

CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH

Second Floor,  
Commercial Complex,  
Indiranagar,  
Bangalore-560038.

Dated: 24 SEP 1993

APPLICATION NO(S) 700 of 1993.

APPLICANTS: M. Papaiah v/s. RESPONDENTS: Secretary, Ministry of  
Steel & Mines, N Delhi & Ors.

TO.

1. Sri.M.S.Anandaramu,  
Advocate, No.27,  
Chandrasekhar Complex,  
First Floor,  
Gandhinagar, Bangalore-9.
2. Secretary,  
Ministry of Steel and Mines,  
New Delhi.
3. The Director,  
Geological Survey of India,  
Project: Hutti, Gadag and OMSB,  
Tin-Tungsten, Op: K&G Bangalore-11.
4. Sri.L.H.Janardhan Rao,  
Director, Geological Survey of India,  
OP; Karnataka and Goa, Bangalore.
5. Sri.M.S.Padmarajaiah,  
Central Govt. Sng. Counsel,  
High Court Building, B'lore.
6. Second Additional Munsiff and J.M.F.C.-II Court,  
Gadag.

Subject:- Forwarding of copies of the Order passed by  
the Central Administrative Tribunal, Bangalore.

Please find enclosed herewith a copy of the  
ORDER/STAY/INTERIM ORDER, passed by this Tribunal in the  
above said application(s) on Sixth Sept, 1993.

For *[Signature]*  
DEPUTY REGISTRAR  
JUDICIAL BRANCHES.

24/9/93

gm\*

*[Signature]*

*[Signature]*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH : BANGALORE

DATED THIS THE SIXTH DAY OF SEPTEMBER 1993

Hon'ble Mr. Justice P.K. Shyamsundar ... Vice-Chairman

Hon'ble Mr. V. Ramakrishnan ... Member [A]

APPLICATION NO.700/93

M. Papaiah,  
Major, Working as Driver,  
Project:Hutti, Gadag and OMSB,  
Tin-Tungsten, OP:K&G GSI,  
Bangalore-11.

...Applicant

[Shri M.S. Anandaramu ... Advocate]

v.

1. The Union of India,  
by its Secretary,  
Ministry of Steel and Mines,  
Government of India,  
New Delhi.
2. The Director,  
Geological Survey of India,  
Project:Hutti, Gadag &  
OMSB, Tin-Tungsten,  
OP:K&G Bangalore-11.
3. Sri L.H. Janardhan Rao,  
Director, Geological Survey  
of India, OP:Karnataka and Goa,  
Bangalore.

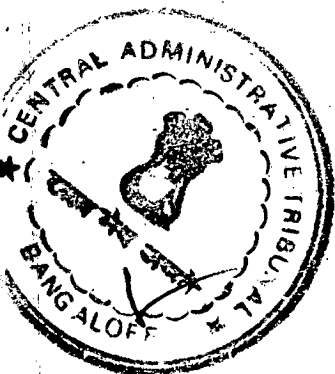
... Respondents

[Shri M.S. Padmarajaiah ... Advocate]

This application having come up for hearing before this  
Tribunal today, Hon'ble Vice Chairman, made the following:

ORDER

1. This application which is by a driver <sup>Gal</sup> in the Geological  
Survey of India presently working in the State of Karnataka,  
prays for stay of disciplinary proceedings initiated against  
him as per Annexure A dated 29.7.1991. He wants that proceeding  
to be stayed for the reason that on the very same allegations



founding the subject matter of disciplinary enquiry a criminal court at Gadag is considering an indictment that has actually culminated into a charge sheet in which the applicant is alleged to have committed an offence punishable under Sections 451, 325, 504 and 506 Indian Penal Code. A copy of the charge sheet is produced before us and that indicating the witnesses proposed to be examined by the prosecution are also the witnesses to be examined and relied upon at the DE.

2. Basing himself on the circumstance that the departmental enquiry and the criminal case now pending before the Magistrate at Gadag stemmed from the same incident and requiring to be supported by the same set of witnesses it is urged that it is only just and proper that the departmental enquiry should stand stayed or be kept in abeyance till the criminal court disposes off the criminal case by reviewing a verdict pertaining to the charges levelled against him.

3. The subject matter of the departmental enquiry to which we have adverted hereinbefore pertains to an incident in which he was involved with one Chakraborty who incidentally is the complainant before the Police on the basis of which a charge sheet has since been filed against the applicant in the court of the Magistrate at Gadag alleging that he wantonly assaulted the complainant Chakraborty in the presence of one Beeraswamy on 18.4.1991 at Sirgunj camp of the Department and, therefore, committed the offences noticed in the charge sheet. At the proposed departmental enquiry the articles of charge produced at Annexure A-1 is that the applicant having assaulted the Geologist Chakraborty had therefore failed to maintain devotion to duty and had behaved in a manner unbecoming of a Government servant.

The witnesses cited in support of the aforesaid allegation are [i] Shri C. Chakraborty, Geologist [ii] Shri Y.C. Puttabasappa, Surveyor and [iii] Shri Beeraswamy, Contingent Mazdoor. There is no dispute that Chakraborty referred to above had filed the complaint before the Police at Gadag which probably had jurisdiction over the place where the incident occurred.

4. As mentioned above it has now gone forward with a charge sheet being filed against the applicant alleging the commitment of offences punishable under Sections 451, 323, 504 and 506 IPC stated above. The prosecution has in support of its case cited witnesses viz. Shri C. Chakraborty, Shri Eeshappa Sangappa Chavi, Mallappa Ningappa Kalasapura, Puttabasappa, Beerappa M. Swamy. There are also two other witnesses not referred to in the departmental enquiry.

5. On these facts the applicant urges that as there is total adidem between the charges confronting him at the departmental enquiry and the charges for which he is indicted in the criminal court it is just and necessary that the departmental enquiry should stand stayed till the criminal case pending before the Magistrate terminates one way or the other. That the abovesaid requirement is mandatory is his counsel's argument and in support reliance is placed on 1993[1] LLJ 168 SUNDARARAJAN V. UNIT TRUST OF INDIA AND ANOTHER. Reference is also made to the decision of the Karnataka High Court in A.R.KAVI V. KARNATAKA AGRO INDUSTRIES CORPORATION LTD. ILR 1993 KAR 264. In the case of Sunderarajan. Unit Trust of India Hon'ble Supreme Court made the following enunciation

"Departmental proceedings - stay of departmental proceedings pending criminal proceedings - Departmental proceeding and



criminal proceeding arise out of same set of facts and circumstances - Departmental enquiry should be stayed till proceedings are over before trial court - Departmental enquiry can be proceeded with after the judgment of the Trial Court, whether appeal is filed or not."

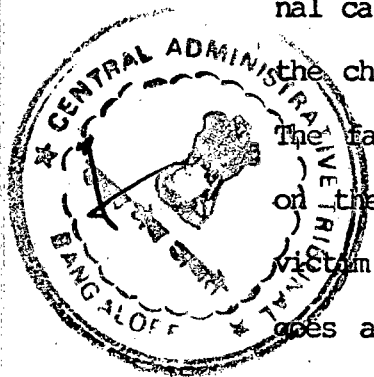
To similar effect is the pronouncement of the Karnataka High Court in KAVI V. KARNATAKA AGRO INDUSTRIES CORPORATION LTD. Suffice it to refer to the head note which indicates the dicta laid down. We notice from the decision in KAVI's case relied on, an earlier judgment of the Supreme Court in KUSHESHWAR DUBEY V. MESSRS. BHARAT COOKING COAL LTD. AIR 198 SC 2118 is referred to. In KUSHESHWAR DUBEY's case their Lordships said-

"While there could be no legal bar for simultaneous proceedings being taken against the delinquent employee against whom disciplinary proceedings were initiated, 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."

We have taken up this matter today for disposal at the admission stage itself after verifying learned counsel for the respondents who, however, asked for time to file a reply but we told him that facts not being in dispute there is no need for any reply statement and we would, however, hear the matter straightaway even in the absence objections and that is how this case was brought <sup>up</sup> from 3.9.1993 to <sup>now</sup> today ie., 6.9.1993. But today also learned counsel Shri Padmarajiah requested an adjournment for filing reply but we did not accede to that request and after his request <sup>as refused</sup> was turned down the learned standing counsel gave us the benefit of <sup>a</sup> full argument bearing on the issue arising for consideration. The question for consideration is whether

we should order stay of <sup>the</sup> disciplinary proceeding <sup>committed</sup> against the applicant in view of the pendency of the criminal case against him in the facts and circumstances of which appear to be akin to the facts and circumstances on the basis of which the departmental enquiry has been mooted. The learned standing counsel tells us that the charges in the criminal court are not identical to the one which the departmental ~~enquiry~~ proposes to investigate. He says ~~that~~ whereas the departmental enquiry is going to investigate whether by assaulting the officer Chakraborty the applicant had not committed any misconduct referred to under Rule 3[1][i] and [iii] of Conduct Rules whereas the charge in the criminal case is whether the applicant had inflicted physical harm by injuring Chakraborty tantamounting to offences punishable under Sections 323 not to mention the allied offences of trespass and intimidation punishable under Sec. 451, 504 and 506 IPC. True in the departmental enquiry he is not charged with causing any physical injury whereas in the criminal case he is specifically charged with having committed that wrong also, apart from the criminal misdemeanour like trespass, libel and slander resulting in intimidation.

6. There can possibly no doubt that the charge before the criminal case is more broad and received a broad based treatment than the charge in the departmental enquiry which is more capsulised. The fact remains that at the disciplinary enquiry what will be on the anvil is whether the applicant wantonly assaulted the victim Chakraborty whereas in the criminal case the Magistrate goes a step further and enquires into the form of assault and he will also find out whether as a result of the assault the

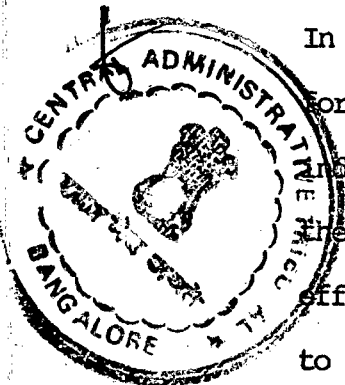


victim Charkaborty was injured. This is all the difference and nothing more, with the same set of witnesses who are going to depose in the departmental enquiry will also depose before the Magistrate as well. There cannot be any doubt that the alleged unruly action of the applicant has given rise to two sets of action against him, one before the department and another before the Magistrate who had started prosecuting the accused. It is difficult to distinguish between the allegations which are the subject matter of the departmental enquiry and the indictment before the Magistrate into which he will enquire and eventually record findings at the trial. In such circumstances the departmental action should stand stayed in view of what the Supreme Court has <sup>laid down</sup> ~~stated~~ in Kusheshwar Dubey's case and later reiterated in Sunderarajans. case subsequently. We are bound by the above said ~~two~~ pronouncements of the Supreme Court and are, therefore, not at liberty to detract from them although the endeavour now made by the learned standing counsel is that we should follow the decisions of a Full Bench of the Karnataka Administrative Tribunal <sup>by which</sup> and that of the Lucknow Bench of the Central Administrative Tribunal in PREM PRAKASH KALRA V. UNION OF INDIA 1993[2] ATJ 73. The decision of the KAT if it has taken a view contrary to the judgment of the Supreme Court cannot possibly persuade us to take a different view in this case. All said and done it can only be of persuasive value and as a precedent cannot persuade us to lay down a contrary dictum in violation of the binding decision of the Supreme Court. The decision of <sup>the</sup> Lucknow Bench <sup>is</sup> appears to rest on its own facts and cannot possibly be of any assistance.

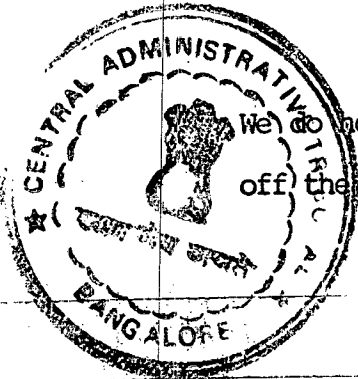
7. In that view of the matter we must hold ~~that~~ this to be a fit case in which the departmental enquiry should stand stayed till the court of the Magistrate at Gadag disposes off the criminal case referred to supra. Though we may have no jurisdiction nor the right to regulate the criminal proceedings before the Magistrate we would like to impress on the Magistrate the need to dispose off the criminal case within six months from the date of this order. We direct a copy of this order be sent to the learned Magistrate for information and needful action.

8. It is pointed out to us by the learned standing counsel that in an earlier proceeding between the applicant and the department that related to an order of transfer I had made an order disposing off that application directing the applicant ~~should~~ be kept at Bangalore till the conclusion of the departmental enquiry which was directed to be disposed off within three months and <sup>then</sup> only thereafter the department should give effect to that order. That order was made on 26.3.1993 in O.A. No.141/93. While we are in the month of September and the enquiry is yet to commence is of course a different matter altogether. In the context of this proceeding since <sup>we did</sup> it has not been possible for the department to conclude the enquiry within the time frame indicated in the earlier order we think it inappropriate to bind the department to the direction given in OA No.141/93 from giving effect to the transfer order. It is now open to the department to give effect to the said transfer order.

9. For the reasons mentioned above this application succeeds as indicated hereinbefore. We direct that the departmental enquiry should stand stayed till the criminal case is over.







We do hope further the learned Magistrate will be able to dispose off the criminal case within six months as indicated. No costs.

Sd-

MEMBER [A]

Sd-

VICE-CHAIRMAN

bsv

TRUE COPY

M. C. S.

SECTION OFFICER  
CENTRAL ADMINISTRATIVE TRIBUNAL  
ADDITIONAL BENCH  
BANGALORE

24/9/93