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CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR

ORIGINAL APPLICATION NO. 33/2010
&
ORIGINAL APPLICATION NO. 34/2010

Date of order: 6.5.2010

CORAM:

HON'BLE MR. JUSTICE S.M.M. ALAM, JUDICIAL MEMBER
HON'BLE MR. V.K. KAPOOR, ADMINISTRATIVE MEMBER

OA NO. 33/2010

Mukesh Jansari son of Shri Tulsi Das, aged about 46 years, resident of Plot No. 119, Rameshwar Nagar, Basni, Jodhpur – 342005, at present employed on the post of Inspector in Central Excise Division, Narpat Niwas, Behind Tendoor, Air Force Road, Jodhpur.

...Applicant.

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

VERSUS

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

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

....Respondents.

Mr. M.S. Godara, counsel for respondents.

OA NO. 34/2010

Mukesh Jansari son of Shri Tulsi Das, aged about 46 years, resident of Plot No. 119, Rameshwar Nagar, Basni, Jodhpur – 342005, at present employed on the post of Inspector in Central Excise Division, Narpat Niwas, Behind Tendoor, Air Force Road, Jodhpur.

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... Respondents.

Mr. M.S. Godara, counsel for respondents.

ORDER
Per Hon'ble Mr. Justice S.M.M.Alam, Judicial Member

The issue involved in both these Original Applications bearing No. 33/2010 & 34/2010 is identical; therefore, both the Original Applications are being disposed of through a commor order.

2. The applicant Shri Mukesh Jansari has filed both these Original Applications seeking following relief:

OA No. 33/2010

"(i) That impugned charge sheet dt. 20.8.2009 (Annexure A-1) and order dated 18.9.2009 (Annexure A/2), passed by the 2nd respondent and all subsequent proceedings thereof, may be declared illegal and the same may be quashed. The respondents may be directed to allow all consequential benefits as if no such disciplinary proceedings were ever in existence.

(ii) That any other direction, or orders may be passed in favour of the applicant which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.

(iii) That the costs of this application may be awarded."

OA No. 34/2010

"(i) That impugned charge sheet dt. 7.8.2009 (Annexure A-1), and order dated 4.9.2009 (Annexure A/2), passed by the 2nd respondent and all subsequent proceedings thereof, may be declared illegal and the same may be quashed. The respondents may be

directed to allow all consequential benefits as if no such disciplinary proceedings were ever in existence.

(ii) That any other direction, or orders may be passed in favour of the applicant which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.

(iii) That the costs of this application may be awarded."

3. The brief facts of both the cases are as follows:

In the year 1995, the applicant was appointed to the post of UDC in Custom Division,Jaisalmer. In 2003, he got promotion to the post of Inspector. On 02.09.2008, an FIR bearing CBI, ACB, Gandhi Nagar, F.I.R. No. 13 (A)/08 was lodged against the applicant alleging demand of illegal gratification and committing an offence under Section 7 of P. C. Act, 1988 and on that basis Spl. case no. 03/09 was instituted. In the said case, the applicant was arrested by the CBI. On 11.09.2008, another FIR bearing CBI, ACB, Gandhi Nagar F.I.R. No. RC/14(A)/08 was lodged against the applicant alleging possession of disproportionate assets to his known sources of income on the basis of which Spl. case no. 19/08 u/s 13 (2) r/w 13 (1) (e) of P.C. Act, 1988 was instituted. On 03.09.2008, the applicant was placed under deemed suspension. However, on 27.04.2009, his suspension was revoked.

In both the cases, the CBI Officers after investigation filed charge-sheet in the Court of Spl. Judge, CBI Gandhinagar. After submission of charge-sheet, the respondents issued a Memorandum dated 07.08.2009 in connection with Spl. case no. 03/09 arising out of F.I.R. No. 13(A)/08 – GNR whereby the disciplinary authority

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proposed an enquiry in respect of imputation of misconduct against the applicant alleging that he demanded a bribe of Rs. 1.5 lacs from Shri Liladhar T. Khushalani. The applicant submitted his reply on 19.08.2009 (Annex. A/4) and requested that the proposed departmental inquiry be stayed till the conclusion of criminal case in C.B.I. Court. Another Memorandum dated 20.08.2009 (Annex. A/1) under Rule 14 of CCS (CCA) Rule, 1965 in connection with the Spl. case No. 19/08 and the applicant was asked to submit written statement within 10 days of the receipt of the said Memorandum whereby the disciplinary authority has proposed an enquiry in respect of imputation of misconduct against the applicant alleging that he has amassed huge assets in his name as well as in the name of his family members, which were disproportionate to his known sources of income. The applicant submitted his reply on 04.09.2009 (Annex. A/4) to the aforesaid Memorandum and requested that the proposed departmental inquiry may please be ordered to be stayed till conclusion of the pending trial of criminal case pending before Special Judge, CBI, Court No. 3, Mirjapur, Ahmedabad. But on both the occasions, his requests were turned down by the disciplinary authority which gave rise to the cause of action for filing the two O.As. In O.A. No. 33/2010, the applicant has challenged the Memorandum dated 20.08.2009 whereas in O.A. No. 34/2010, he has challenged the Memorandum dated 07.08.2009.

केन्द्रीय प्रशासनिक अधिकरण Central Admin. Tribunal जोधपुर न्यायपीठ जोधपुर की मोहर

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4. The main ground on which the applicant has challenged both the memorandums and has sought the stay of both the departmental proceedings is that both the departmental proceedings and criminal cases are based on identical set of facts and evidences and in both the proceedings witnesses are common, so if the departmental proceedings are allowed to continue, the disclosure of the defence of the applicant in departmental proceeding will adversely affect the proceeding in criminal case and will cause prejudice to the applicant.

5. On filing of both the Original Applications, the notices were issued to the respondents and they appeared through the advocate and filed reply of both the Original Applications. The main contention of the respondents is that departmental proceedings and criminal case can proceed simultaneously as there is no legal bar in their being conducted simultaneously and no prejudice will be caused to the applicant if both the proceedings are allowed to continue simultaneously. It has also been contended that no question of any complicated or complex question of law and facts are involved in the case.

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6. Heard the learned advocates of both the parties at length. The contention of the learned advocate of the applicant is that if the departmental proceedings initiated against the applicant is allowed to continue then the applicant will be highly prejudiced in his criminal trial as his defence will be disclosed at the time of cross examining the witnesses produced in departmental proceedings. The learned advocate of the applicant drew our

attention towards the fact that some of the witnesses cited in the departmental proceedings are also witnesses who would be examined in the criminal case pending against the applicant and some of the documents on which the Inquiry Officer will place his reliance in the departmental proceedings are also common. He submitted that under the above circumstances, there is every likelihood that if the departmental proceedings is allowed to continue then the applicant will be forced to disclose his defence which will cause prejudice to the applicant in defending his case before the criminal court. In support of his arguments, he has placed reliance upon the decision of the Hon'ble Supreme Court in the case of **Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd. and another**; reported in AIR 1999 SC 1416 = 1999 (3) SLJ 152 (SC) = JT 1999 (2) SC 456. He has also placed reliance upon the decision of C.A.T., Principal Bench, New Delhi in the case of **Virendra Singh vs. Union of India**; (OA No. 1477 of 2007); reported in All India Services Law Journal X-2009 (3) (CAT) 203. The learned advocate also placed on record Government of India's instructions in connection with departmental proceedings and prosecution as described in Swamy's CCS (CCA) Rules, under heading 'Procedure for Imposing Minor Penalties' under Rule 14.

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7. On the other hand, the submission of the learned advocate of the respondents is that the departmental proceedings and criminal proceedings are separate and distinct and can go on simultaneously. Learned advocate of the respondents has submitted that even in the case of **Capt. M. Paul Anthony**

(supra) it has been held that there is no bar in continuing the departmental proceedings and criminal proceedings simultaneously. The learned advocate of the respondents has relied upon the decision of Hon'ble High Court of Delhi at New Delhi in the case of **N.K. Sethi vs. India Trade Promotion Organisation** (LPA No. 917/2004) decided on 03rd September, 2007 (photocopy placed before us) and submitted that the matter under controversy was thoroughly considered in the said case and it was held that in such cases where departmental proceedings and criminal cases are based on same set of facts and on common evidence; in such cases what is required to be seen is whether the departmental proceedings if allowed to continue would seriously prejudice the delinquent employee in his defence at the trial of the criminal case. However, no straightjacket formula can be applied and the facts of each case have to be considered separately.

8. We have perused the above-mentioned decisions and on perusing the decision, we have come to the conclusion that there is no bar in continuing the departmental proceedings and criminal cases simultaneously and the departmental proceedings can only be stayed when there are complicated questions of fact and law involved in the case which require deferment of departmental proceedings and that if the proceedings are taken simultaneously then the same could cause prejudice to the applicant by way of disclosure of his defence. The law is well settled that departmental proceedings and criminal proceedings are separate and distinct and can go on simultaneously. The

object and purpose of departmental proceedings is to determine whether the delinquent officer is guilty of misconduct. The disciplinary proceedings are for the purpose of maintaining discipline and efficiency in public services whereas criminal prosecution is launched for an offence for breach of law, which implies infringement of public duty punishable under criminal law as distinguished from mere private rights in disciplinary proceedings. Thus, in criminal cases pending against the applicant, the fact regarding recovery of the assets disproportionate to his known sources of income and demanding a bribe by the applicant is required to be seen / proved whereas in the disciplinary proceedings the question of integrity and devotion to duty and the applicant's being guilty of misconduct is required to be proved. Thus, we are of the view that even if both the proceedings will continue simultaneously, no prejudice will be caused to the applicant and therefore, we do not feel any necessity to stay the further proceedings of the departmental proceedings. Our experience shows that in disposal of criminal proceedings, some times, abnormal delay is caused and due to lapse of time either the witnesses become reluctant to come to the court or the raiding officers retires, as a result of which, the accused gets benefit. So, it is desirable that in cases where the allegation of bribe is levelled against the Govt. servant and there is a case of having assets in disproportionate to his known sources of income, the Tribunal should not ordinarily interfere in the departmental proceedings at the initial stage. Thus, we are of the opinion that it is not a fit case in which the interim order by way of staying the further proceeding in the disciplinary

proceedings can be passed. Hence, the prayer for grant of interim relief is hereby rejected.

9. With regard to the submission of the learned advocate of the applicant that as per Government of India's instructions regarding departmental proceedings and prosecution where criminal cases involving serious nature of allegation of bribery, corruption or other criminal misconduct were instituted, the departmental proceedings cannot be precede prosecution, We have to say that the Government instructions only says that before launching of prosecution, the departmental proceedings cannot be initiated in such cases of serious nature. It does not say that the criminal case and departmental proceeding cannot go simultaneously. Thus, this argument is also of no help to the applicant.

10. Since the applicant has sought sole relief for quashing and setting aside of Memorandums (Annex. A/1 in both the OAs) by which the departmental proceedings were proposed to be initiated against him and as the same relief was sought by way of interim relief which has been rejected by this Court as stated above, as such we are of the view that on merit also both the Original Applications cannot be admitted. In such view of the matter, both the Original Applications are dismissed at the stage of admission. There is no order as to costs.

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CERTIFIED TRUE COPY
Dated 07.5.10

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

-Sd-
(V.K. KAPOOR)
ADMINISTRATIVE MEMBER

-Sd-
(JUSTICE S.M.M. ALAM)
JUDICIAL MEMBER

nlk

दिनांक 27-1-15 के आदेशानुसार

मेरी ओर 10-2-16

को आज-11 [illegible]।

अनुभाग अधिकारी
केन्द्रीय प्रशासनिक अधिकरण
जोधपुर न्यायपीठ, जोधपुर

1-5/16

10/2