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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

O.A. NO: O.A. 794 /91 199  
T.A. NO:

DATE OF DECISION 26.6.92

HARI VITHU GAIKAR

Petitioner

MR. M. A. MAHALLE,

Advocate for the Petitioners

Versus

DY. COMMISSIONER OF Income Tax. Respondent  
Thane.

MR. V. M. BENDRE for Mr. P. M. Pradhan

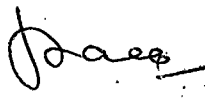
Advocate for the Respondent(s)

CORAM:

The Hon'ble Mr. M. Y. PRIOLKAR, MEMBER(A)

The Hon'ble Mr. J. P. SHARMA, MEMBER(J)

1. Whether Reporters of local papers may be allowed to see the Judgement ? ys
2. To be referred to the Reporter or not ? y3
3. Whether their Lordships wish to see the fair copy of the Judgement ? p
4. Whether it needs to be circulated to other Benches of the Tribunal ? p.

  
(J. P. SHARMA)  
M/J

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CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No. 794/91

Shri Hari Vithu Gaikar

... Applicant

V/s.

Deputy Commissioner of  
Income Tax, Thane -Range-1,  
Thane and others.

... Respondents.

CORAM: Hon'ble Shri M.Y.Priolkar, Member (A)  
Hon'ble Shri J.P. Sharma, Member (J)

Appearance:

Mr. M.A.Mahalle, for  
the applicant.

Mr. V.M.Bendre, proxy  
for Mr. P.M.Pradhan,  
for the respondents.

JUDGEMENT

Dated: 26-6-92

( Per Shri J.P. Sharma, Member(J) )

We have heard learned counsel for the applicant on admission and interim relief. Learned counsel for the respondents opposed the admission as well as interim relief. The interim relief claimed by the applicant is till the outcome of criminal proceedings the respondent No.2 and the respondent No.1 be directed not to proceed with the departmental inquiry. The main relief claimed by the applicant is regarding quashing of the chargesheet dated 24.1.1991 and order dated 7.10.1991 of the appointment of Enquiry Officer and in the alternative the Departmental proceedings be stayed till the final outcome of the criminal case. It goes to show, that the interim relief claimed by the applicant is almost the same as the alternative relief claimed by the applicant in the application. During the course of the argument, the learned counsel for the respondents holding brief for Mr. P.M.Pradhan has referred the judgement delivered in O.A. No.659/91 in N.P. Jadhav Vs. Commissioner of Income Tax, Pune and other decided on 31.3.1992. The applicant in this

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application (OA 659/91) is Income Tax Inspector in the Income Tax Department. He was also served with a chargesheet and was required to undergo trial in the Criminal Court regarding having entered into the Criminal conspiracy with a private person Mr. M.L. Mehta and was charged in the criminal case under Section 120<sup>B</sup>/420 of the Indian Penal Code and Section 5(1)(d), Section 5(2) of Prevention of Corruption Act. In fact, in the case, the Bench ordered that the said O.A. be dismissed.

2. The present applicant is also co-accused with Shri N.P. Jadhav in the criminal case, the applicant was also suspended on 27.5.1985 by the Deputy Commissioner of Income Tax, Thane, Thane Range-1, Thane, but the suspension order was set aside in O.A. No. 617/87 decided on 20.4.1990. This suspension order was passed in contemplation of disciplinary proceedings and in view of the investigation of the criminal case no disciplinary proceedings have been initiated against the applicant till that date. The Bench observed that in respect of the criminal offence, the investigation is over and a chargesheet has been filed so the view of the Bench was no justification to continue suspension pursuant to the aforesaid order.

3. In this application, the main contention of the applicant's counsel is that when the criminal proceedings are proposed then in such case departmental proceedings should not precede prosecution. The learned counsel for the applicant has also referred the case of Hawasing Vs. Commissioner of Police (1991) 16-ATC-263, CAT. Principal Bench that, when the departmental proceedings and the criminal proceedings are based on the same state of facts, the departmental

proceedings may be stayed. The learned counsel for the applicant has also referred to the case of Kushweshwar Dubey AIR 1988 - SC 2118. The learned counsel for the applicant has also referred the case of Jaiprakash Vs. Union of India 1991(1) SLJ 352, CAT, where the departmental inquiry was stayed which was likely to affect the delinquent officer prejudicially.

4. The learned counsel for the respondents has stated that, there is no case for admission and interim relief because the charges in the departmental inquiry are not the same as in the criminal case, there was also private individual, Income-Tax Consultant Mr. Mehta and all of them are accused of criminal conspiracy in which the applicant is co-accused. The charges, which were placed before the departmental inquiry was also placed before us during the course of argument by the counsel for the respondents. The applicant also filed Annexure - I article of charges framed against the applicant at page 9 of the paper book. This goes to show that the departmental enquiry is not wholly grounded on the criminal complaint.

5. We have gone through the article of charges placed as Annexure - I and the statement of imputation of misconduct placed at Annexure - II and the evidence placed at Annexure - III in the charge Memo annexed with the Memo dated 24.1.1991 annexed with the application. The whole matter related to the years 1984 -1985 and the applicant was working as L.D.C. in the Income Tax Office.

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6. In the case of Kusheshwar Dubey Vs. M/s. Bharat Coking Coal Ltd. in the paragraph 6 that the Hon'ble Supreme Court has observed as follows:

" The view expressed in the three cases of this court seem to support the position that while there could be no legal bar for simultaneous proceedings being taken, yet, there may be cases where it would be appropriate to defer disciplinary proceedings awaiting disposal of the criminal case. In the latter class of cases it would be open to the delinquent employee to seek such an order of stay or injunction from the Court. Whether in the facts and circumstances of a particular case there should or should not be such simultaneity of the proceedings would then receive judicial consideration and the Court will decide in the given circumstances of a particular case as to whether the disciplinary proceedings should be interdicted, pending criminal trial. As we have already stated that it is neither possible nor advisable to evolve a hard and fast, straight-jacket formula valid for all cases and of general application without regard to the particularities of the individual situation. For the disposal of the present case, we do not think it necessary to say anything more, particularly when we do not intend to lay down any general guideline."

Coming to the same in hand, we find there is no material on the record as to what are the charges in criminal case against the applicant and the applicant's counsel could not rebut contention of the respondent's counsel that the departmental proceedings are <sup>soloely</sup> ~~not~~ grounded on the same charges as has been filed in the criminal case. In the present case, it is evident that the matter related to the year 1980 to '85 and already 7 years have passed. There is no bar to simultaneous departmental and criminal proceedings against the applicant. It is to be seen in the fact and circumstances of the case, whether the applicant will be prejudiced in his defence in the criminal case, if he participates in the departmental inquiry. The Enquiry Officer has already been appointed and the stage of recording the statement of departmental

witness has reached. The article of charges framed in the departmental inquiry, only pertains to certain acts committed by the applicant. Moreover, in the criminal case besides, the applicant, private person Shri M.L. Mehta is also an accused. The citation cited by the learned counsel for the applicant of Jaiprakash case has no relevance with the present case. In the present case, the applicant is facing criminal trial on the charge of criminal conspiracy, while the departmental proceedings there is imputation of misconduct for certain acts committed by him in his official capacity while functioning as a L.D.C. alongwith one Shri N.P. Jadhav, Income Tax Inspector. Thus, we find that the case is distinguishable from that of Jaiprakash cited by the learned counsel for the applicant. Moreover, quoted above. The Hon'ble Supreme Court in Kushweshwar Dubey's case clearly held that, on the particular circumstances of each case, departmental proceedings can be stayed.

7. The learned counsel has also referred the case of Sunderlal vs. Collector, Thane AIR 1990 SC page 261, but this case too has no relevance to the case in hand.

8. In view of the fact and circumstances of the case we find that the present application can be disposed of at the admission stage itself with the observations: that the departmental inquiry can continue upto the stage of leading of departmental evidence. The Enquiry Officer, will thereafter, stay the further proceedings till the applicants exhausts his defence in the criminal case. After the applicant's

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defence in the criminal case is over the departmental proceedings will again proceed and shall be concluded. The interim direction earlier issued is modified to this extent. The parties to bear their own costs.

*J.P. Sharma*

(J.P.SHARMA)  
MEMBER(J)

26.6.82

*M.Y. Priolkar*

(M.Y.PRIOLKAR) 26.6.82  
MEMBER(A)

NS/