

**CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH
LUCKNOW**

Original Application No.170/2009

Order Reserved on 19.5.2014

Order Pronounced on 01/07/14

**HON'BLE MR. NAVNEET KUMAR MEMBER (J)
HON'BLE MS. JAYATI CHANDRA, MEMBER (A)**

Arvind Mishra aged about 45 years son of Sri Ashutosh Mishra, presently posted as Deputy Commissioner of Income Tax, at Lucknow.

By Advocate: Sri Surendran P **Applicant**

Versus

1. Union of India through its Secretary, Ministry of Finance, Department of Revenue, Central Board of Direct Taxes, New Delhi.
2. Central Board of Direct Taxes, New Delhi, through its Chairman.
3. Chairman, Central Board of Direct Taxes, New Delhi.

Respondents

By Advocate : Sri S.P.Singh

ORDER

By Hon'ble Mr. Navneet Kumar, Member (J)

The present Original Application is preferred by the applicant under Section 19 of the AT Act, 1985 with the following reliefs:-

- a) To quash the disciplinary proceedings initiated on the basis of the charge sheet dated 14.6.2004 against the applicant contained in Annexure-4.
- b) or in the alternative, a direction be issued to the opposite parties not to proceed with the Disciplinary proceedings pending the Criminal Trial in the Court of Special Judge (Central) CBI, Lucknow.

2. The brief facts of the case are that the applicant was selected in Indian Revenue Service in 1989 batch and after completing the training at the National Academy of Direct Taxes at Nagpur, he was posted as Assistant Commissioner of Income Tax at Bombay in the month of April, 1991. The applicant was promoted to the next higher post i.e. Deputy Commissioner of Income Tax w.e.f. 1.10.1997 and he was given charge of Circle 1(1), Lucknow as Deputy Commissioner of Income Tax w.e.f. 18.12.1997. On 30th November, 1999, a trap was laid by the CBI and the applicant was arrested and sent to judicial custody and he was released on bail on 18.12.1999. Since the applicant was in jail exceeding 48 hours, as

such he was placed under suspension w.e.f. the date of the arrest i.e. 30th November, 1999. The applicant has also filed O.A. No. 256/2000 and the said O.A. was decided. Subsequently, the applicant was served with the charge sheet under Rule 14 of CCS (CCA) Rules, 1965. Along with charge sheet, list of witnesses and documents are mentioned including the statement of imputation of misconduct and misbehavior in support of Article of charge framed against the applicant. Learned counsel for the applicant submits that charges mentioned in the charge sheet dated 14th June, 2004 served under Rule 14 of CCS (CCA) Rules, 1965 and charges mentioned in the charge sheet filed before the CBI court are the same as such, the applicant cannot be hesitated for same charges at two places. The learned counsel for the applicant has also relied upon a decision of the Hon'ble Apex Court in the case of **Capt. M. Paul Anthony Vs. Bharat Gold Mines Limited reported in 1999 Supreme Court Cases (L&S) 810** and submits that both the proceedings cannot go on simultaneously as after perusal of the charges in the disciplinary proceedings and in the criminal case are the same and witness and evidence are also the same.

3. On behalf of the respondents, objections in regard to maintainability of O.A. as well as detailed counter reply is filed along with vacation of interim order dated 24.4.2009. Through their counter reply, it is indicated that the entire procedure is so devised so as to ensure full and fair opportunity to the applicant at various stages of the proceedings and the procedure also involves consultation with independent advisory bodies such as CVC and the UPSC so as to ensure a fair objective and dispassionate assessment of the facts and circumstances of the case and the article of charges cannot be established by the evidence only during the course of inquiry without being inquired into by an inquiry officer and without recording any finding whether the article of charge has been sustained or not either by oral inquiry or documentary evidence. It was not open for any court to come to the conclusion at the stage of framing of charges that no material is forthcoming to establish the charges. The learned counsel for the respondents has also relied upon the decision of Hon'ble Supreme Court in the case of **M.Paul Anthony (supra)**. Apart



from this, the respondents have also relied upon the decision of **State of Rajasthan Vs. B.K. Meena and others reported in (1996) 6 Supreme Court Cases 417** and decision of Hon'ble Apex Court in the case of **Noida Entrepreneurs Association Vs. Noida and others reported in (2008) 1 Supreme Court cases 792** as well as the decision of Hon'ble High Court in the case of **Ram Kinkar Dwivedi Vs. State of U.P. and others reported in 2009(27) LCD 89** and has also pointed out that Hon'ble Bombay High Court has also dealt with similar issue in the case of **Union of India Vs. Binoy Gupta** wherein it was held that "The Tribunal was not justified in quashing the memorandum of charge issued to the applicant without waiting for the outcome of the findings of the disciplinary authority in the disciplinary proceedings initiated against the officer."

4. Apart from this, the learned counsel for the respondents has also taken a ground that the present O.A. is barred by limitation as provided under Section 21 of the AT Act because relief sought originates in 2004 when the charge sheet was served upon the applicant and the present O.A. is filed in 2009. Apart from this, the learned counsel for respondents have also filed Suple. Reply and in the Supple. Reply, the respondents have reiterated the averments made in their counter reply and no new facts are brought on record. Not only this, the respondents have also filed application for vacation of interim order supported with an affidavit and the averments made in the said application are also the reiteration of the counter reply as well as the Supple. Counter reply.

5. No rejoinder reply is filed by the applicant.

6. Heard the learned counsel for the parties and perused the records.

7. Admittedly, the applicant was selected in Indian Revenue Service in 1989 and after completing training from 1989 till 1991, he was posted as Assistant Commissioner of Income Tax at Bombay and thereafter in the month of May, 1997, he was transferred from Bombay to Lucknow and joined duty at Lucknow on 1.6.1997. On the basis of a complaint of Sri R.C. Garg, the CBI trap was conducted on 30th November, 1999 and the applicant was arrested and sent to judicial custody on account of accepting bribe of Rs. 15,000/- for issuing the Tax Clearance Certificate

u/s 230 A of the Income Tax 1961 in respect of sale of space No. A-2 located in building No. 2/16, Vikas Nagar, Lucknow belonging to the wife of Sri R.C. Garg. The applicant was served with the charge sheet on 14.6.2004 under Rule 14 of Central Civil Services (Classification, Control and Appeal) Rules, 1965 and the substance of the imputation of misconduct or misbehavior in respect of which the enquiry is proposed to be held is set out in the statement of Article of charges. The said article of charges reads as under:-

"Sri Arvind Mishra, while functioning as DCIT Circle 1(1) , Lucknow, during the year 1999 demanded and accepted a bribe of Rs. 15,000/- from Sri R.C.Garg, Manager of M/s Perfect Constructions, Lucknow, in lieu of issuing a Tax Clearance Certificate U/s 230 A of the IT Act, 1961, in respect of sale of Space No.A-2 located in building No. 2/16, Vikas Nagar belonging to the wife of Sri R.C.Garg, and was trapped by a CBI team while accepting the said bribe.

By his said acts, Sri Arvind Mishra failed to maintain absolute integrity and devotion to duty and displayed conduct unbecoming of a Government Servant. He thereby, violated the Rules 3(1)(i) , 3(1)(ii) and 3(1)(iii) of the CCS (Conduct) Rules, 1964.

8. Along with Article of charge, statement of imputation of misconduct and misbehavior is also mentioned and through which it is indicated that on 29.11.1999, one Sri R.C.Garg contacted the applicant , DCIT circle 1(1) in his office for issuing a Tax Clearance Certificate and the applicant demanded a sum of Rs.20,000/- as bribe for issuing the said certificate and the said bribe was to be paid to him at his residence at 108, Chandra Lok colony, Aliganj, Lucknow. On 30.11.1999, the complainant along with one Capt. Jai Deep Negi , independent witness contacted the applicant at his residence at 108, Chandra Lok Colony, Aliganj, Lucknow and the applicant agreed to accept Rs. 15000/- . On the same date, a trap was laid by the officials of CBI/SPE, Lucknow headed by Sri B.S. Mishra, Dy. S.P. The services of two independent witnesses namely Capt. Jai Deep Negi and Sri Ajit Srivastava were requisitioned. After completion of the pre-trap memorandum at the CBI office, the trap was conducted and the applicant was caught red handed and the right hand fingers and the right side pocket of the applicant was washed in a colourless solution of sodium carbonate and the same turned pink. The pink coloured solution were sealed and preserved in glass bottles. These bottles were subsequently sent to the Central Forensic Science Laboratory ,New Delhi and the expert

opinion has confirmed the present of phenolphthalein and sodium carbonate in the said solution. On the basis of said trap, the applicant was placed under suspension and subsequently the charge sheet was issued. Along with charge sheet, list of documents and list of witnesses are also annexed. Not only this, the Central Bureau of Investigation has also lodged FIR against the applicant under Section 7 and 13(2) RW 13(1) (d) of Prevention of Corruption Act, 1988. Subsequently, the charge sheet is filed and the case is proceeded. It is to be mentioned that the applicant also submitted the reply to the charge sheet to Secretary to Govt. of India, Ministry of Finance, Department of Revenue, CBDT, New Delhi. Through his representation dated 7.7.2004, applicant denied the article of charges framed against him. Thereafter, enquiry officer was appointed and the disciplinary proceedings started. It is also to be pointed out that the applicant has also given a representation against the appointment of the enquiry officer and proceedings of the disciplinary proceedings. Through his representation dated 12.12.2008 he pointed out that he is suffering from high blood pressure and severe other deceases, he requested that the matter be fixed after about 2 months. During the said period, the applicant approached the Tribunal and the Tribunal grant interim relief as such the disciplinary proceedings are not continuing.

9. The learned counsel for applicant has relied upon the case of **M.Paul Anthony (supra)** and the said judgment is also relied upon by the learned counsel for respondents and as per the observation of the Hon'ble Apex Court in the aforesaid case that the criminal case and disciplinary proceedings can go on simultaneously. The Hon'ble apex Court has been pleased to observe as under:-

There is a consensus of judicial opinion on a basic principle that proceedings in a criminal case and departmental proceeding can go on simultaneously, except where departmental proceedings and criminal case are based on the same set of facts and the evidence in both the proceedings is common. Basis for this proposition is that proceedings in a criminal case and departmental proceedings operate in distinct and different jurisdictional areas. In departmental proceedings, factors operating in the mind of the disciplinary authority may be many, such as enforcement of discipline, or to investigate level of integrity of delinquent or other staff. The standard of proof required in those proceedings is also different from that required in a criminal case. While in departmental proceedings, the standard of proof is one

of preponderance of probabilities, in a criminal case, the charge has to be proved by the prosecution beyond reasonable doubt.

Conclusions which are deducible from various decisions of the Supreme Court (referred to in para 14 to 22 of the judgment) on this point, are as follows:-

(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, administration may get rid of him at the earliest."

10. In the case of **State of Rajasthan Vs. B.K. Meena and others reported in (1996) 6 Supreme Court Cases 417**, the Hon'ble Apex Court has observed as under:-

"17. There is yet another reason. The approach and the objective in the criminal proceedings and the disciplinary proceedings is altogether distinct and different. In the disciplinary proceedings, the question is whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be, whereas in the criminal proceedings the question is whether offences registered against him under the Prevention of Corruption Act (and the Indian Penal Code, if any) are established and, if established, what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the case are entirely distinct and different. Staying of disciplinary proceedings pending criminal proceedings, to repeat, should not be matter of course but a considered decision. Even if stayed at one stage, the decision may require reconsideration if the criminal case gets unduly delayed."

11. In the case of **Noida Entrepreneurs Association Vs. Noida and others** reported in (2008) 1 Supreme Court Cases (Cri.) 792, the Hon'ble Apex Court has observed as under:-

“13. There can be no straight jacket formula as to in which case the departmental proceedings are to be stayed. There may be cases where the trial of the case gets prolonged by the dilatory method adopted by delinquent official. He cannot be permitted to, on one hand, prolong criminal case and at the same time contend that the departmental proceedings should be stayed on the ground that the criminal case is pending.

14. In **Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. (1999) 3 SCC 679**, this Court indicated some of the fact situations which would govern the question whether departmental proceedings should be kept in abeyance during pendency of a criminal case. In paragraph 22 conclusions which are deducible from various decisions were summarised.

They are as follows:

- 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.

16. The standard of proof required in departmental proceedings is not the same as required to prove a criminal charge and even if there is an acquittal in the criminal proceedings the same does not bar departmental proceedings. That being so, the order of the State Government deciding not to continue the departmental proceedings is clearly untenable and is quashed. The departmental proceedings shall continue.”

12. Not only this, the Hon'ble Bombay High Court in the case of **Union of India Vs. Binoy Gupta** has observed as under:-

"The Tribunal was not justified in quashing the memorandum of charge issued to the applicant without waiting for the outcome of the findings of the disciplinary authority in the disciplinary proceedings initiated against the officer."

13. In the case of **Union of India and others Vs. Upendra Singh 1984 (1) SLR SC 831**, it is held that:

"Administrative Tribunal or High Court has no jurisdiction to look into the truth or correctness of charges even in a proceeding against the final order and much less at the stage of framing of charges."

14. It is also to be pointed out that in criminal case, the offence is to be proved by the prosecution against the accused beyond all reasonable doubts and foolproof evidence is a sine qua-non for basing the conviction of an accused person but this stand of proof is not necessary in cases of domestic enquiries. If there is reliable evidence of probative value, the enquiry officer can base his finding on such evidence even if it may not be sufficient for proving an offence in criminal case. The Hon'ble Delhi High Court in the case of **Narendra Kumar Vs. North Delhi Power Ltd. Arms 2005 (105) FLR 484** has observed that "***Disciplinary proceedings and Criminal proceedings under anticorruption law could go simultaneously.***" As such there cannot be taken as a bar that both criminal and domestic proceedings can go together even in acquittals in criminal case the same should be on merit and on honourable terms. If the employee is given benefit of doubt then such an acquittal would not stand in the way of awarding punishment to such an employee in the disciplinary proceedings.

15. In the case of **Kendriya Vidyalaya Sangathan vs T.Srinivas reported in 2004 SC (L&S) 1011**, the Hon'ble Apex Court has been pleased to observe as under:-

"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."

16. In the case of **Indian Overseas Bank , Annasalai and another Vs. P. Ganesan and others reported in (2008) 1 SCC, 650**, the Hon'ble Apex Court has been pleased to observe as under:-

“18. Legal position operating in the field is no longer res-integra. A departmental proceedings pending a criminal proceedings does not warrant an automatic stay. The superior courts before exercising its discretionary jurisdiction in this regard must take into consideration the fact as to whether the charges as also the evidence in both the proceedings are common and as to whether any complicated question of law is involved in the matter.

19. In Delhi cloth and General Mills Ltd.Vs. KushalBhan reported in AI 1960 SC 806, this court while holding that the employer should not wait for the decision of the criminal court before taking any disciplinary action against the employee and such an action on the part of the employer does not violate the principle of natural justice , observed :-

“3....We may, however, add that if the case if a grave nature or involves questions of fact or law, which are not simple, it would be advisable for the employer to await the decision of the trial court, so that the defence of the employee in the criminal case may not be prejudiced.”

17. Keeping in view the observations made by the Hon'ble Apex as well as the facts of the case, we do not find any justified reason to say that the criminal proceedings and the disciplinary proceedings cannot go together. The respondents are at liberty to proceed with the departmental proceedings as per law. Since the charge sheet is of the year 2004 as such it is expected that the respondents will complete the entire enquiry upto the stage of orders of disciplinary authority within six months from today and in the event of non-cooperation by the applicant, respondents are at liberty to proceed further.

18. With the above observations , O.A. is disposed off. No order as to costs.

J. Chandra.
(Ms. Jayati Chandra)
Member (A)

Navneet Kumar
(Navneet Kumar)
Member (J)