

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 810 OF 1998.

DATE OF DECISION : 11.01.1999.

Arun Kumar Raghuvanshi, Petitioner.

Shri G. S. Walia, Advocate for the Petitioner.

VERSUS

Union Of India & Another, Respondents.

Shri R. R. Shetty, Advocate for the Respondents.

CORAM: Hon'ble Shri Justice R. G. Vaidyanatha,
Vice-Chairman.

Hon'ble Shri D. S. Bawej, Member (A).

- (i) To be referred to the Reporter or not ?
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ?

R. G. Vaidyanatha
(R. G. VAIDYANATHA)

VICE-CHAIRMAN.

os*

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 810 OF 1998.

Dated this Monday, the 11th day of January, 1999.

CORAM : HON'BLE SHRI JUSTICE R. G. VAIDYANATHA,
VICE-CHAIRMAN.
HON'BLE SHRI D. S. BAWEJA, MEMBER (A).

Arun Kumar Raghuvanshi,
Assistant Security Officer,
Bhabha Atomic Research Centre,
Trombay,
Mumbai - 400 085.

(By Advocate Shri G.S. Walia)

... Applicant

VERSUS

1. Union Of India through
The Secretary,
Department of Atomic Energy,
Anushakti Bhavan,
C.S.M. Marg,
Bombay - 400 039.
2. The Head,
Personnel Division,
Bhabha Atomic Research Centre,
Central Complex,
Trombay,
Mumbai - 400 085.

... Respondents.

(By Advocate Shri R. R. Shetty).

: OPEN COURT ORDER :

¶ PER.: SHRI R. G. VAIDYANATHA, VICE-CHAIRMAN ¶

This is an application filed by the applicant for quashing the charge-sheet dated 11.02.1998 and for consequential reliefs. The respondents have filed reply opposing the application. We have heard the Learned Counsels appearing on both sides regarding admission and interim relief.



2. The applicant has been charge-sheeted for alleged misconduct that being a Security Officer, he had misused his official position and entered the office and stole cheques of the employees and misused them by forging the cheques, etc.

Though the applicant has sought the relief of quashing the charge-sheet or for a declaration that the allegation does not amount to misconduct, at the time of argument, the Learned Counsel for the applicant made only one prayer, namely - that the departmental enquiry proceedings be stayed till the disposal of the criminal case or atleast till the evidence is recorded in the criminal case.

Respondents have filed a reply mentioning the peculiar facts and circumstances of the case and stating that there is no merit in the application so far as the main relief of quashing the charge-sheet is concerned.

3. The Learned Counsel for the applicant contended that the charges against the applicant are grave and the applicant will be highly prejudiced if the departmental enquiry is proceeded with. On the other hand, the Learned Counsel for the respondents submitted that there is no bar for simultaneous departmental enquiry and criminal proceedings and in the admitted facts and circumstances of the case, no case is made for staying of the departmental enquiry.

fw

113

4. Both sides have relied upon Supreme Court decision which clearly points out that there is no legal bar for disciplinary enquiry to be proceeded when criminal case is pending. Infact, the Supreme Court has pointed out in all the decisions that the proof in the criminal case is one of beyond reasonable doubt whereas, in the disciplinary enquiry, strict proof of evidence is not required unlike a criminal case. It is also pointed out that strict ^{rules} proof of evidence ^{applicable} are not required in a departmental enquiry.

The Learned Counsel for the applicant relied on 1996 SCC (L&S) 1455 | State of Rajasthan V/s. B. K. Meena & Others | where no doubt, general observations are made as to in what circumstances the disciplinary enquiry can be stayed pending criminal case. Infact, the Supreme Court has clearly pointed out that there is no legal bar for both proceedings to go on simultaneously. That was a case where an I.A.S. Officer was involved for alleged misappropriation of Rs. One Crore and odd. The Central Administrative Tribunal had granted stay on the disciplinary enquiry, which came to be set aside by the Supreme Court stating that in the facts and circumstances of the case, it is not desirable to stay the disciplinary enquiry. Infact, at page 1462 in para 17, the Supreme Court has observed that the standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are entirely distinct and different. It is further pointed out that staying of

disciplinary proceedings (pending criminal proceedings, should not be granted as a matter of course.

Another decision relied on by the Learned Counsel for the applicant is reported in 1988 SCC (L&S) 950 (Kusheshwar Dubey V/s. M/s. Bharat Cooking Coal Ltd. & Others) where also it is observed that though there is no legal bar for simultaneous proceedings, there may be cases where it is appropriate to defer disciplinary proceedings awaiting disposal of criminal case. Therefore, it is ultimately a question of fact. Infact, in para 7 the Supreme Court itself has observed that whether in the facts and circumstances of a particular case, stay should be granted or not, has to be decided judicially and it is not possible to evolve a hard-and-fast strait jacket formula applicable in all cases.

5. Both Counsels invited our attention to another decision of the Apex Court in the case of Depot Manager, Andhra Pradesh State Road Transport Corporation V/s. Mohd. Yusuf Miya, etc. in Criminal Appeal No. 15419 of 1996 dated 20.11.1996, which is extracted in Swamy's Case Law Digest - 1996/2, where at Item No. 195 the gist of the judgement is given. The Supreme Court has pointed out that the standard of proof in the disciplinary enquiry and criminal trial are not identical. Normally, the disciplinary enquiry should not be stayed, unless ofcourse, a case of serious prejudice is pleaded and proved.

6. Therefore, ultimately it is a question of fact to be decided in each case, whether in the circumstances of the case disciplinary enquiry should be stayed or not?

7. The Learned Counsel for the respondents also pointed out that applicant has already made a confession during the preliminary enquiry and no prejudice will be caused to the applicant. On the other hand, the Learned Counsel for the applicant contended that serious prejudice will be caused to the applicant if disciplinary enquiry is proceeded with.

After noticing the law bearing on that point and on going through the facts of the case, we do not find any case of prejudice is made out. It is possible in every case the delinquent official would say that prejudice will be caused if disciplinary enquiry is proceeded when criminal case is pending. After going through the facts of the case, we are not satisfied that any such prejudice is likely to be caused to the applicant if disciplinary enquiry is proceeded with. We must also bear in mind that normally criminal case takes years together for completion. The Learned Counsel for the respondents pointed out that the applicant is kept under suspension and he will have to be paid 75 per cent of the salary as subsistence allowance and it will go on for years together for no fault of the department.

Another thing to be noticed is that the allegations against the applicant is that of cheques of three ^{official} offices being stolen and misused by the applicant.



But the criminal case pertains to only the cheques of one of the official who had filed a private compliant in the ~~criminal case~~ ^{complaint} and on the basis of which charge-sheet is filed. As far as the cheques of two others are concerned, they are not subject matters of criminal case and, therefore, there cannot be any prejudice in proceeding with the disciplinary enquiry regarding the misuse of the cheques of those two officials. Therefore, even on this ground we do not find ^{that} any case is made out for staying the disciplinary enquiry proceedings.

No other points ^{were urged} are argued before us.

In our view, there is no merit in the application and is liable to be rejected at the admission stage.

8. In the result, the application is rejected at the admission stage. The interim order granted in this case on 25.09.1998 is hereby vacated. All observations made above, are only for the limited purpose of deciding the admissibility of the application and should not be taken as final view on the merits of the case. In the circumstances of the case, there will be no order as to costs.

(D. S. BAWEJA
MEMBER (A))

R. G. Vaidyanatha
(R. G. VAIDYANATHA)
VICE-CHAIRMAN.