

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

(60)

ORIGINAL APPLICATION NO.92 of 1990

DATE OF JUDGEMENT: 7.1.1992

BETWEEN

Mr. K. Ramulu .. Applicant

AND

1. The Secretary to Government,
Department of Posts, New Delhi.
2. The Chief Post Master General,
Hyderabad.
3. The Superintendent of Post Offices,
Mahabubnagar.
4. Officer on Special Duty,
O/o Chief Post Master General,
Hyderabad. .. Respondents

COUNSEL FOR THE APPLICANT :: Mr. K.S.R. Anjaneyulu

COUNSEL FOR THE RESPONDENTS : Mr. N.V. Ramana, Addl.CGSC

CORAM:

Hon'ble Shri R. Balasubramanian, Member (Admn.)

Hon'ble Shri T. Chandrasekhar Reddy, Member (Judl.)

JUDGEMENT OF THE DIVISION BENCH DELIVERED BY THE HON'BLE
SHRI T. CHANDRASEKHAR REDDY, MEMBER (JUDICIAL)

This is an application filed under Section 19 of the Administrative Tribunals Act, 1985 to direct the respondents to keep in abeyance the departmental inquiry till such time the cases filed against the applicant in criminal and civil courts are completed.

2. The facts giving rise to this application in brief are as follows:-

The applicant herein was appointed as T/S Clerk in Postal Department in 1970. The applicant was working as Postal Assistant in Mahabubnagar Head Office when he was kept under suspension. The applicant has completed nearly 20 years of service.

3. A charge memo dated 9.6.1989 (Annexure-I) was issued as against the applicant by the competent authority, Superintendent of Post Offices, Mahabubnagar (3rd respondent herein) under Rule 14 of the CCS(CCA) Rules with the following allegations:-

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- i) that the applicant kept shortage in the balance of stamps and stationery to the extent of Rs.9,550.75;
- ii) that he did not account for Rs.12,000/- in the Government accounts;
- iii) that he did not account for Rs.1,000/- relating to TD Account No.150151; and
- iv) that he did not account for Rs.500/- relating to RD Account No.15575.

4. In the court of Sub-ordinate Judge, Mahabubnagar, the Chief Post Master General, Hyderabad, who is the 2nd respondent herein, had filed ~~an~~ Original Suit No.34 of 1989 for recovery of the amounts said to have been misappropriated which, according to the respondents exceeds one lakh rupees. A report had also been given to the Police by Mr C. Daniel, Assistant Superintendent of Post Offices, Mahabubnagar as against the applicant on the alleged misappropriation said to have been committed by the applicant and the same had been registered as Cr.No.34 of 1989 by the II-Town Police Station, Mahabubnagar. The II-Town Police, Mahabubnagar had completed investigation in the said Cr.No.34/89 and a charge sheet had also been filed in the Court of the Judicial Magistrate of First Class, Mahabubnagar of the offences under Sections 409 and 420 of IPC.

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So, as could be seen, as against the applicant, (1) departmental proceedings, (2) civil suit in the court of Sub-ordinate Judge, Mahabubnagar, and (3) criminal case 34/89 in the court of Judicial Magistrate of First Class, Mahabubnagar, are pending for his alleged acts of omissions and commissions referred to above. So, the present application is filed by the applicant for the reliefs already indicated above.

5. The respondents in this case are, the Secretary to Government, Department of Posts, New Delhi (1st respondent), the Chief Post Master General, Hyderabad and the Superintendent of Post Offices, Mahabubnagar to which respondents 2 and 3 a reference is already made and the 4th respondent is the Officer on Special Duty, Office of the Chief Post Master General, Hyderabad.

The respondents have filed counter opposing the said application.

6. It is the contention of the learned counsel for the applicant, if the departmental inquiry is allowed to continue pending criminal case that the applicant would be very much prejudiced in his defence in the criminal case and so, it is advisable for the respondents to await final decision of the criminal case and as such, the application filed by the applicant is liable to be allowed.

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7. It is the contention of the learned Additional Standing Counsel for the Respondents, Mr. N.V. Ramana, that pendency of the criminal case and civil suit as against the applicant is not a bar to proceed as against the applicant in the disciplinary inquiry and as such, the application filed by the applicant is liable to be dismissed.

8. In AIR 1960 SC 806 (Delhi Cloth and General Mills Limited Vs. Kushal Bhan), it is laid down as follows:-

"It is true that very often employers stay enquiries pending the decision of the criminal trial courts and that is fair; but, we cannot say that principles of natural justice require that an employer must wait for the decision atleast of the criminal trial court before taking action against an employee. In Shri Bimal Kanta Mukherjee Vs. Messrs. Newman's Printing Works, 1956 Lab AC 198, this was the view taken by the Labour Appellate Tribunal. We may, however, add that if the case is of a grave nature or involves questions of fact or law, which are not simple, it would be advisable for the employer to await the decision of the trial court, so that the defence of the employee in the criminal case may not be prejudiced."

The facts of the above decision would go to show where departmental enquiry is pending into misconduct by a Government servant, refusal to stay departmental proceedings till the decision of the criminal court would not violate the principles of natural justice. When a misconduct is an offence, criminal

prosecution and the disciplinary proceedings cannot be equated. As could be seen in this case, even before filing of the charge sheet in the criminal case, disciplinary proceedings had been initiated against the applicant after serving on the applicant a regular charge memo to which a reference has already been made. A copy of the First Information Report (FIR) registered in Crime No.34/89 registered as against the applicant is on record. A copy of the charge sheet filed against the applicant in the Cr.No.34/89 is also on record. We have gone through the charges framed as against the applicant in the departmental inquiry. The defalcated amount appears to be more than one lakh of rupees by the applicant as per the allegations of the respondents. The criminal case which is against the applicant does not appear to us to involve any question of fact or law which are not simple. The department is proceeding against the applicant for misconduct for allegedly misappropriating the said amount. As already pointed out, when a misconduct is an offence, the criminal prosecution and the disciplinary proceedings cannot be equated. There is no duty cast on the Government first to take proceedings in the criminal court and its power to hold disciplinary proceedings to punish a Government servant is not taken away. The said decision makes it clear that it is open to the Government to take both the proceedings simultaneously or one after the other. So, in our opinion this case is squarely covered by the above decision of the Supreme Court and we see no justifiable reasons to stay

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the departmental proceedings until termination of the criminal and civil proceedings pending as against the applicant. It is worthwhile to refer to a few more decisions on this point that are brought to our notice.

In 1981(1) AISLJ p.18 (Karnataka High Court), "Narayana Rao Vs. State of Karnataka and others", it is held that -

"acquittal in a criminal trial is not a bar for a departmental enquiry being held and in such an enquiry the Enquiry Officer can come to a different conclusion than the one arrived at by a Criminal Court. When this aspect of law is settled, it is immaterial whether the charges were identical, whether the witnesses were common in the departmental enquiry and the criminal and they were also simultaneous as long as power exercised by the criminal court and the Enquiry Officer under the relevant law and service Rules are distinct and separate powers conferred on them."

In another case reported in 1988(1) SLJ p.165 (Nepal Chandra Biswas and another Vs. Union of India and others), the Calcutta Bench of the Central Administrative Tribunal held that "there was nothing wrong in having both actions simultaneously or even when FIR has been filed". The facts in that case are that there were charges of attempted theft and FIR was lodged and also disciplinary action was started. The police filed FIR in that case. The Government servants who were the applicants in that case before the Calcutta Bench of

the Central Administrative Tribunal claimed that they should not be proceeded against departmentally. Considering the nature of the offence committed by the applicants therein, the Bench held that there was nothing wrong in having both actions simultaneously even when FIR had been filed.

9. In 1991(1) SLR 448 (P.J. Sundararajan and another Vs. The Deputy General Manager, Unit Trust of India, Madras Regional Office and another), it is laid down by the High Court of Madras as follows:-

"the settled view is that even though there could have been an acquittal in the criminal proceedings, still prosecution of disciplinary proceedings would not be barred. In M.N. Rubber Co.,Ltd., Vs S.Natarajan and Presiding Officer, (1985) 2 LLJ 364, a Bench of this Court opined that departmental proceedings can be taken even after the original case too initiated in respect of identical charge, which might have ended in acquittal. This principle to a very great extent indicates that departmental proceedings have got an independent angle of testing the charges levelled therein and they have got to be viewed from independent standard and the decision in favour of the employee in criminal proceedings need not necessarily stand in the way of prosecution of the disciplinary proceedings against him. It would be a different matter if the service rules or regulations will certainly govern".

10. In 1991(1) SLR 658 (Sufal Kumar Naskar Vs Union of India and others), the Calcutta Bench of the Central Administrative Tribunal held that "doctrine of double jeopardy will not be attracted when both the criminal proceedings under the Indian Penal Code and the Departmental enquiry under Rule 14 of C.C.S.(C.C.A) Rules, 1965 are continued simultaneously.

11. In 1991(4) SLR 581 at para 4 (Chandanlal Vs. Director General, ESI & anr.), it is observed as follows:-

"After perusal of the documents placed before us and considering the arguments advanced on both sides, we are of the view that in the present case since the enquiry has not been completed, there is no finding as on date of any misconduct - what to say of any grave misconduct - on the part of the applicant. Since no final order has been passed by the disciplinary authority, it would not be appropriate or proper to anticipate what finding the disciplinary authority would give in this case. The indefinite delay in the completion of the disciplinary proceedings after retirement cannot be countenanced. The learned counsel on both sides say that since a criminal prosecution is also pending on the basis of the same facts which gave rise to the charge-sheet against the petitioner the department is not proceeding against the applicant's case. There is no bar to the departmental proceedings being continued and finalised even when a criminal case is pending."

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12. So, from the above said judgements, it also becomes amply clear that there cannot be any bar in continuing departmental inquiry when a criminal case is pending with regard to the same charges as in the departmental enquiry.

13. The learned counsel for the applicant relied on the following decisions:-

i) 1987(4) SLJ (CAT) 493 (M.Huchaiah Vs. Union of India and others) wherein the Divisional Bench of the Central Administrative Tribunal, Bangalore Bench, has held as follows:

"We are, therefore, satisfied that the holding or continuance of the departmental inquiry pending investigation by the CBI, is likely to prejudice the case of the applicant.

The loss alleged to have been sustained by the Government, is over a lakh of rupees and keeping in view the magnitude of the loss, the department would be transgressing paragraph 80 of the Manual, which lays down that prosecution should be the general rule in cases which involve loss of substantial public funds, i.e. in excess of Rs.2,000/-."

The said judgement states that continuance of departmental proceedings pending investigation by the police may prejudice the case of the applicant. But the said decision is not applicable to the facts of this case as the investigation of the criminal case is complete and charge sheet as against the applicant is also filed in the competent criminal court.

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ii) ATR 1986(2) CAT 97 (Abullais Khan Vs. The State of West Bengal and Others), wherein, the Calcutta Bench of the Central Administrative Tribunal, held that "fair play equity demands that applicant should not be compelled to disclose his defence in departmental enquiry which may possibly be taken up in criminal trail which also involves serious charges. One would find that criminal case not only involves grave allegations but some of the sections of the Indian Penal Code under which case has been registered involve moral turpitude. If there is a conviction of the applicant in criminal court, consequential orders may follow from the Government without an inquiry. Therefore, unnecessary wastage of money from the State Exchequer and wastage of public time could be well avoided. If the applicant is acquitted, law will take its own course, so far as the domestic enquiry is concerned." In the said case, with the above observations, departmental inquiry was stayed till the final disposal of the criminal case.

iii) 1981(2) SLJ 332 (Project Manager, ONGC Vs Lalchand Vajirchand Chandana), wherein, the Division Bench of the Gujarat High Court held as follows:-

"the petition giving rise to the present appeal cannot be said to be one "relating" to the Industrial Disputes Act or a Labour Legislation. The prayer is in respect of the stay of disciplinary proceedings initiated under the Oil & Natural Gas Commission Regulations: (1) because a parallel departmental proceeding is likely to cause prejudice to the

Opposed to the application

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defence in the criminal case where the accused has the right to keep his mouth shut and not to reveal his defence, (2) he can obtain a verdict from a Court presided over by a Judicial Officer who is adept in appreciation and assessment of evidence in an objective matter instead of a decision from a disciplinary authority constituted by his employer who does not possess the advantages; (3) complications may arise if the same evidence is believed by one and disbelieved by the other and contradictory verdicts rendered by them. These are not matters which relate to Industrial Disputes Act or any other Labour Legislation. We are, therefore, unable to uphold the contention that learned single Judge had no jurisdiction and that the learned Single Judge ought not to have granted interim relief maintaining status quo during the petition."

14. The facts in the above cited judgements are entirely different from the facts of the present case and the said decisions cited on behalf of the respondent have no application to the fact of the case on hand.

15. In view of the Supreme Court decision referred to above and the other decisions including the recent Judgement in "Sundarajan and another Vs. the Deputy General Manager, Unit Trust of India, Madras Regional Office and another" (1991(1) SLR 448) of the High Court of Madras, we are not in a position

To

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4. Officer on Special Duty,
O/o Chief Post Master General, Hyderabad.
5. One copy to Mr. K.S.R. Anjaneyulu, Advocate, CAT.Hyd.
6. One copy to Mr. N. V. Ramana, Addl. CGSC. CAT.Hyd.
7. Copy to All Reporters as per standard list of CAT.Hyd.Bench.
8. One copy to Hon'ble Sri. T. Chandrasekhar Reddy, Member (J), CAT.Hyd.
9. One Copy to Deputy Registrar (CAT.Hyd.)
10. One Spare copy.

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to agree with the contention of the learned counsel for the applicant that the disciplinary proceedings taken against the applicant when criminal case and civil suit are pending cannot be continued. As a matter of fact, the Judicial trend seems to be not to stay the departmental proceedings pending criminal proceeding even though the subject matter in the departmental proceeding and criminal proceeding is one and the same. Unless it is so, there is the danger of departmental proceedings never being completed within a reasonable time, as there might be undue delay in the final termination of the criminal proceedings. The civil suit filed for recovery of amounts against the applicant has nothing to do with the departmental inquiry as against the applicant. In view of this position, we do not have any hesitation to hold that the application filed by the applicant is liable to be dismissed.

16. In the result, the application filed by the applicant is hereby dismissed. In view of the dismissal of this Original Application, the orders passed by this Tribunal on 14.2.1990 to stay the departmental proceedings stand vacated. The respondents would be at liberty to take necessary action to continue the disciplinary inquiry as against the applicant. The parties shall bear their own costs in the circumstances of the case.

R. Balasubramanian
(R. BALASUBRAMANIAN)
Member (Admn)

T. Chandrasekhar Reddy
(T. CHANDRASEKHAR REDDY)
Member (Judl.)

