

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.176/2007

FRIDAY, this the.....3RD..... day ofOCTOBER, 2008.

CORAM:

**HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Ms.K.NOORJEHAN, ADMINISTRATIVE MEMBER**

V.S.Praveen, S/o G.Sivathanu,
Lower Division Clerk (under suspension),
Office of the Protector of Emigrants,
Ministry of Labour, Suganth, Thycaud,
Thiruvananthapuram -695 014.
residing at: "Seetha Nivas",
Maniyankara Thoppu, Pappanamcode,
Thiruvananthapuram -695 018.Applicant

(By Advocate Mr.Millu Dandapani)

Vs.

1. Government of India,
Represented by Deputy Secretary,
Ministry of Overseas Indian Affairs,
934, Akbar Bhavan, New Delhi -110 021.
2. The Protector of Emigrants,
Ministry of Labour, Suganth, Thycaud,
Thiruvananthapuram -695 014.
3. Shri Rajiv Kumar,
Inquiry Officer,
Ministry of Overseas Indian Affairs,
934, Akbar Bhavan, New Delhi -110 021. Respondents

(By Advocate Mrs.K.Girija, ACGSC(R.1-3))

The application having been heard on 1.9.2008,
the Tribunal on...3-10-08.....delivered the following:

ORDER

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

The question involved in this case is whether the applicant who is facing criminal proceedings under section 109 IPC and Sec 13(2) r/w sec 1391) (e) of the Prevention of Corruption Act, 1988 on charges of amassing wealth

disproportionate to his known sources of income (allegedly stated to have been acquired during the period from 2001 to 2005) has to be compelled to face departmental proceedings also, when the latter, though with regard to violation of Conduct Rules in as much as he has failed to intimate/obtain permission in acquiring properties, also deals with same transactions as in the criminal charges.

Brief Facts:

The applicant initially joined as Lower Division Clerk in the Office of the Ministry of Health & Family Welfare, New Delhi in September 1996 and later on, on his selection as LDC in the Office of Protector of Emigrants, Trivandrum, on loan basis, joined the said office in December, 2001, vide Annexure A-1. He is under the administrative Control of the Ministry of Overseas Indian Affairs.

While so working, the CBI has registered an F.I.R. against the applicant as RC 13(A)/2005, alleging commission of offence punishable under Sec. 13 (2) r/w 13(1)(e) of the Prevention of Corruption Act, 1988. CC No. 13/2005 is pending before the Special judge (CBI) SPE II at Ernakulam against the applicant. Annexure A-2 is the Charge Sheet filed in the criminal court.

The applicant was placed under suspension on 13 th June, 2005 which still continues.

For alleged non-intimation of transaction relating to movable property, the applicant has been proceeded against departmentally, vide Annexure A-4. Substantial number of items referred to in the charge sheet are the same as those referred to in the charge sheet filed before the Criminal Court. The applicant has already filed his written submissions against the charge sheet. Annexure A-5 refers.

The applicant sought for keeping in abeyance of the departmental proceedings till the criminal case is decided, relying on the decision of Capt. M. Paul Anthony vs Bharat Gold Mines Limited, (1999) 3 SCC 679 and G.M. Tank vs State of Gujarat (2006) 5 SCC 446. He has also relied on the decision of the Apex Court in the case of Kusheswar Dubey vs M/s Bharat Cooking Coal Limited & Others (1988) 4 SCC 319, judgment reported in (2007) 4 SCC 566 (Inspector Prem Chand vs NCT Delhi). The applicant has thus prayed for a direction to the respondents not to proceed with the departmental inquiry till CC 13/2005 is tried and disposed off by the

Special Court CBI SPE II, Ernakulam. He has also prayed for a direction to the respondent to consider and pass appropriate orders on Annexure A-5, preliminary Written Statement.

2. Respondents have contested the O.A. Their contention is that the applicant has not challenged the very charge sheet in which event, he cannot be permitted to seek a direction for not proceeding with the charge sheet. The respondents have also contended that the departmental proceedings are entirely on a different misconduct in as much as he has not intimated acquisition of movable/immovable properties. As such, the proceedings could simultaneously go.

3. Counsel for the applicant argued on the same lines as in the OA and cited the authorities as contained in the OA.

4. Counsel for the respondents relied upon the decision of the Apex Court in the following cases:-

- (i) (2008) 1 SCC (L & S) 672
- (ii) (2008) 1 SCC (L & S) 689

5. Arguments were heard and documents perused. The factual aspect is not in dispute that the applicant is facing both departmental and criminal proceedings and ~~the~~ many of the documents in the list of documents being relied upon and many of the witnesses in the list of witnesses in both the cases are one and the same. It is the case of the applicant that any defence disclosed in the departmental proceedings would boomerang against him in the criminal proceedings and hence the departmental proceedings shall have to be stayed till the disposal of the criminal proceedings.

In Pandiyan Roadways Corpn. Ltd. V. N. Balakrishnan, (2007) 9 SCC

755, the Apex Court has held as under:-

21. There are evidently two lines of decisions of this Court operating in the field. One being the cases which would come within the purview of Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. (1999) 3 SCC 679 and G.M. Tank v. State of Gujarat (2006) 5 SCC 446. However, the second line of decisions show that an honourable acquittal in the criminal case itself may not be held to be determinative in respect of order of punishment meted out to the delinquent officer, inter alia, when: (i) the order of acquittal has not been passed on the same set of facts or same set of evidence; (ii) the effect of difference in the standard of proof in a criminal trial and disciplinary proceeding has not been considered (see Commr. of Police v. Narender Singh (2006) 4 SCC 265), or; where the delinquent officer was charged with something more than the subject-matter of the criminal case and/or covered by a decision of the civil court (see G.M. Tank, Jasbir Singh v. Punjab & Sind Bank and Noida Entrepreneurs' Assn. v. Noida (2007) 10 SCC 385).

6. The question is, as to in which line the case of the applicant falls.
7. A comparison of the list of documents relied upon by the department in the departmental case and so relied upon by the prosecution in the criminal case and likewise a comparison of the list of witnesses in the two cases has been made. All the documents relied upon by the department are also equally relied upon by the prosecution in the criminal case. And so is the case of list of witnesses.
8. In the case of Capt. M. Paul Anthony v. Bharat Gold Mines Ltd., (1999) 3 SCC 679, the decision to stall the departmental proceedings pending the criminal proceedings was precisely the following, as given in the judgment.

"35. Since the facts and the evidence in both the proceedings, namely, the departmental proceedings and the criminal case were the same without there being any iota of difference, the distinction, which is usually drawn as between the departmental proceedings and the criminal case on the basis of approach and burden of proof, would not be applicable to the instant case."
9. The above was cited in the case of Pandiyan Roadways vs N. Balakrishnan (*supra*).


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10. Thus, the case joins the line of Captain Paul Anthony decision and hence in

case the departmental proceedings continue, the same would result in the applicant's disclosing his defence, which would be detrimental to his interest in the criminal proceedings.

11. The applicant continues ^{to be under} in suspension. As such, save the monetary aspect the department is not prejudiced in any other way. As such, the O.A. is allowed. Respondents are directed not to proceed with the departmental proceedings (Annexure A-4) till the finalization of the Criminal proceedings in CC No. 13/2005 pending before the Special judge (CBI) SPE II at Ernakulam against the applicant. No costs.

Dated the 3rd OCTOBER, 2008.


Ms.K.NOORJEHAN
ADMINISTRATIVE MEMBER


Dr.K.B.S.RAJAN
JUDICIAL MEMBER