in the criminal trial and if not so done, the competent authority was given liberty to abate or to proceed with the departmental inquiry proceedings. We feel that no prejudice would be caused to any party if the said decision is adopted in the present case as well. We, therefore, feel inclined to grant the same relief to the applicants in the present O.As. as has been given in the said case.

12. In the conspectus of the facts and circumstances, we are of the view that ends of justice would be met by giving a direction to the respondents to keep the disciplinary proceedings in these cases in abeyance for sometime, till the witnesses as in the disciplinary proceedings, who are also witnesses in the criminal case, are examined by the criminal court. Thereafter, the departmental proceedings can commence as in that event the fear of the applicants that their defence in the disciplinary proceedings would come to be known to the prosecution in the criminal case would stand dispelled and would no longer subsist. In case even after two years the witnesses, as stated above, are not examined, the competent authority may consider either to wait till the witnesses are examined or make progress in the departmental proceedings. We order accordingly.

13. All these O.As. are allowed to the above extent and respondents are directed to keep the departmental proceedings in abeyance against the

applicants in these OAs, as ordered in the preceding paragraphs. The Registry is directed to place copies of this order in the respective files and to supply copies of this order to the parties along with copies of order of this Bench, passed in O.A. No.149 of 2006 in the case titled Naresh Kumar vs. Union of India & another, decided on 2.3.2007.

14. In the facts and circumstances of these case, there would be no orders as to costs.

Sd/-

(TARSEM LAL)
MEMBER(A)

Sd/-

(K.V.SACHIDANANDAN)
VICE CHAIRMAN(J)

Dated: September 26th, 2008

'bss'

CERTIFIED TRUE COPY
Dated 30.9.2008

अनुभाग अधिकारी (न्यायिक)
Section Officer (Judl.)
केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
जोधपुर न्यायपीठ, जोधपुर
Jodhpur Bench, Jodhpur

Part II and III destroyed
in my presence on 15/12/14
under the supervision of
section officer (J.) as per
order dated 18/9/14

Section Officer (Record