

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Dated of order: 25.09.2003

OA No.383/2003

Pradeep Ramchandani s/o late Shri Daya Ram, Head Clerk E/E Section, O/o the Senior Divisional Personal Office, Ajmer r/o H.No.241/3, Swami Servanand Mohalla, Delhi Gate, Ajmer.

.. Applicant

Versus

1. Union of India through General Manager, North-Western Railway, Jaipur.
2. The Divisional Railway Manager, North-Western Railway, Ajmer.
3. The Senior Divisional Personal Officer AII, North-West Railway, Ajmer.
4. Shri S.P.Dixit, Railway Enquiring Officer, Kota.

.. Respondents

Mr. Mahesh Kishore Sharma, counsel for the applicant.

Mr. P.G.Gupta, counsel for the respondents

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDICIAL)

HON'BLE MR. A.F.BHANDARI, MEMBER (ADMINISTRATIVE)

O R D E R

PER HON'BLE MR. M.L.CHAUHAN.

The applicant by way of this application has prayed for quashing Anns.A2, A3 and A5 and in the alternative prayed that the Tribunal may issue directions to the respondents to keep the departmental proceedings in abeyance till the trial in criminal case is pending or stay the departmental enquiry or any other order which the Hon'ble Tribunal considers appropriate be passed in favour of the applicant.

[Signature]

2. The brief facts of the case are that the applicant while working as Head Clerk in the office of Divisional Personal Officer, North-Western Railway, Ajmer was issued memorandum dated 13.5.2002 thereby enclosing articles of charge. The articles of charge reads as under :-

"That during 1992-95, he in connivance with Shri Bahadur Chand Chauhan & Bahadur Singh, a railway employee, earlier working and posted as Head Clerk in Western Railway Gandhidham and thereafter working and posted as Head Clerk, Loco Shed, W.Rly., Abu Road, and presently OS-II, Loco Shed, W.Rly. Abu Road, with an intention to get many candidates selected by wrongful means, for various posts in the DRM office, W.Rly. Ajmer, contacted various poor, semi-literate jobless youth and wrongly induced them by giving false assurance of procuring job for them in the Railway Deptt. and unauthorisedly demanded and accepted undue pecuniary advantage from them.

And he thereby contravened Rule 3(i)(ii) and (iii) of the Railway Conduct Rules, 1964."

Prior to this, a chargesheet under Section 120B, 420, 467, 468, 471 IPC, 13(1)(d)(2) of Prevention of Corruption Act, 1988 was filed against the applicant in the Court of Special Judge, C.B.I. on 11.12.2000 containing almost the same charges and the case is pending trial before the Special Judge, CBI Cases, Jaipur. The contention of the learned counsel for the applicant is that the articles of charge and the statement of imputation are on the same facts on which the CBI, Jaipur has filed the chargesheet and, therefore, it is not proper to hold the departmental enquiry against the applicant simultaneously and thus he has filed the present OA

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thereby praying for the aforesaid reliefs.

3. Notices of interim prayer were issued to the respondents. The respondents have filed interim reply thereby opposing the prayer for grant of interim prayer in favour of the applicant stating that the departmental enquiry and criminal proceedings can also be initiated simultaneously because the approach and object of criminal proceedings and the disciplinary proceedings are distinct and different. The standard of proof, the mode of enquiry and trial in both the cases are entirely distinct and different. Thus, in view of the law laid down by the Apex Court in the case of M.Paul Anthony Vs. Bharat Cold Mines Ltd. [1999-8CC (L&S)-810] and also the decision of the Apex Court in the case of Lalit Popli vs. Canara Bank and ors. [2003 (2) SLJ SC 409] and State of Rajasthan vs. E.K.Meena [1996 (6) -SCC-417], the applicant has got no case and hence not entitled for any interim relief.

4. The matter was listed for hearing on 19.9.03 and the learned counsel for the applicant submitted that in view of the interim reply filed by the respondents, the matter may be decided finally on merits.

5. We have heard the learned counsel for the parties. The learned counsel for the applicant while relying on the judgment of the Apex Court in the case of Kusheshwar Dubey vs. M/s Bharat Cooking Coal Ltd. [AIR 1988 SC 2118] and subsequent judgment of the Apex Court in M.Pal Anthony (supra) which has reaffirmed the view taken in the Kusheshwar Dubey's case (supra) argued that the criminal case and the disciplinary proceedings cannot go

on the same set of facts and as such the disciplinary proceedings should be stayed.

5.1 The learned counsel for the applicant also brought to our notice the decision rendered by this Bench in OA No.582/2002 dated 18.8.03, Ramji Lal Neelam vs. General Manager and ors., whereby this Tribunal has directed that disciplinary proceeding shall remain stayed for a period of 3 years. If the criminal case is not concluded within the aforesaid period of three years, the respondents may resume the departmental proceedings. According to the learned counsel for the applicant, the present case is also squarely covered by this judgment.

We have considered the submissions made by the learned counsel for the applicant and we are of the view that the applicant has not made out any case for staying the departmental proceedings.

5.2 The law on the point is well settled by the Hon'ble Apex Court in number of judgments.

5.2.1 In B.K.Meena's case (*supra*) the respondent was a member of the Indian Administrative Service belonging to Rajasthan cadre. In that case an FIR was lodged against him for alleged misappropriation of public funds to the tune of Rs. 1.05 crores. Departmental proceedings were initiated against him. He has submitted his written statement. Chargesheet was filed in the Court of Chief Judicial Magistrate, Jaipur against him for the offence of misappropriation of public funds. He had approached the Central Administrative Tribunal for stay of the disciplinary proceedings. The Tribunal found that the chargesheet in the criminal case and the memo of charges in the disciplinary proceedings are based upon same facts and allegations. The Tribunal, therefore, stayed the

disciplinary proceedings pending the criminal proceedings. The State of Rajasthan approached the Supreme Court. After taking a resume of the relevant case law on the point the Supreme Court observed that the disciplinary proceedings are meant not really to punish the guilty but to keep the administrative machinery unsullied by getting rid of bad elements and hence they should not be unduly delayed. The Supreme Court observed as under:-

"One of the contending consideration 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 even reach a prompt conclusion that is the reality inspite of repeated advise and admonitions from this Court and the High Courts. If a criminal case is unduly delayed 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. The interests of administration and good Government demand that these proceedings are concluded expeditiously. It must be remembered that interest of administration demand that undesirable elements are thrown out and any charge of misdemeanour is enquired into properly. 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 earliest 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

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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 period 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 decision referred to above."

5.2.2 In Paul Anthony's case the same question fell for consideration of the Supreme Court. The appellant therein was appointed as the Security Office in Bharat Gold Mines Ltd., a Government undertaking. In the raid conducted by the Superintendent of Police at his house gold was recovered. A criminal case was registered against him and he was placed under suspension on 3.6.1985. On 4.6.1985 a chargesheet was issued proposing a regular departmental inquiry with regard to the recovery of gold from his house. The appellant did not participate in the departmental proceedings. The proceedings were concluded. The appellant was found guilty and was dismissed from service. Thereafter he was acquitted in criminal case. His prayer for reinstatement was rejected. He challenged the validity of dismissal. When the matter reached the Supreme Court, the Supreme Court after referring to the relevant judgments again restated the law on the point with following observations:-

"....The conclusions which are deducible from,

various decisions of this court referred to above are:

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 conclusions of the criminal case.

iii) Whether the nature of charge in a criminal case is grave and whether complicated question of fact and law are involved in that case, will depend upon the nature of 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 chargesheet.

iv) The factors mentioned at i) and 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 him at the earliest."

5.2.3 Further, in Lalit Popli's case (*supra*) the Apex Court has held that approach in disciplinary and criminal proceedings are different.

5.3 The judgment of the Supreme Court in E.K.Meena's case, Paul Anthony's case as well as Lalit Popli's case

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(cited supra) makes it clear that departmental proceedings and proceedings in criminal case can proceed simultaneously and merely because a criminal case is pending, the departmental proceedings are not to be stayed as a rule. Departmental proceedings have to be concluded as expeditiously as possible because their purpose is to keep persons with questionable background out of the administration so as to protect it. It is well known that criminal cases take a long time to reach conclusion. Unless prejudice is imminent on account of presence of identical facts and complicated question of law and facts in both the proceedings and on account of the grave nature of charge, departmental proceedings cannot be stayed on the speculative reason that the disclosure of defence will prejudice the delinquent, because that will be harmful to the administration. But in this connection no hard and fast rule can be laid down and each case will have to be decided against the backdrop of its peculiar facts and circumstances. Departmental proceedings and criminal case operate in distinct fields. The purpose of criminal case is to punish a person for the offence he had committed. The purpose of departmental proceedings is to clear out undesirable elements from the administration so as to prevent vices like corruption from percolating in its layers. There is a vast difference in the nature and conduct of these two proceedings. It is only in exceptional cases where departmental proceedings and criminal case are based on identical facts and the charge in the criminal case is of a grave nature which involves complicated question of law and fact that departmental proceedings and criminal case can proceed simultaneously and it is necessary to see whether on the basis of the

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evidence collected it can be said that the charge is grave involving complicated questions of law and fact these factors cannot be considered in isolation to stay the departmental proceedings, but regard must be had to the facts that the departmental proceedings cannot be unduly delayed and if the criminal case is unduly delayed, the departmental proceedings, even if they are stayed must be resumed.

5.4 In the instant case, it cannot be said that the charge in the criminal case is of a grave nature which involves complicated question of law and facts. The applicant was working as Head Clerk during the period 1992-95. He in connivance with Shri Bahadur Chand Chauhan alias Bahadur Singh, a railway employee earlier working and posted as Head Clerk with an intention to get many candidates selected by wrongful means, for various posts in the DRM office, Western Railway, Ajmer, contacted various poor semi-literate jobless youth and wrongly induced them by giving false assurance of procuring job for them in the railway Deptt. and unauthorised demanded and accepted undue pecuniary advantage from them. The facts are simple. Similarity of facts, assuming it is there, will not by itself be sufficient because in most cases similarity may exist. What is important is that the present case does not involve any complicated question of law and facts. Further, the learned counsel for the applicant has not pleaded and argued as to how the present case involves complicated question of law and facts so that the departmental proceedings should be stayed in the instant case. The departmental proceedings is adopted for the purpose of dealing with a case of misconduct under the Rules and Regulations governing the service of the

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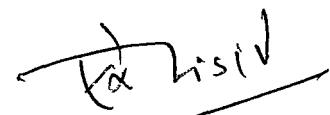
employer. On the other hand, a criminal prosecution is a proceeding for the purpose of dealing with a violation of the penal law of the land. The standard of proof in a criminal trial is a proof beyond reasonable doubt. In a departmental proceedings, the charge of misconduct has to be established on a preponderance of probabilities. The applicable rules of substantive law, of evidence and of procedure which govern departmental proceedings, are distinct from those which govern criminal prosecutions.

5.5 Thus, we are of the firm view that the applicant has not made out any case for staying the departmental proceedings or for keeping the departmental proceedings in abeyance till the conclusion of the trial in criminal case. Similarly, we are of the view that the judgment of this Tribunal rendered in OA No. 582/2002 decided on 18.8.2003 is not of any help to the applicant in as much as in that case this Tribunal in Paras 10.1 and 10.2 held that the charge in criminal case of taking bribe is certainly of grave nature and further that in case disciplinary proceedings are continued, the defence of the applicant in criminal case may be prejudiced. The learned counsel for the respondents argued that finding given by this Tribunal in that case has been arrived at without recording any reason whatsoever, cannot be made applicable in the instant case. He further argued that in case the finding of the Tribunal in Ramji Lal Neelam's case (supra) to the effect that (i) "the charge in the criminal case of taking bribe is certainly of grave nature" and (ii) "it cannot be denied that, if the disciplinary proceedings are continued, the defence of the applicant in criminal case may be prejudiced", if accepted as abstract preposition of law then the disciplinary proceedings in every case will

have to be stayed which view is contrary to the law laid down by the Apex Court in the case of Capt. M.Paul Anthony (supra). Suffice it to say that unless the prejudice is imminent on account of presence of identical facts and complicated question of law and facts in both the proceedings and on account of grave nature of the charge, departmental proceedings cannot be stayed on the speculative reason that the disclosure of defence will prejudice the delinquent, because that will be harmful to the administration. But in this connection no hard and fast rule can be laid down and each case will have to be decided against the background of its peculiar facts and circumstances.

5.6 Anyhow, since we had already held that in the instant case it cannot be said that the charge in criminal case is of grave nature which involves complicated question of law and facts as such the ratio laid down by the Apex Court in the case of M.Paul Anthony is fully attracted in the instant case.

6. For the reasons stated above, this OA is dismissed at the admission stage with no order as to costs.



(A.K.EHANDARI)

MEMBER (A)



(M.L.CHAUHAN)

Member (J)