

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

MUMBAI BENCH, MUMBAI.

1. ORIGINAL APPLICATION NO.921/99.
2. ORIGINAL APPLICATION NO.922/99. ✓

MONDAY, THIS THE 21st DAY OF FEBRUARY, 2000.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri B.N.Bahadur, Member (A).

1. Original Application No.921/99 & 922/99.

R.P.Dongardive,
Building No.6,
Block No.61,
MIG, MHADA Colony,
Opp. Hotel Printravel,
Aurangabad - 431 001.

...Applicant.
(In both the OAs)

(By Advocate Mr.V.Madhav)

Vs.

1. The Union of India
Through the Secretary
Department of Telecom
Govt. of India,
New Delhi.
2. The Dy. General Manager,
Telecom Aurangabad,
3. Telecom District Engineer,
Department of Telecom,
Anvikar Building,
Adalat Road,
Aurangabad.
4. Mr.Ashok Srinivas Joshi,
Asstt. Accounts Officer,
Office of the TDE,
Aurangabad.

...Respondents.
(In both the OAs)

(By Advocate Mr.V.S.Masurkar)

: O R D E R : (ORAL)

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

These are two applications filed by the applicant for different reliefs. The respondents have filed reply opposing both the applications. We have heard both the counsels regarding admission.

2. The applicant was working as TRA Counter Clerk in the Department of Telecom. He came to be suspended by the order dt. 5.10.1993. Then, a F.I.R. was lodged with the Police alleging certain irregularities and mis-appropriation against the applicant on 11.10.1993. On the basis of the F.I.R., the Police

made investigation and filed a charge sheet against the applicant on 31.10.1995 and the Criminal Case is pending. In the meanwhile, the Department issued a Departmental charge sheet against the applicant dated 31.5.1999 and the disciplinary case is pending enquiry. At this stage the applicant has approached this Tribunal for two reliefs, one for revocation of suspension in OA No.921/99 and the other is for quashing the disciplinary enquiry proceedings in O.A. No.922/99.

The applicant's main case is that the order of suspension was issued in 1993 and till now the enquiry has not been completed and he has not been punished in the Criminal Case and still he is continued under suspension and therefore, due to this delay, the order of suspension is liable to be quashed.

As far as the disciplinary case is concerned, the applicant's case is that when Criminal Proceedings are pending against him in respect of the same charges and on the same allegations, it is not right on the part of the Department to start parallel departmental enquiry and therefore the departmental charge sheet should be quashed or at least the disciplinary enquiry should be stayed, pending disposal of the criminal case.

3. The respondents in their reply have justified the order of suspension on the ground that there are serious allegations of mis-appropriation against the applicant involving a sum of Rs.3 to 4 lacs and therefore the Competent Authority has found fit to keep him under suspension and he cannot be taken back on duty unless he is cleared of the charges.

As far as the second case is concerned, the respondents have stated that there is no bar in having

parallel departmental enquiry and the enquiry has commenced and major part of the evidence is already over and at this stage the applicant has approached this Tribunal. It is also stated that the departmental enquiry can be completed within another three months and no case is made for quashing or staying the departmental enquiry.

4. The learned counsel for the applicant contended that the suspension must be revoked since the applicant is under suspension for nearly 7 years and there is no finality either to the criminal case or the departmental enquiry. It was argued that continued suspension of the applicant is not necessary. As far as the pending Disciplinary Enquiry is concerned, the only submission is that when applicant is facing an identical charge in the criminal case, the parallel proceedings in the Disciplinary Enquiry should not be allowed to be continued and he strongly placed reliance on the Judgment of the Supreme Court in Paul Anthony's case. On the other hand, the learned counsel for the respondents contended that the order of suspension is justified, having regard to the gravity of the charges against the applicant and there is no bar for parallel departmental enquiry and since major part of the evidence is already over there should be no stay of the disciplinary enquiry.

5. As far as the question of law is concerned, there is no legal bar for departmental proceedings and criminal case to go on simultaneously. Even Paul Anthony's case on which the applicant's counsel strongly relied, says that there is no legal bar for parallel proceedings of criminal case and departmental enquiry. Then, after considering the number of decisions bearing

on the point, the Supreme Court has summarised the conclusions in para 22 of the reported Judgment. In the first para, they clearly say that there is no legal bar for parallel departmental proceedings when criminal case is pending. But, in para 22 (ii) an exception is made out viz. "when both charges are on same grounds and the charges involve complicated questions of law and fact, then it would be desirable to stay the departmental proceedings till the conclusion of the criminal case". Therefore, mere identity of facts is not sufficient for stay of the departmental enquiry. The Supreme Court has added that the case must involve complicated questions of law and fact and then alone the departmental enquiry can be stayed. What is more, even in cases where a stay has been granted, in clause (v) of para 22 the Supreme Court says that if the criminal case does not proceed and its disposal is being unduly delayed, the departmental proceedings, even if they were stayed should be allowed to proceed and then in clause (iv) of the same para 22 the Supreme Court says that the stay should not be granted in isolation, but due regard has to be given to the fact that departmental proceedings cannot be unduly delayed.

On the other hand, a Division Bench of this Tribunal had an occasion to consider a similar question in O.A. No.1/2000 to which one of us was a party (R.G.Vaidyanatha, Vice-Chairman), where in Judgment dt. 31.1.2000, this Tribunal considered various decisions bearing on the point including Paul Anthony's case (AIR 1999 SC 1416), Kusheshwar Dubey (A.I.R. 1988 SC 2118), Mohd. Yousuf Miya (1997 SCC L&S 548) and B.K.Meena (1996 SCC L&S 1455) and held that there is no necessity to stay the departmental enquiry pending criminal case when there are no complicated questions of facts and law arise for consideration in the departmental enquiry case and we respectfully adopt the same reasoning in this

case also.

In the present case, there is neither any pleadings nor any arguments addressed at the bar that the departmental enquiry case involves complicated questions of facts or law. We have considered the allegation in the charge sheet and the allegation is that he is involved in certain mis-appropriation for certain period. As could be gathered from the arguments addressed at the bar, the mis-appropriation as such is not disputed, but the applicant states that he had collected the amount and the said amount was paid to Shri R.G.Kshirsagar, Accounts Officer who in turn did not deposit the amount. Therefore, the defence of the applicant that he is not responsible for the mis-appropriation may be true or may not be true, but the defence does not involve any complicated questions of facts and law to be considered in the departmental enquiry. Therefore, in our view, on facts, we do not find that any case is made out for interfering with the pending disciplinary enquiry.

6. In addition, we might notice one aspect viz. that the enquiry in the departmental charge sheet has gone far ahead, nine witnesses have already been examined and cross-examined by the applicant. The learned counsel for the respondents also says that 90% of the enquiry is over and the matter can be finished in a month or two. Therefore, particularly at this late stage, we are not inclined to stay the departmental enquiry.

It is in the interest of the applicant himself that the disciplinary enquiry should reach a logical conclusion. If the applicant is innocent he should be exonerated and consequently he would be reinstated in service. Of course, if he is found guilty, the law will take its own course. Hence, both in the interest

of the applicant and administration, we feel that no case is made out for interfering with the disciplinary enquiry against the applicant.

7. As far as the revocation of suspension is concerned, one of the contentions of the respondents counsel is that the applicant has not exhausted the statutory right of appeal.

Even otherwise, the applicant has approached this Tribunal for quashing the order of suspension of 1993 by filing the present OA in 1999. He himself has not at all come to the Tribunal by either pleadings or arguments why he took six years in approaching this Tribunal for quashing of the order of suspension.

As far as the respondents side is concerned, though the applicant was kept under suspension on 5.10.1993, within a ^{criminal} week law has been set in motion by filing an F.I.R., the Police were doing investigation and ultimately charge sheet was filed on 31.10.1995. When a serious criminal case is pending against the applicant regarding alleged mis-appropriation, how can the department revoke the suspension and take him on duty. Subsequently, a departmental charge sheet has been issued. Having regard to the gravity of the charges against the applicant, we cannot say that the suspension was not justified and therefore it should be revoked. Now, that the departmental enquiry is coming to close and if the applicant co-operates, it can be disposed of in two to three months and then the applicant's prayer for quashing suspension also does not survive. Hence, in the facts and circumstances of the case, we are not inclined to interfere with the revocation of suspension.

8. Before parting with the case, we only observe that nine witnesses have already been examined and cross-examined, then prosecution may have to examine two more witnesses. Then, it is for the applicant to examine his witnesses.

Another submission made by the applicant's counsel is that subsistence allowance is not paid since January, 2000. The learned counsel for the respondents says that subsistence allowance has been paid till the end of December and now he has no instructions to say as to why the subsistence allowance for January, is not paid. We only direct that in case it is not yet paid till to day, then the respondents should immediately pay the subsistence allowance due to the applicant within one week from the date of receipt of copy of this order.

9. In the result, both the applications are rejected at the admission stage. No order as to costs.

(B.N.BAHADUR)
MEMBER(A) ↑

(R.G.VAIDYANATHA)
VICE-CHAIRMAN

B.