

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 438 OF 2009

Monday, this the 12th day of October, 2009

CORAM:

**HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

M.N. Radhakrishnan Nair,
S/o. R. Nagappan Nair,
Sorting Assistant (BCR),
HRO, RMS 'TV' Division,
Thiruvananthapuram,
Residing at "Sarada",
TC 23/167-1, Valiyashala,
Thiruvananthapuram : 695 036

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Applicant.

(By Advocate Ms. R. Jagada Bai)

v e r s u s

1. Union of India, represented by
The Secretary to Department of Posts,
New Delhi.
2. Chief Postmaster General,
Kerala Circle,
Thiruvananthapuram : 695 033
3. Senior Superintendent,
RMS 'TV' Division,
Thiruvananthapuram : 695 036
4. Shri S. Narendran,
Inquiring Authority & Assistant Superintendent
of Post Offices (HQ), Office of the Senior
Superintendent, RMS 'TV' Division,
Thiruvananthapuram : 695 036
5. Head Record Officer,
RMS 'TV' Division, Thiruvananthapuram....

Respondents.

[By Advocate Mr. M.M. Saidu Mohammed, ACGSC (R1-3 & 5)]

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The Original Application having been heard on 07.10.09, this Tribunal on 12.10.09.. delivered the following :

ORDER
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

The applicant has filed this OA praying for the following reliefs:-

- (i)Quash and set aside the order in Annexure A-12 of the respondent No.4 rejecting the application for the stayal of the departmental proceedings until the disposal of the criminal case;
- (ii)Quash and set aside the Annexure A-4, charge sheet, Memo No. K-DISC/14-3/2008 dated 31.12.2008, issued by respondent No. 3;
- (iii)Stay further initiation of departmental proceedings until the disposal of the criminal case.

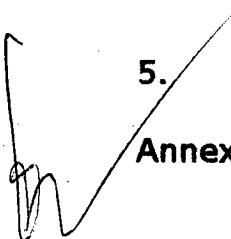
2. To narrate the brief facts of the case, the applicant has been issued with a charge sheet, vide Memo dated 31st December, 2008, the charge being as under:-

" That the said Shri M.N. Radhakrishnan Nair, SA (BCR) RMS 'TV' Division Trivandrum (presently under suspension) assaulted Smt. B. Pankajakshy, SA (TBOP), HRO, Trivandrum on 18-12-2008 while she was on duty in Tivandrum RMS.

By the above act, Shri M.N. Radhakrishnan Nair, SA (BCR), RMS TV Division, Trivandrum has exhibited conduct quite unbecoming of a Government servant contravening Rule 3(1)(iii) of CCS (Conduct) Rules, 1964."

3. The applicant having preferred his representation, the Disciplinary authority had, vide order dated 29th January 2009 appointed an Inquiry Authority, who had had the first sitting of inquiry on 27-03-2009, when the applicant denied the charges and the second sitting was held on 29-04-2009, when without any transaction of business, at the request of the applicant, the hearing was adjourned sine-die. The applicant, thereafter, made a representation to the Inquiry authority requesting for stay of further proceedings on the ground that a criminal case is pending on the basis of the very same alleged incident. Annexure A-10 refers. In addition, a bias petition against the inquiry authority has also been filed before the Director of Postal Services, vide Annexure A-13. In view of the bias petition, the Inquiry Officer has stopped further inquiry pending decision, on the bias petition, by the competent authority, vide Annexure A-12.

4. The applicant has impugned the charge memo (Annexure A-4) and the inquiry officer's proceedings dated 15-05-2009 (Annexure A-12) and prayed for the stay of further departmental proceedings, on the ground that criminal case is pending on the very same subject matter and hence, under the provisions of Rule 80 of P & T Manual the departmental proceedings shall have to be stayed. Another ground raised relates to holding of common proceedings under the provisions of Rule 18 of the CCS (CC&A) Rules, 1965.

5.  Respondents have contested the O.A. According to them, vide Annexure R-1 by way of advance correction slip, the rule 80 of the P & T

Manual has been amended and as such, there is no bar in holding the inquiry simultaneously with the criminal proceedings. The respondents have also taken support of the DOP&T instructions dated 1st August 2007 which has referred to the Apex Court's guidelines as contained in the judgment of Captain M. Paul Anthony, K.V.S. Vs T. Srinivas, Noida Entrepreneurs' Association vs Noida and Hindustan Petroleum Corporation vs Survesh Berry wherein it has been held that there would be no bar to proceed simultaneously with departmental inquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law.

6. The applicant has filed the rejoinder, annexing a copy of judgment of the Apex Court reported in AIR 1963 SC 1618.

7. Counsel for the applicant submitted that in view of the fact that an FIR has been filed and the matter is under investigation, it would be fair and appropriate to stay the departmental proceedings. As regards the advance correction slip, it is the case of the applicant that the same having not been gazetted, it cannot replace the Rule. Again, emphasis was made over the imperative obligation of the authority to hold under Rule 18 of the CCS (CC&A) Rules, 1965, common proceedings where more than one individual is involved.

8. Counsel for the respondents has submitted that in so far as the correction slip is concerned, the same goes in tandem with the DOPT instructions as well and further in so far as common proceedings, the other

persons belong to GDS category, who are governed by a different set of instructions.

9. Arguments heard and documents perused. Legal points to be addressed are as under:-

- (a) whether a common proceeding under Rule 18 of the CCS(CC&A) is obligatory or is it at the discretion of the disciplinary authority.
- (b) Under what circumstances would simultaneous proceedings of departmental inquiry and criminal case be not held.
- (c) Whether the correction slip to Rule 80 cannot be taken to have come into force unless gazetted?

10. Rule 18 of the CCS(CC&A) reads as under:-

18. Common Proceedings -

(1) Where two or more Government servants are concerned in any case, the President or any other authority competent to impose the penalty of dismissal from service on all such Government servants may make an order directing that disciplinary action against all of them may be taken in a common proceeding.

NOTE: If the authorities competent to impose the penalty of dismissal on such Government servants are different, an order for taking disciplinary action in a common proceeding may be made by the highest of such authorities with the consent of the others.

(2) Subject to the provisions of sub-rule (4) of rule 12, any such order shall specify-

(i) the authority which may function as the disciplinary authority for the purpose of such common proceeding;

(ii) the penalties specified in rule 11 which such disciplinary authority shall be competent to impose;

(iii) whether the procedure laid down in rule 14 and rule 15 or rule 16 shall be followed in the proceeding.

11. The auxilliary verb used in Rule 18(1) is 'may', while in 18(2), the term "shall" has been used. The counsel for the applicant argued that the term 'may' will have the meaning of 'shall'. We disagree. True, depending upon the circumstance, 'may' will carry the meaning of 'shall' but when the same section uses both 'may' and 'shall' in that event, the term 'may' cannot be construed to mean 'shall'. Reliance could be placed in this regard to the decision of the Apex Court in the case of ***Kailash Nath Agarwal vs. Pradeshiya Industrial & Investment Corpn. of U.P. Ltd.***, (2003) 4 SCC 305, wherein, the Apex Court has held as under:-

"20. There is an apparent distinction between the expressions "proceeding" and "suit" used in Section 22(1). While it is true that two different words may be used in the same statute to convey the same meaning, that is the exception rather than the rule. The general rule is that when two different words are used by the same statute, *prima facie* one has to construe these different words as carrying different meanings" (Emphasis supplied).

Hence, the power vested with the authorities under Rule 18(1) of the CCS (CC&A) Rules is discretionary and it is not mandatory to hold common proceedings in all the cases. In any event, in the instant case, since the other individuals allegedly involved in the act of misconduct are, as per the version of the counsel for the applicant, functioning as G.D.S. The provisions of CCS(CC&A) Rules are not applicable, as they are governed by a different and complete set of instructions. Hence, even if the case on the

basis of facts deserves a common proceeding, in view of the different set of rules being applicable, such a common proceeding cannot be held in this case.

12. As regards the character of correction slip to Rule 80 of the P & T Manual, the advance correction slip is the valid amendment to the provisions and there is no need to formally amend the manual.

13. As regards holding simultaneously the departmental proceedings as well as criminal case, the law has been crystallized in one the latest decision by the Apex Court in the case of **G.M. Tank vs State of Gujarat**, (2006) 5 SCC 446, wherein the Apex Court has stated as under:-

"22. In Capt. M. Paul Anthony v. Bharat Gold Mines Ltd., the question before this Court was as to whether the departmental proceedings and the proceedings in a criminal case launched on the basis of the same set of facts can be continued simultaneously. In para 34, this Court held as under:

"34. There is yet another reason for discarding the whole of the case of the respondents. As pointed out earlier, the criminal case as also the departmental proceedings were based on identical set of facts, namely, 'the raid conducted at the appellant's residence and recovery of incriminating articles therefrom'. The findings recorded by the enquiry officer, a copy of which has been placed before us, indicate that the charges framed against the appellant were sought to be proved by police officers and panch witnesses, who had raided the house of the appellant and had effected recovery. They were the only witnesses examined by the enquiry officer and the enquiry officer, relying upon their statements, came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case but the Court, on a consideration of the entire evidence, came to the conclusion that no search was conducted nor was any recovery made from the residence of the appellant. The whole case of the

prosecution was thrown out and the appellant was acquitted. In this situation, therefore, where the appellant is acquitted by a judicial pronouncement with the finding that the 'raids and recovery' at the residence of the appellant were not proved, it would be unjust, unfair and rather oppressive to allow the findings recorded at the ex parte departmental proceedings to stand."

23. In R.P.Kapur v. Union of India a Constitution Bench of this Court observed:

"If the trial of the criminal charge results in conviction, disciplinary proceedings are bound to follow against the public servant so convicted. Even in case of acquittal proceedings may follow, where the acquittal is other than honourable." (emphasis supplied)

24. In Corpn. of the City of Nagpur v. Ramchandra, the same question arose before this Court. This Court, in para 6, held as under:

"6. The other question that remains is if the respondents are acquitted in the criminal case whether or not the departmental inquiry pending against the respondents would have to continue. This is a matter which is to be decided by the department after considering the nature of the findings given by the criminal court. Normally where the accused is acquitted honourably and completely exonerated of the charges it would not be expedient to continue a departmental inquiry on the very same charges or grounds or evidence, but the fact remains, however, that merely because the accused is acquitted, the power of the authority concerned to continue the departmental inquiry is not taken away nor is its direction [discretion] in any way fettered." (emphasis supplied)

14. In a still latest case of *Indian Overseas Bank v. P. Ganesan*, (2008) 1 SCC 650, the Apex Court has held as under:-

21. Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. also deserves to be noticed. This Court therein held that the departmental proceedings need not be stayed during pendency of the criminal case save and except for cogent reasons. The Court summarised its findings as under:

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"22. (i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as 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 offence, 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 as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest."

22. The issue came up for consideration yet again in T. Srinivas where this Court while analysing B.K. Meena and Capt. M. Paul Anthony held that: (Srinivas case, SCC p. 446, para 10)

"10. From the above, it is clear that the advisability, desirability or propriety, as the case may be, in regard to a departmental enquiry has to be determined in each case taking into consideration all facts and circumstances of the case. This judgment also lays down that the stay of departmental proceedings cannot be and should not be a matter of course."

23. The High Court, unfortunately, although it noticed some of the binding precedents of the Court failed to apply the law

in its proper perspective. The High Court was not correct in its view in concluding that the stay of the departmental proceedings should be granted in the peculiar facts and circumstances of the case without analysing and applying the principle of law evolved in the aforementioned decisions. It, therefore, misdirected itself in law. What was necessary to be noticed by the High Court was not only existence of identical facts and the evidence in the matter, it was also required to take into consideration the question as to whether the charges levelled against the delinquent officers, both in the criminal case as also the in disciplinary proceedings, were same. Furthermore it was obligatory on the part of the High Court to arrive at a finding that the non-stay of the disciplinary proceedings shall not only prejudice the delinquent officers but **the matter also involves a complicated question of law.**

24. The standard of proof in a disciplinary proceedings and that in a criminal trial is different. If there are additional charges against the delinquent officers including the charges of damaging the property belonging to the Bank which was not the subject-matter of allegations in a criminal case, the departmental proceedings should not have been stayed.

15. Thus, in all the above cases, the bottom line is that there is no straight jacket formula in such cases, but each case has to be examined from the facts and circumstances thereof. Existence of complicated questions of law would be a sine qua non. Viewed from the above, it would be seen that in the instant case, the allegation is one of assault. The applicant has denied the same. There has been an FIR and separately, there has been a complaint to the department by the alleged victim. As such, just because the the incident was one and the same, the requirements for staying the departmental proceedings do not get fulfilled. We do not find that the case involves complicated questions of facts or law.

16. In view of the above, we find that the applicant could not make out a case. Hence, the OA has to be dismissed, which we order so.

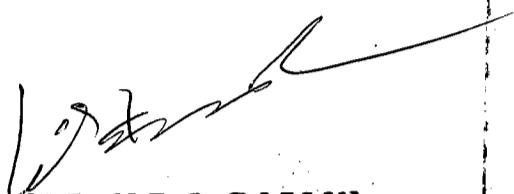
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17. No costs.

(Dated, the 12th October, 2009)



K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER



(DR. K B S RAJAN)
JUDICIAL MEMBER

CVR.