

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

O.A.No.42/96

Date of order: 3/12/2001

S.N.Khandelwal, IAS (Retd), S/o Sh.Suraj Malji

Khandelwal, R/o C-171, Sunder Marg, Tilak Nagar,

Jaipur.

...Applicant.

Vs.

1. Union of India, Deptt of Personnel, Pension & Public Grievances, Govt of India, New Delhi.
2. State of Rajasthan through Chief Secretary, Govt of Rajasthan, Jaipur.

...Respondents.

Mr.P.V.Calla : Counsel for applicant

Mr.B.N.Purohit : for respondents.

CORAM:

Hon'ble Mr.S.K.Agarwal, Judicial Member.

Hon'ble Mr.A.P.Nagrath, Administrative Member.

PER HON'BLE MR S.K.AGARWAL, JUDICIAL MEMBER.

In this O.A filed under Sec.19 of the ATs Act, 1985, the applicant makes a prayer (i) to quash and set aside the memorandum of charge-sheet dated 24.2.95 (Annx.Al) thereafter by amendment in the O.A, the applicant seeks (ii) to direct the respondents not to proceed in the matter of departmental enquiry initiated against the applicant through memo dated 24.2.95 till the criminal trial is completed and final order by the criminal court is passed.

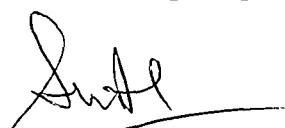
2. Undisputed facts as borne out from the pleadings of the parties in this case are that at the time of entering into the Rajasthan Administrative Service in 1956, the date of birth of the applicant was recorded as 20.2.1932 on the basis of application and other documents submitted by the



applicant. It also appears that for the first time, the applicant made representation on 10.3.80 for correction of his date of birth as 30.1.33 and thereafter further representation dated 28.5.80. The representation dated 10.3.80 was rejected vide order dated 11.4.80 and communicated to the applicant vide letter dated 7.5.80. It is also an undisputed fact that in the civil list dated 1.1.81, the date of birth of the applicant was shown as 22.3.33 and the same date was shown in the subsequent civil list. It also appears that in the application for House Building Advance, the applicant himself has mentioned his date of birth as 20.2.32 and a declaration was also given that he will retire in February 1990. Due to accidental clerical mistake an order dated 5.11.90 was issued to retire the applicant in March 1991 and the applicant was mistakenly allowed to continue even after his date of superannuation. But the applicant never brought notice the fact that his actual date of birth is 20.2.1932 and he should have been retired in February 1990 as he is entitled to work only upto February 1990. Therefore, the applicant cannot escape his responsibility for continuing his service after the actual date of his superannuation.

3. A charge-sheet can only be quashed if the charges are vague or no misconduct is borne out from the charge-sheet or enquiry in pursuance of the charges was not legally permissible. In the instant case, it is admitted by both the parties that in pursuance of charge-sheet dated 24.2.95, the enquiry is pending.

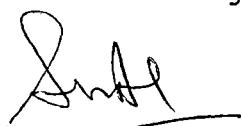
4. The established legal position in this regard is that the Tribunal or Court should not interfere when the enquiry is midway. Chennai Bench of the Tribunal in



N.Haribhaskar, IAS Vs. Sri K.E.Varadan, Inquiry Officer & Ors, 2001(1) SLJ (CAT) 29, has held that the Tribunal should not interfere in the disciplinary proceedings especially when the inquiry has come to a final stage. While dismissing the O.A, the Chennai Bench has observed as under:

"10. That apart, it is settled law that the Inquiry report is not binding on the disciplinary authority and it is open for the disciplinary authority to accept or reject the findings of the Inquiry Officer. It is always open to the applicant to challenge any final order passed on the ground that no reasonable opportunity has been given as contemplated under Article 311(2) of the Constitution of India or under the Rules framed under Article 309 of the Constitution of India. In our view, to interdict at the intermediary stage of any disciplinary inquiry is wholly unwarranted. It is always open to the applicant after the final orders were passed, to contend that reasonable opportunity was not granted to the applicant because of the non-examination of witnesses and prejudice has been caused by the non-examination. We are of the view, that the Tribunal should not interfere at this stage, especially when the Inquiry has come to a final stage. We see no merit in this application and accordingly the application shall stand dismissed. No costs."

5. As charges levelled against the applicant are not ambiguous one and it cannot be said at this stage that no *prima facie* misconduct is borne out from the memorandum of charge-sheet against the applicant. Therefore, in view of



the settled legal position and facts and circumstances of this case, we are of the opinion that the memorandum of charge sheet dated 24.2.95 (Annx.A1) cannot be quashed.

6. As regards the other relief of the applicant, no doubt the departmental proceedings and criminal proceedings can go simultaneously and there is no bar in their being conducted simultaneously though separately but the departmental proceedings can be stayed till the conclusion of the criminal case if the charge in the criminal case against the delinquent is of grave nature which involves complicated questions of law and fact and if defence is disclosed, the delinquent will suffer.

7. In Capt.M.Paul Anthony Vs. Bharat Gold Mines Ltd, JT 1999(2) SC 456, Hon'ble Supreme Court in para 22 laid down the following principles:

- i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.
- ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.
- iii) Whether the nature of a charge in a criminal case is of a grave nature and complicated question of fact and law are involved in that case, it will depend upon the nature of the offence, the nature of the

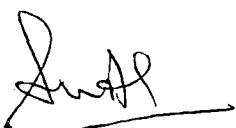


case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge sheet.

- iv) The factors mentioned as (ii) & (iii) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.
- v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, administration may get rid of him at the earliest.

8. In a similar case decided by Ahmedabad Bench of the Tribunal in Shri J.B.Patel Vs. UOI & Ors, 2000(2) SLJ (CAT) 227, the Tribunal directed to stay the proceedings for 6 months.

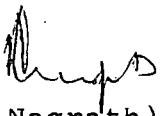
9. In the instant case, vide order dated 22.8.96, this Tribunal stayed the disciplinary proceedings, till further orders. The respondents' department challenged this order before Hon'ble Supreme Court and Hon'ble Supreme Court declined to interfere in the impugned order and observed that it will be appropriate if criminal proceedings are disposed of expeditiously. Undoubtedly, the allegation against the applicant in the criminal proceedings appears to be similar and order of this Tribunal dated 22.8.96 has been confirmed by Hon'ble Supreme Court vide order dated 9.1.98,



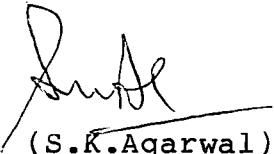
therefore, in the facts and circumstances of this case and legal positions as cited above, we feel it just and proper to restrain the respondents' department not to proceed against the applicant in the departmental proceedings in pursuance of memorandum dated 24.2.95 (Annex.A1) till the criminal case pending against the applicant is finally decided.

10. We, therefore, allow the O.A in part and direct the respondents' department not to proceed against the applicant in the departmental proceedings in pursuance of charge-memo dated 24.2.95 (Annex.A1) till the criminal case pending against the applicant is finally decided.

11. No order as to costs.


(A.P.Nagrath)

Member (A).


(S.K.Agarwal)

Member (J).