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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

O.A.No.187/97.

Date of order : 19.2.1997.

Between

Smt. K.Vijayakumari .. Applicant

And

1. Postmaster-General,
Kurnool Region,
Kurnool,

2. Supdt. of Post Offices,
Cuddapah Division,
Cuddapah.

3. Sri C.Daniel,
Inquiry Officer/
Asst. Supdt. of Post Offices,
Cuddapah(N) Sub-Division,
Cuddapah. .. Respondents

Counsel for the Applicant .. Shri S.Ramakrishna Rao

Counsel for the Respondents .. Shri V.Rajeswara Rao,
Addl. CGSC.

C O R A M

Hon'ble Shri R.Rangarajan : Member(A)

Hon'ble Shri B.S.Jai Parameshwar : Member(J)

Order

(Per Hon'ble Shri R.Rangarajan : Member(A))

The applicant in this O.A. was issued with a charge memo No.B/473 dated 14.9.95 for unauthorised absence. The article of charge listed in annexure I to that memorandum reads as follows:-

"Smt. K.Vijaya Kumari while working as Postal Assistant, Rajampet H.O. during November, 1994 did not turn up for duty from 12.11.94 to 6.9.95 without prior permission for non-attendance to duty or grant of leave and thus acted subversive of discipline as per Rule 62 of P&T Manual Vol.III. Therefore, Smt. K.Vijaya Kumari failed to maintain devotion to duty as required by Rule 3(1)(i) of CCS (Conduct) Rules, 1964."

2. Annexure II to the memorandum is the imputations of misconduct/misbehaviour framed against the applicant herein

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who is under suspension. This annexure also is extracted as below:-

"The Postmaster, Rajampet H.O. reported in his letter A/Misc/94-95 dt. 25.11.94 to the Supdt. of Post Offices, Cuddapah that Smt. K.Vijaya Kumari, Postal Assistant, Rajampet H.O. left the office on 11.11.94 after completion of day's work and did not turn up for duty from 12.11.94. The Supdt. of Post Offices, Cuddapah in letter No.B/413 dt. 29.11.94 by Regd. Post AD R.L.No.2623 dt. 29.11.94 of SPOs, Cuddapah directed Smt. K.Vijaya Kumari to join duty immediately explaining the reasons for absence from duty. The Regd. letter was delivered to her on 8.12.94. The acknowledgement was received in this office on 12.12.94, duly signed in token of receipt of the said Regd. letter. But she neither reported for duty nor submitted any explanation for non-attendance to duty from 12.11.94. Again a reminder was issued on 28.6.95 in which she was directed to submit explanation within 3 days for her unauthorised absence failing which disciplinary action would be initiated against her. The said Regd. letter was delivered to her and acknowledgement received in this office on 6.7.95. As there was no response, the ASPOs(R) Divisional Office, Cuddapah was directed to contact Smt. K.Vijaya Kumari and to record her statement. In her statement given before the ASPOs(R) on 27.8.95 she stated that she received the notices issued by the SPOs, Cuddapah and did not submit any explanation or joined to duty. She further stated that due to financial problems unhealth of children and not keeping peace of mind she could not attend duty since 12.11.94. She thus admitted that she did not attend duty w.e.f. 12.11.94. The absence of Smt. K.Vijaya Kumari is thus wilful and so her action in not attending to duty without prior permission is subversive of discipline as mentioned in Rule 62 of Vol.III. Therefore, Smt. K.Vijaya Kumari failed to maintain devotion to duty as required in rule 3(1)(ii) of CCS (Conduct) Rules, 1964."

3. It is stated that the enquiry in regard to the charge memo mentioned above has been completed. The enquiry report is also enclosed at pages 30 to 35 to the O.A. Further no final decision is taken in regard to grant of punishment to her.

4. It is further stated that a criminal trial is pending on the file of the Judicial First Class Magistrate, Rajampet in C.C.No.36/96. The applicant submits that in case the charge memo dated 14.9.95 issued against her is finalised that will prejudice her case in criminal trial and hence she prays that the charge memo proceedings shall be suspended till the criminal case is finalised.

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5. This O.A. is filed praying for a direction to the respondents to stay all the further proceedings in the departmental enquiry by Respondent No.3 with a direction to Respondent No.2 not to proceed with the departmental proceedings initiated by the impugned memo No.B/473 dated 14.9.95 until the criminal case in C.C.No.36/96 on the file of the Judicial First Class Magistrate, Rajampet is finalised as continuation of the departmental enquiry proceedings will prejudice the case of the applicant in the criminal case.

6. Before we analyse this case, the observations made by the Apex Court in the reported case 1996 SCC (L&S) 1455 (State of Rajasthan Vs. B.K.Meena & Ors.) is relevant to be noted. Paras 14 and 17 of the reported case are relevant to this issue. These paras are reproduced below:-

"14. It would be evident from the above decisions that each of them starts with the indisputable proposition that there is no legal bar for both proceedings to go on simultaneously and then say that in certain situations, it may not be 'desirable', 'advisable' or 'appropriate' to proceed with the disciplinary enquiry when a criminal case is pending on identical charges. The staying of disciplinary proceedings, it is emphasised, is a matter to be determined having regard to the facts and circumstances of a given case and that no hard and fast rules can enunciated in that behalf. The only ground suggested in the above decisions as constituting a valid ground for staying the disciplinary proceedings is that "the defence of the employee in the criminal case may not be prejudiced". This ground has however, been hedged in by providing further that this may be done in cases of grave nature involving question of fact and law. In our respectful opinion, it means that not only the charges must be grave but that the case must involve complicated questions of law and fact. Moreover, 'advisability', 'desirability' or 'propriety' as the case may be, has to be determined in each case taking into consideration all the facts and circumstances of the case. The ground indicated in D.C.M. and Tata Oil Mills is also not an invariable rule. It is only a factor which will go into the scales while judging the advisability or desirability of staying the disciplinary proceedings. One of the contending considerations is that the disciplinary enquiry cannot be - and should not be - delayed unduly. So far as criminal cases are concerned, it is well known that they drag on endlessly where high officials or persons holding high public offices are involved. They get bogged down on one or the other ground. They hardly ever reach a prompt conclusion. That is the reality in spite of repeated advice and admonitions from this Court and the High Courts. If a criminal case is undelayed that may itself be a good ground for going ahead with the disciplinary enquiry even where the disciplinary proceedings are held over at an earlier stage."

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stage. The interest of administration and good government demand that these proceedings and concluded expeditiously. It must be remembered that interests of administration demand that undesirable elements are thrown out and any charge of misdemeanour is enquired into promptly. The disciplinary proceedings are meant not really to punish the guilty but to keep the administrative machinery unsullied by getting rid of bad elements. The interest of the delinquent officer also lies in a prompt conclusion of the disciplinary proceedings. If he is not guilty of the charges, his honour should be vindicated at the earlier possible moment and if he is guilty, he should be dealt with promptly according to law. It is not also in the interest of administration that persons accused of serious misdemeanour should be continued in office indefinitely, i.e., for long periods awaiting the result of criminal proceedings. It is not in the interest of administration. It only serves the interest of the guilty and dishonest. While it is not possible to enumerate the various factors, for and against the stay of disciplinary proceedings, we found it necessary to emphasise some of the important considerations in view of the fact that very often the disciplinary proceedings are being stayed for long periods pending criminal proceedings. Stay of disciplinary proceedings cannot be, and should not be, a matter of course. All the relevant factors, for and against, should be weighed and a decision taken keeping in view the various principles laid down in the decisions referred to above.

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17. There is yet another reason. The approach and the objective in the criminal proceedings and the disciplinary proceedings is altogether distinct and different. In the disciplinary proceedings, the question is whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be, whereas in the criminal proceedings the question is whether the offences registered against him under the Prevention of Corruption Act (and the Indian Penal Code, if any) are established and, if established, what sentence should be imposed upon him. 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. Staying of disciplinary proceedings pending criminal proceedings, to repeat, should not be a matter of course but a considered decision. Even if stayed at one stage, the decision may require reconsideration if the criminal case gets unduly delayed."

7. From the above observation of the Supreme Court it is evident that the disciplinary proceedings need not be suspended even if a criminal case is pending but each case has to be seen on the facts and circumstances of the case and decided whether proceedings in the departmental enquiry will prejudice the case in the trial court or not. Hence a decision has to be taken to see whether the present charge memo given to the applicant herein will prejudice the criminal case on the file of the

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Judicial First Class Magistrate, Rajampet. Hence it is necessary to examine the present charge memo to ascertain the repercussions vis-a-vis pending criminal case.

8. We have already extracted the charge and the imputations of misconduct/misbehaviour as enclosed to the charge memo dated 14.9.95. From the above it is clear that the charge levelled against her is purely for her unauthorised absence from duty. It has nothing to do with the criminal case pending against her. The criminal case pending against her is for misappropriation/non-credit of the amounts pertaining to telephone bills and that case came to light on 11.11.94. The applicant did not attend office from 12.11.94. Whether she was actually present in the office from 12.11.94 and thereafter is a point for consideration in the charge memo. While processing the charge memo the question of alleged misappropriation of funds may not arise at all. Even the witnesses called for in this case will give evidence only to the extent in regard to her unauthorised absence. Even the enquiry proceedings enclosed do not reveal that the enquiry report talks anything other than the unauthorised absence. In view of the above circumstances it has to be held that there is no bar in continuing the proceedings in the charge memo and finalise the same in accordance with the law. The stay of the disciplinary proceedings in this connection cannot be and need not be a matter of course. We have weighed all the relevant factors for and against and come to the conclusion that the disposal of the charge memo proceedings will in no way prejudice the case of the applicant in the criminal case. The above decision of ours is in accordance with the principles laid down by the Apex Court reported above.

9. In view of the above we feel that the prayer in this O.A. ^{granted.} cannot be ^{dismissed} ~~dismissed~~. Accordingly the O.A. is ~~disposed of~~ at the admission stage itself. No costs.

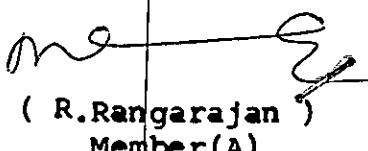

(B.S.Jai Parameshwar)
Member(J).

br.

19.2.97

Dated: 19.2.1997.

Dictated in the Open Court.


(R.Rangarajan)
Member(A).

19.2.1997
D. R. (J.D.)

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Copy to:-

1. Postmaster General, Kurnool Region, Kurnool.
2. Superintendents of Post Offices, Cuddapah Division, Cuddapah.
3. One copy to Sri. S. Ramakrishna Rao, advocate, CAT, Hyd.
4. One copy to Sri. V. Rajeswara Rao, Addl. CGSC, CAT, Hyd.
5. One copy to Library, CAT, Hyd.
6. One copy to Deputy Registrar(A), CAT, Hyd.
7. One spare copy.

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THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH, HYDERABAD

THE HON'BLE SHRI R. RANGARAJAN: M(R)
AND

THE HON'BLE SHRI B.S. JAI PARAMESHWAR:
M(J)

DATED: 19/3/97

Order/Judgement
R.P/C.P/M.A.NO.

D.A.NO.

in
187/97

ADMITTED AND INTERIM DIRECTIONS ISSUED
ALLOWED
DISPOSED OF WITH DIRECTIONS.
DISMISSED
DISMISSED AS WITHDRAWN
DISMISSED FOR DEFAULT
ORDERED/REJECTED
NO ORDER AS TO COSTS.

II COURT

YLKR

केन्द्रीय प्रशासनिक अधिकार अधिकार
Central Administrative Tribunal
DESPATCH/DESPATCH

10 MAR 1997

हैदराबाद अधिकार
HYDERABAD BENCH