

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, AT JODHPUR

Dated this the 3rd day of March, 2011

Coram: HON'BLE MR. JUSTICE S.M.M. ALAM, MEMBER (J) &
HON'BLE MR. SUDHIR KUMAR, MEMBER (A)

1. Original Application No. 214/2010

Brij Mohan Swaroop s/o late Sh. Ram Swaroop, aged about 59 years,
R/o T-176-C, D.S. Colony, Jodhpur.) Post - Chief Reservation
Supervisor at Jodhpur, North Western Railway, Jodhpur.

....Applicant

By Advocate Mr. Sukesh Bhati, counsel for the applicant

2. Original Application No. 215/2010

Kanhaiya Lal s/o Sh. Ramcharan, aged about 36 years R/o T-87 New
Loco Railway Colony, Ratanada, Jodhpur.

....Applicant

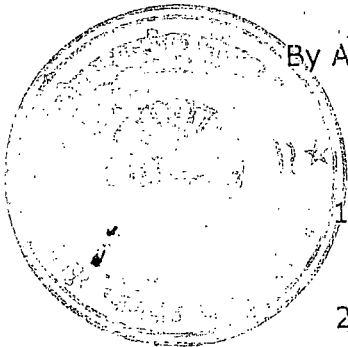
By Advocate Mr. Sukesh Bhati, counsel for the applicant

Vs.

1. Union of India, through the Manager, North Western Railway,
Jaipur.
2. The Asstt. Commercial Manager, North Western Railway,
Jodhpur.

By Advocate Mr. Kamal Dave counsel for respondents.

....Respondents



24

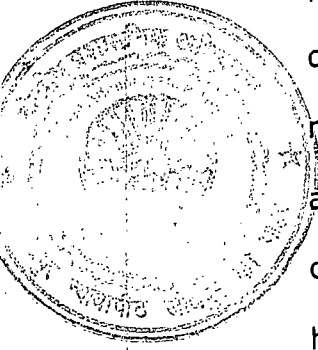
ORDER

Per Hon'ble Mr. Sudhir Kumar, Member (Administrative)

Since, the facts and questions of law involved in these two Original Applications are similar/common, therefore, these two cases were taken up together for hearing, and are being disposed of by a common order.

OA No. 214/2010

2. The applicant of this O.A. has been served with a charge sheet in Standard Form No.5 dated 2.7.2010 in regard to the CBI trap case arising out of the incident when, on 23.10.2009, the applicant had been allegedly found to have accepted illegal gratification for facilitating one Sh. Abhinav Rajpurohit in business of purchase of railway tickets at Jodhpur Railway Station. Soon after the registration of the trap case by CBI, the applicant had been placed under suspension, against which the applicant had filed an O.A. which was disposed of by directing the respondents to hear the applicant in person on his representation for a review of his suspension within 10 days, and to decide as to whether the suspension has to be revoked or not, and the suspension was revoked by the respondents. The applicant has come before this Tribunal again now, stating that it is clear that the charges which have been levelled against the applicant have been based upon the Section 7 of the Prevention of Corruption Act, while the Article of charges and imputation of charge only state that the applicant had failed to maintain absolute integrity, exhibited lack of devotion to duty, and also acted in a manner unbecoming of a



15

Railway Servant, and had thereby violated Rule 3.1 (i), (ii) and (iii) of the Railway Services Conduct Rules, 1966. The applicant pleads that the departmental proceedings initiated will affect the criminal proceedings pending against him, if the outcome of the departmental proceedings comes ahead of the outcome of the criminal proceedings.

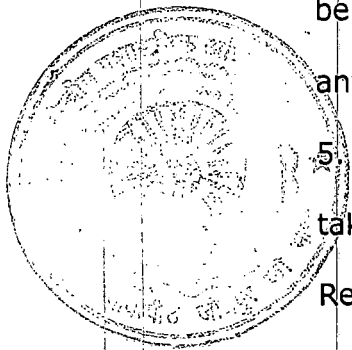
3. The applicant submitted that simultaneous departmental proceedings as well criminal proceedings are not permissible if both of these proceedings are based on identical and similar sets of facts. He submitted that still the respondents have issued a charge sheet against the applicant, which is in violation of the provisions of law. Aggrieved by the action of respondents for initiation of departmental proceedings, the applicant raised the grounds that the initiation of departmental proceedings vide order dated 2.7.2010 (Annexure A/1), is without application of mind, because the charge which has been levelled against him is based on identical and similar set of facts on which criminal proceedings are already pending against him, and a decision on the departmental proceedings will affect the criminal proceedings, and therefore the departmental proceedings should not have been initiated. He, therefore, prayed that the departmental proceedings should have been commenced after a decision of the criminal case, and therefore the memo. of charge sheet issued for initiation of the departmental proceedings deserves to be quashed. He submitted that it is settled law that when departmental proceedings and criminal proceedings are based on identical set of facts, then the departmental proceedings should be stayed till the conclusion of the criminal proceedings, and even the action of initiating fresh



departmental proceedings on the same allegations is bad in the eyes of law.

4. The applicant submitted that it is not within his authority to issue reservation tickets to any person, he does not sit on the window where such reservation tickets are issued, and the office of the applicant as Supervisor is very far from the windows from where the reservation tickets are issued, and it is not possible for him even to see the functioning of the reservation windows. The applicant pleaded that some persons who maintain enmity with him had falsely implicated him in a criminal case, and even the decision for the issuance of charge sheet appears to have been taken by the respondents with malafide intention, on the instigation of some persons. He also submitted that his suspension order was not reviewed for ~~the~~ more se. than 9 months, and he was not granted subsistence allowance as per law, and even his representation in this regard was not replied to. In the circumstances, the applicant had prayed for the charge sheet dated 2.7.2010 (Annexure A/1) issued to him by respondent no.2 to be quashed, and had claimed the costs of application and prayed for any other relief to be granted to him.

5. The respondents filed their written statement on 17.8.2010, taking a stand that while the applicant was serving as Chief Reservation Supervisor (CRS), he was caught red handed by the CBI while demanding and accepting illegal gratification for personal monetary gain in lieu of extending facility of reserved ticket, in misuse of his official capacity as CRS, and, in this manner, he had failed to se. maintain absolute integrity. It is further submitted that applicant had



referred to Judgment of Hon'ble Supreme Court in the case of **Capt.**

M. Paul Anthony vs. Bharat Gold Mines Ltd. AIR 1999 SC 1416,

which was considered by this Tribunal while considering the interim prayer on 28.7.2010, and this Tribunal had stayed the operation of the

impugned charge sheet, ^{but} while the criminal proceedings were with the

regard to the criminality of the act of the applicant in having been caught red handed by the CBI while demanding and accepting illegal

gratification for personal monetary gains in lieu of extending the facility of reserved ticket, in misuse of his official capacity as CRS, the

departmental proceedings were only on account of the applicant

having failed to maintain absolute integrity and having violated the

Railway Service Conduct Rules, 1966, and that these two aspects are

entirely different. It was stated that notwithstanding the case of **M.**

Paul Anthony (Supra) cited by the applicant, which was considered

by this Tribunal while considering grant of interim stay, the

departmental inquiry and the criminal case can run simultaneously. It

was submitted that Hon'ble Supreme Court has consistently held that

the approach and the objective in the criminal proceedings and the

disciplinary proceedings are altogether distinct and different, and

therefore staying of the disciplinary proceedings till the conclusion of

criminal trial cannot be done as a matter of course. It was submitted

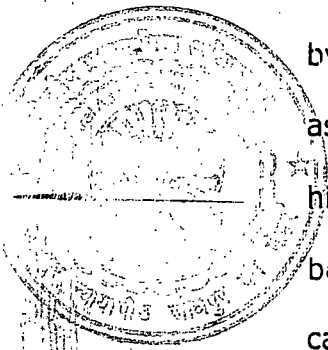
by the respondents that in the disciplinary proceedings the question is

as to whether the applicant is guilty of such conduct as would merit

his removal from the service, or a lesser punishment, as the case may

be, whereas in the criminal proceedings, the question is whether the

case registered against him under the Prevention of Corruption Act is



98

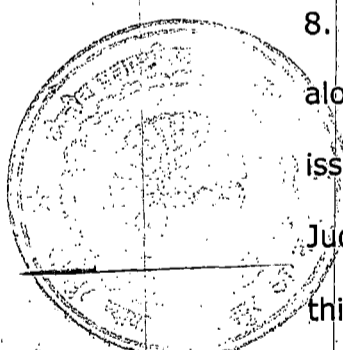
established or not, and, if established beyond reasonable doubt, what sentence should be imposed upon him. The respondents cited the case of **Uttaranchal Road Transport Corporation and Ors. Vs. Mansa Ram Nainwal; (2006) 6 SCC 366** to state that it is mandatory for the Court to discuss the factual scenario as to how Anthony's case had any application or not. The respondents cited another case of **State of Rajasthan VS. B.K. Meena (1996) 6 SCC 417** in support of their contentions.

6. The respondents had therefore raised an objection that the applicant has failed to show any ground as to what prejudice will be caused to him on account of simultaneous conduct of criminal case as well as departmental inquiry, which is necessary for him to show in view of the Judgment of the Hon'ble Supreme Court in the case of **Uttaranchal Road Transport Corporation** (Supra). The respondents, therefore, prayed for the O.A. to be dismissed with exemplary costs.

7. The applicant filed a rejoinder also, reiterating the grounds taken in the O.A., and again prayed for the O.A. to be allowed.

O.A. 215/2010

8. This case also came up for hearing for admission on 28.7.2010, alongwith the above cited O.A. No. 214/2010, and while ordering issuance of dasti notices upon the respondents, on the basis of the Judgment in the case of **M. Paul Anthony** (Supra), the Bench of this Tribunal had directed for stay of the departmental proceedings against the present applicant initiated through Memo. Of charge sheet dated 02.7.2010 (Annexure A/1).



lu.

10

9. The applicant of this case is a Ticket Collector, and he was allegedly caught red handed on 18.12.2009 while accepting illegal gratification for supplying confirmed reserved ticket by charging Rs. 300/- over and above the actual fare. The Article of charges and imputation of the charges had given the details of the case, whereby it was stated that the applicant had failed to maintain absolute integrity, exhibited lack of devotion to duty, and also acted in a manner unbecoming of a Railway Servant, and had thereby violated rule no.3.(i), (ii) & (iii) of Railway Service Conduct Rules, 1966. Upon lodging of the criminal case by the CBI, the applicant was suspended on 2.2.2010, but he came before this Tribunal in an earlier O.A. No. 82/2010, and his suspension was stayed by this Tribunal vide order dated 9.4.2010. That O.A. No. 82/2010 was initially being heard alongwith this O.A., but was delinked later, and reserved for orders on 19.11.2010, and orders in the same dismissing the O.A. were pronounced on 25.2.2011.

10. In the present O.A. the applicant has come against the charge Memo issued to him dated 2.7.2010, as mentioned above, on the same grounds as the applicant of O.A. No. 214/2010, pleading that when the criminal case under Section 7 of Prevention of Corruption Act is already pending against him on the identical set of facts/charges, the respondents could not have initiated the departmental proceedings against him, as they have done, and that such initiation of departmental proceedings would affect the criminal proceedings, if the out come of the departmental proceedings comes prior to the conclusion of the criminal proceedings, and therefore the charge



10
Memo. deserves to be quashed and the costs of application alongwith other relief may be granted to him.

11. The respondents filed the detailed reply written statement dated 17.8.2010, taking the similar grounds as taken in the O.A. No. 214/2010, and had again cited the case of Uttaranchal Road Transport Corporation and State of Rajasthan Vs. B.K. Meena

(Supra). The respondents further pointed out that the applicant had failed to implead the General Manager as party respondent in his O.A., although for challenge to an order passed by the Union of India Railways, the order can be assailed only if the General Manager of the Railway is impleaded as party respondent. On the other hand, the applicant has also failed to implead the Senior Divisional Commercial officer as party respondent, and the respondents therefore submitted that the O.A. deserves to be dismissed on this account alone. The learned counsel for the respondents submitted that on page 27 in para 5(a) in 5,6 and 7 line of the reply to the O.A. a mistake had crept inasmuch as the applicant of this O.A. had also been described as Chief Reservation Supervisor, which he was not, as the applicant of this O.A. is only a Ticket Collector. There, appears to be no need to again recount the submissions of the respondents which were all in parallel with the reply given to the earlier O.A.

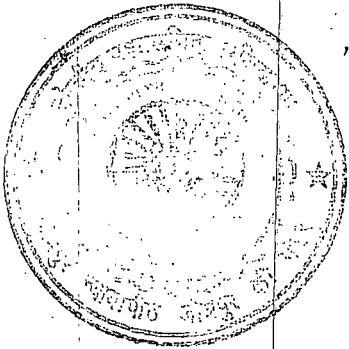
12. The applicant of this O.A. also filed a rejoinder dated 1.2.2011. In that the applicant had pointed out the mistake of describing his designation as Chief Reservation Supervisor while he was a Ticket Collector, which led to the learned counsel for the respondents accepting the bonafide mistake. He had further submitted



there is no bar in their being conducted simultaneously, though separately.

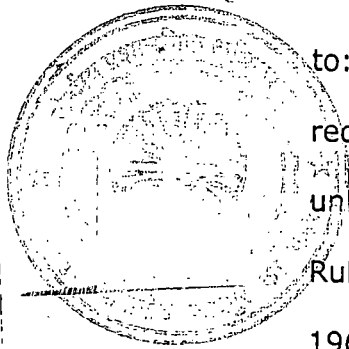
- ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings 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 offences, 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 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".

16. Thus, in view of the above guidelines laid down by the Hon'ble Supreme Court itself, we can understand that the departmental proceedings and proceedings in the criminal case can proceed simultaneously, as there is no bar for their being conducted simultaneously, though separately. The only rider is that, as quoted in para 22 (ii) and 22 (iii) of the Judgment, if the departmental proceedings and the criminal case are based on identical and similar



sets 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 proceedings till the conclusion of the criminal case.

17. We are of the opinion that none of these two conditions are satisfied in the instant cases of these two applicants. While the instant applicants had been caught red handed by the CBI while allegedly accepting illegal gratification by way of cash over and above the costs of the ticket, for facilitating the delivery of ~~the~~ confirmed railway tickets, otherwise than in the normal course of the transactions of the railway counters, the aspect pending before the trial Court in the criminal cases is only the criminality aspect of the events which took place leading to the two traps being laid against these two applicants. But, that instance being the same, it is seen that no complicated questions of law and facts are involved in the case of these two applicants, and that their case would not be covered by the summary of the decision as laid down by the Hon'ble Supreme Court in para 22(ii) and 22 (iii) in the aforesaid case. The criminality aspect of the acts of these two applicants is already pending decision in the trial Criminal Court. The disciplinary aspect of the applicants having failed to:- i) maintain absolute integrity, and ii) having failed to exhibit the requisite devotion to duty, and iii) having acted in a manner unbecoming of a railway servant, and iv) having thereby violated the Rule 3.1 (i),(ii) and (iii) of the Railway Service Conduct Rules, 1966, are not aspects which are pending adjudication before the CBI Court where the criminal case is presently under trial.



23

Ru.

Ru.

Ru.

Ru.

18. Therefore, the contention of the respondents that since paragraph 22(i) of the Judgment of Hon'ble Supreme Court in the said **M. Paul Anthony** case itself provides that departmental proceedings and proceedings in a criminal case can proceed simultaneously, as there is no bar in law in their being conducted simultaneously, though separately, this Tribunal need not interfere with the Article of Charges already served upon the applicants of these two O.As, deserves due consideration. In respectful submission to the observations of the Hon'ble Supreme Court in para 22 (i) of the cited judgment as reproduced above, and the other earlier case law referred to in the case, we also hold that there is no bar for the departmental proceedings and the proceedings in the criminal case being conducted simultaneously, though separately, since in the instant cases no complicated questions of law and facts are involved.

19. In any case, the applicants have approached this Tribunal soon after the issuance of the charge sheet, and no proceedings have taken place in the disciplinary inquiry. It is noticed that the conclusion of the disciplinary inquiry would in no way adversely affect the defence of the employees in the criminal case, and as such their defence may not be prejudiced as was laid down by the Hon'ble Apex Court in the **State of Rajasthan Vs. B.K. Meena: (1996) 6 SCC 417**, the relevant paragraph of which is reproduced herein below:-

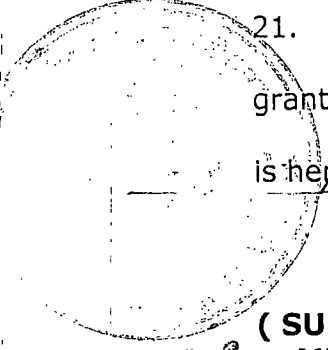
" It must be remembered that interest of administration demand that undesirable elements are thrown out and charge of misdemeanor is enquired into promptly. The disciplinary proceedings are meant not really to punish the guilt but to keep the administrative machinery unsullied by getting rid of bad elements. The interest of the delinquent officer also lies in a prompt conclusion of the disciplinary proceedings. If he is not guilty of the charge, his honour should be indicted at the earliest possible moment and if he is guilty, he should

25

be dealt with promptly according to law. It is not also in the interest of administration that person accused of serious misdemeanor should be continued in office indefinitely i.e. for long periods awaiting the result of criminal proceedings. It is not in the interest of administration. It only serves the interest of the guilty and dishonest."

20. It is clear that even if the applicants are acquitted by the trial Court on the criminal aspect of the case, the charges of their having failed to maintain absolute integrity, having exhibited lack of devotion to their duties, and having acted in a manner unbecoming of a railway servant, and having violated the Rules would still have to be separately faced by the applicants. Therefore, in these circumstances, there does not appear to be any need for us to stay the disciplinary proceedings in the instant cases.

21. In the result, both the O.As. are dismissed, and the stay granted earlier by the concurrent Bench of this Tribunal on 28.7.2010 is hereby vacated. However, there shall be no order as to costs.



SK

SK

(SUDHIR KUMAR)
MEMBER (A)

(JUSTICE S.M.M. ALAM)
MEMBER (J)

ORIGINAL &
CHECKED

SK

CERTIFIED TRUE COPY

Date: 09-4-11

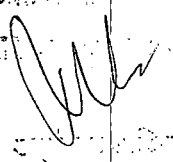
SK

Secretary (Gen.)
Central Railway Tribunal
New Delhi

दिनांक 21-4-16 को अनेकानुसार

मेरी उपस्थिति में 09-6-16

को धारा 10 के अन्तर्गत



केन्द्रीय प्रशासनिक अधिकरण
जोधपुर न्यायापीठ, जोधपुर