

9/1

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH:JODHPUR

ORIGINAL APPLICATION NO.269/2009

DATE OF ORDER: 13.07.2012

CORAM:

HON'BLE SHRI SUDHIR KUMAR, ADMINISTRATIVE MEMBER

HON'BLE SHRI V. AJAYKUMAR, JUDICIAL MEMBER

M.S. Sidhur son of late Shri Karnail Singh, about 53 years, resident of Plot No.215, Sector-6, Hanumangarh Junction (Raj), at present employed on the post of Superintendent in Central Division, Jaipur Road, Ajmer.

.... .Applicant

Mr. J.K. Mishra, counsel for applicant.

vs.

1.The Union of India through the Secretary,Ministry of Finance,Department of Revenue
North Block, New Delhi-110 001.

2.The Commissioner of Central Excise
Jaipur-1 , New Central Revenue Building
Statue Circle, C-Scheme, Jaipur, Rajasthan.

3.The Commissioner of Custom (Prev)
Jodhpur at Jaipur, New Central
Revenue Building,Statue Circle, C-Scheme,
Jaipur, Rajasthan.

.....Respondents

Shri M. S. Godhra, counsel for respondents.

O R D E R
PER SHRI V. AJAY KUMAR, JUDICAL MEMBER

The applicant who is working as Superintendent in the Central Excise Department has filed the present O.A questioning the Charge

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Memorandum No.C.No.II-39(12)Vig./JPR-II/09/1065 dated 26.11.2009, inter alia, contending that the charges levelled in the Charge Memorandum are akin to the charges in the criminal case levelled against him. He further submits that the issue involved in the impugned charge memorandum is pertaining to the complicated questions of law and facts involving as much as 39 witnesses and 61 documents. One of the accused in the criminal case is the listed witness in the departmental proceedings against the applicant. Since the criminal case registered under Section 120B read with Section 420 of IPC and Section 13(2) read with 13 (1) (d) of the Prevention of Corruption Act, 1988, is in progress, the disclosure of defence of the applicant in disciplinary case would adversely prejudice his defence in criminal case.

2. This Tribunal by its order dated 16.12.2009 restrained the respondents from proceeding further with the departmental enquiry being held in pursuance of the impugned charge memorandum and the said order is subsisting as on today.

3. The respondents have filed a detailed reply, inter alia, contending that the pendency of the criminal case is not a bar to proceed with the departmental proceedings. They further submit that the standard of proof in a criminal case is different from that of the departmental proceedings. The scope, ambit and purpose of both the proceedings are quite different and distinct and hence the O.A is liable to be dismissed.

4. The learned counsel for the applicant has placed reliance on the Constitution Bench judgement of the Hon'ble Supreme Court in A.R. Antulay vs. R.S. Nayak (1992 1 SCC 225). It is not the case of the

respondents that the charges levelled in the impugned charge memorandum are not similar to the charges in the criminal case. However, they contend that there is no legal bar to proceed with the departmental disciplinary action when a criminal case is pending on the same issue.

5. It is trite that there is no legal bar to proceed with the departmental enquiry even when criminal case is pending involving the same facts and law. However, the Hon'ble Apex Court in a catena of cases categorically held that when the charges levelled in the departmental charge memorandum and the criminal case are one and the same and based on the same set of facts, it is desirable to stay the departmental action till the criminal case is decided, more so, when the charges in the criminal case are mainly under the Prevention of Corruption Act, as the case is in this O.A. By virtue of the orders of this Tribunal, the impugned charge memorandum has not been proceeded with, already for a substantial period, and hence, the respondents are restrained from proceeding with the departmental enquiry being held in pursuance of the impugned charge memorandum till the disposal of the criminal case by the C.B.I Court. But the prayer of the applicant to quash the impugned charge memorandum cannot be granted either on the ground of pendency of criminal case or on the ground of issuing the same after inordinate delay. The applicant has failed to show any valid reason for quashing the charge memorandum. Accordingly, the O.A is disposed of. There shall be no order costs.

V-2-annex
(V. AJAY KUMAR)
MEMBER (J)


(SUDHIR KUMAR)
MEMBER (A)

8/12
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