

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6
PREScot ROAD, MUMBAI-1

O.A. No. 1308/95

Dated: This 19th day of July, 1996

Coram: Hon. Shri B S Hegde, Member (J)
Hon. Shri P P Srivastava, Member (A)

N.K. Prasad

(By Advocate Mr. V S Masurkar) ..Applicant

V/s.

Union of India & Another

(By Mr. M.I. Sethna, Senior
Standing Counsel with Mr.
N.S. Krishna, Counsel)

..Respondents

ORDER

Heard the arguments of the Ld. Counsel for the Applicant Mr. V.S. Masurkar and Mr. M.I. Sethna along with Mr. Krishna, Counsel for the Respondents. On the basis of the submissions made by the Ld. Counsel for the applicant the Tribunal had passed an ex-parte order dated 6.11.95 staying operation of the order passed by the Respondents on 23/28.8.1995 for a period of 14 days. The respondents have filed their reply on 14.12.95 opposing admission and grant of any interim relief as prayed by the applicant. The interim order was allowed to continue till date.

2. The prayer made in this O.A. is to stay the operation of the order passed by the respondents dated 23/28.8.1995. In the facts and circumstances of the case, the main thrust of the argument on the part of the applicant is since the evidence in both the departmental proceedings as well as criminal trial pending against the applicant are common and identical continuation of the departmental inquiry for the same set of facts is not warranted. In this connection

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Ld. Counsel for the applicant draws our attention to Annexure-III List of Documents in the Departmental Inquiry as well as in the Criminal Prosecution are one and the same. Therefore, he urged that the inquiry proceedings should be stayed till the criminal trial is pending against the applicant. In support of his contention the Ld. Counsel for applicant has relied upon the judgment of the Supreme Court in KUSHESHWAR V. M/s. BHARAT COKING COAL LTD., AIR 1988 SC 2118 wherein the Apex Court has laid down the ratio in the following manner:

"6. The views expressed in the three cases of this court (Delhi Cloth & General Mills' case (AIR 1969 SC 806), Tata Oil Mills' case (AIR 1965 SC 155) and Jang Bahadur's case (AIR 1969 SC 30) 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 proceeding should be interdicted, pending criminal trial. As we have already stated that it is neither possible nor adviseable to evolve a hard and fast, straight-jacket formula valid for all

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cases and of general application with 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."

In the light of the above, the Ld. Counsel for the applicant submits that as stated earlier the list of documents and evidence required both in the departmental proceedings and the criminal trial are one and the same, if the departmental inquiry is allowed to continue, interest of the applicant would be prejudiced in the criminal trial and hence continuation of the interim order already passed is necessary in the interest of justice.

3. On the other hand Ld. Senior Standing Counsel Mr. M.I. Sethna, urged that the charges leveled against the applicant in the departmental inquiry cannot be treated as one and the same with that of the charge sheet filed in the criminal trial. He also urged that since the charges leveled against the applicant in the departmental proceedings is not one and the same in the criminal trial and therefore the principle laid down in KUSHESHWAR's case (supra) is not applicable in this case. The main charge in the departmental inquiry is the mere fact that he ante-dated the cheque which would itself show the intention of the applicant though he retired from service while issuing the cheque and thus the applicant has committed a fraud. On perusal of the record we find that it is true that the applicant had retired from service on 31.8.92 and the charge sheet was filed on 23.8.95 by the C.B.I. and he was released on bail

thereafter. However, on verification of the charge sheet filed by the C.B.I. and Articles of charge issued in the Departmental Proceedings, we are satisfied that both the charges are identical.

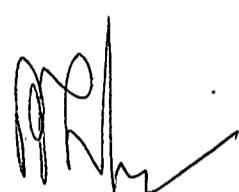
4. During the course of hearing Ld. Counsel for the applicant also stated that the Bank of Baroda itself has admitted the liability and had paid back money to the Sea Farers Welfare Fund Bombay, for which the Respondents state that it is in connection with some other transaction which is not related to this case.

5. In the light of above, the only question to be decided by us is whether the charges leveled against the applicant in the departmental proceedings as well as in the Criminal Trial are common and identical. In our view, charges leveled against the applicant in the departmental proceedings and criminal trial are grounded on the ^{some} ~~set~~ of facts ~~thereby~~ the departmental proceedings should be stayed in view of the guidelines and ratio laid down in KUSHESHWAR's case i.e., if the charges are similar and identical ~~where~~ it would be appropriate to defer disciplinary proceedings awaiting disposal of the criminal case. Since we had already granted ex-parte interim order on the basis of the submissions made by the Ld. Counsel for the applicant and the matter requires consideration by the Tribunal, accordingly the O.A. is ADMITTED. The interim order already passed shall continue till disposal of the O.A.

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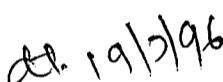
6. Respondents are directed to file additional reply if they so desire, apart from the reply already filed, within a month and the applicant is at liberty to file a rejoinder, ~~if~~ any, within 15 days thereafter.

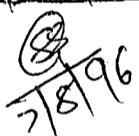
7. List the case before the Registrar for completion of pleadings on 10th SEPTEMBER 1996 and thereafter keep the O.A. in sine-die list.


(P.P. Srivastava)
Member (A)


(B.S. Hegde)
Member (J)

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order/Judgement despatched
to Applicant/Respondent(s)
on 2/8/96


7/8/96

Dated : 10-9-96

Ms. Yoshoda Shenvi,
Counsel for the applicant
Mr. N.S. Krishna, Counsel
alongwith R. Sethna, Counsel
for the respondent.

No additional reply
filed so far.

S.O. to 11-11-96 for
reply.



D.Y. Regdhar

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO:1308.95

DATE OF DECISION: 6.6.2001

Shri N.K.Prasad Applicant.

Shri V.S.Masurkar Advocate for
Applicant.

Versus

Union of India and others. Respondents.

Shri R.R.Shetty Advocate for
Respondents

CORAM

Hon'ble Shri S.L.Jain , Member(J)
Hon'ble Shri Govindan S.Tampi, Member(A)

(1) To be referred to the Reporter or not? yes

(2) Whether it needs to be circulated to ~~the~~ other Benches of the Tribunal?

(3) Library. yes

P.S.J.
(S.L.Jain)
Member(J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO:1308/95

WEDNESDAY the 6th day of JUNE 2001

CORAM: Hon'ble Shri S.L. Jain, Member(J)
Hon'ble Shri Govindan S.Tampi, Member(A)

N.K. Prasad

Residing at 116, Juhusagar,
Varsova, Link Road, New D.N.Nagar
Andheri(West), Bombay.

...Applicant

By Advocate Shri V.S. Masurkar

V/s

1. Union of India through
The Secretary to the
Government of India
Ministry of Surface Transport
Directorate General of
Shipping, New Delhi.

2. Director General of Shipping
the Ex-Officio Additional
Secretary, Government of India
Ministry of Surface Transport
Jahaz Bhavan, Walchand Hirachand
Road, Bombay.

...Respondents.

By Advocate Shri R.R. Shetty.

ORDER (ORAL)

{Per Shri S.L. Jain, Member (J)}

This is an application under Section 19 of the
Administrataive Tribunals Act 1985 seeking the reliefs as under:

(a) This Hon'ble Tribunal be pleased to call for the records and proceedings which led to issuance of the impugned orders No. VIG-3(10)/95 dated 23-28.8.1995 and order No. Memo/Chargesheet VIA-3(10)/95 dated 23-28th August 1995 and after going through their legality, validity, propriety and constitutionality be pleased to quash and set aside the same.

(b) Any other or further reliefs or order be passed by this Hon'ble Tribunal as may be felt proper in the facts and circumstances of the case.

(c) Cost of this application to provide for.

2. We have heard Shri V.S. Masurkar and Shri R.R. Shetty
counsel for both sides.

3. On perusal of chargesheet at para 45 of the OA, we find that the charge is in respect of an act done by the applicant in November 1992 regarding issue of cheque. The applicant retired from the Government service from 31.8.1992. The relationship of the employer and employee ceases with effect from 1.9.1992. This cannot be a ground to assail the charge sheet as the pension is subject to future good conduct as mentioned in Rule 8(a) of the CCS (Pension) Rules 1972.

4. In addition to it it is suffice to mentioned that the charge sheet is issued without compliance under Rule 9(2)(b)(i) of CCS (Pension) Rules 1972 as there is no sanction of the President for initiation of the departmental proceedings.

5. On perusal of page 244 of the OA, the applicant has requested the Director General, shipping vide order dated 8.4.2000 to supply a copy of sanction order for taking departmental enquiry under Rule 9(2)(b)(i) of CCS Pension Rules 1972 but no reply has been received. In para 4 of the reply to M.P. it has been stated that with reference to para 5(12), 5(13) and 5(14) of the schedule of amendment the respondents have not comment.

6. In the above circumstances the alleged act of the applicant is of the period after his retirement. The charge sheet issued is not after obtaining due sanction. Hence the OA deserves to be allowed and is allowed, the charge sheet issued by the respondents is quashed. No order as to costs.

(Govindan S.Tampi
Member(A))

S.L.Jain
(S.L.Jain)
Member(J)

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