

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 19th day October, 2010

ORIGINAL APPLICATION No.466/2010

CORAM:

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

Gajendra Singh Rathore
s/o Shri Ram Krishna Rathore,
Senior Tax Assistant,
Office of Deputy Commissioner of Income Tax
(Special Audit Party), Jaipur
r/o D-179, Parivahan Nagar,
Khatipura Road,
Jaipur.

.. Applicant

(By Advocate: Shri P.V.Calla)

Versus

1. Union of India through its Secretary, Ministry of Finance, Department of Revenue, New Delhi.
2. The Chief Commissioner, Income Tax, New Central Revenue Building, Near Statue Circle, Jaipur
3. Commissioner of Income Tax (Audit), Jaipur
4. Additional Commissioner of Income Tax, Range-III (I.O.), New Central Revenue Building, Near Statue Circle, Jaipur.

... Respondents

(By Advocate:)

ORDER (ORAL)

The applicant has filed this OA thereby praying for the following reliefs:-

- (i) by issuance of an appropriate order or direction the respondents be restrained from proceeding in the pending departmental enquiry initiated in view of the memorandum dated 13.3.2008 and further be pleased to set aside the order or prosecution of sanction dated 8.10.2007.
- (ii) This Original Application may kindly be allowed with exemplary costs in the facts and circumstances of this case.
- (iii) Any other appropriate order or directions which is deemed just and proper by this Hon'ble Tribunal may also be passed in favour of the applicant.

2. Briefly stated, facts of the case are that the applicant while working as Senior Tax Assistant was issued a chargesheet dated 13.3.2008 accompanied with Ann.III, list of witnesses and Ann.IV list of documents by which articles of charge framed against the applicant was proposed to be sustained. It may be stated that consequent upon trap laid by the Central Bureau of Investigation (CBI), a criminal case was also lodged against the applicant and challan has also been presented before the competent court on 30.10.2007. The grievance of the applicant in this case is that all the charges mention in the chargesheet as well as the witnesses and list of documents are the same as were mentioned by the CBI in the chargesheet, as such, the respondents should not have proceeded in the departmental enquiry till the conclusion of the criminal case.

For that purpose, the applicant has filed representation dated



20.3.2008 (Ann.A/8) before the Commissioner of Income Tax (Audit), Jaipur, which has not been decided so far. It may be stated here that the department did not proceed with the enquiry proceedings immediately. However, the Enquiry Officer was appointed by the department on 6.1.2009. The applicant has also shown to the court the order dated 11.10.2010 whereby the matter has been fixed by the Enquiry Officer for preliminary hearing on 19.10.2010 at 5.00 p.m. The learned counsel for the applicant argued that earlier the applicant did not approach before this Tribunal for the aforesaid relief as the respondents have themselves stayed the proceedings and since now the respondents are proceedings with the departmental proceedings, as such, the present OA has been filed now.

3. As can be seen from the averments made in the OA as well as the contention raised before this Tribunal, the grievance of the applicant is that departmental proceedings and criminal proceedings cannot be initiated on same set of facts. For that purpose, our attention has been drawn to the list of witnesses and list of documents attached with the chargesheet as well as list of witnesses and list of documents annexed with the challan (Ann.A/4). It may be relevant to state that in this case the complainant has been examined on different dates commencing from 4.5.2009 to 17.5.2009. The question which requires our consideration is whether in the facts and circumstances of the case, the applicant has made out a case for grant of relief.

4. We have heard the learned counsel for the applicant at admission stage and gone through the material placed on record. As can be seen from the prayer clause, the applicant has prayed for restraining the respondents to proceed in the pending departmental enquiry initiated vide memorandum dated 13.3.2008 and second prayer is that the order of prosecution of sanction dated 8.10.2007 be set aside. At the outset, it may be stated that the second prayer of the applicant that this Tribunal should set aside the prosecution sanction as accorded by the department in criminal case cannot be entertained and accepted as this Tribunal has no jurisdiction to deal with the prosecution sanction granted in criminal case. In case the applicant is aggrieved by grant of prosecution sanction and filing of challan pursuant to investigation carried out by the CBI, this Tribunal is not proper forum and it was open for the applicant to invoke jurisdiction of the Criminal Court/High Court for that purpose.

5. So far as prayer of the applicant that respondents may be restrained from proceeding in the pending departmental enquiry, suffice it to say that such relief cannot be granted to the applicant as the Hon'ble Apex Court in number of decisions has categorically held that departmental as well as criminal proceedings can proceed simultaneously as there is no bar for their being conducted simultaneously though separately. At this stage, we wish to refer to the decision of the Apex Court in the case of NOIDA Entrepreneurs Association vs. NOIDA and Ors. (2008) 1 SCC (L&S) 672 where decision pertaining to departmental enquiry was taken on the basis

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of criminal proceedings. In the instant case also prosecution sanction and challan were presented before the criminal court in the year 2007 whereas the chargesheet was issued on 13.3.2008. The Apex Court held that there is a conceptual difference between departmental enquiry and criminal proceedings. At this stage, we wish to reproduce relevant portion of Para-11 of the judgment, which thus reads:-

"11..... The conceptual difference between departmental proceedings and criminal proceedings have been highlighted by this Court in several cases. Reference may be made to Kendriya Vidyalaya Sangathan vs. T.Srinivas, Hundustan Petroleum Corpn. Ltd.. V. Sarvesh Berry and Uttranchal RTC vs. Mansaram Nainwal.

"8.... The purpose of departmental enquiry and of prosecution are two different and distinct aspects. The criminal prosecution is launched for an offence for violation of a duty, the offender owes to the society or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not therefore desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental enquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law. Offence generally implies infringement of public duty, as distinguished from mere private rights punishable under criminal law. When trial for criminal offence is conducted it should be in accordance with proof of the offence as per the

evidence defined under the provisions of the Indian Evidence Act, 1872. Converse is the case of departmental enquiry. The enquiry in a departmental proceedings relates to conduct or breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. That the strict standard of proof or applicability of the Evidence Act stands excluded is a settled legal position.... Under these circumstances, what is required to be seen is whether the departmental enquiry would seriously prejudice the delinquent in his defence at the trial in a criminal case. It is always a question of fact to be considered in each case depending on its own facts and circumstances." (emphasis ours)

A three-Judge Bench of this Court in Depot Manager, AP SRTC vs. Mohd. Yousuf Miya analyses the legal position in great detail on the above lines:"

In para-14 of the Judgment, the Apex Court noticing its earlier decision in Capt. M.Paul Anthony vs. Bharat Gold Mines Ltd., has observed as under:-

"14. In Capt. M.Paul Anthony v. Bharat Gold Mines Ltd., this Court indicated some of the fact situations which would govern the question whether departmental proceedings should be kept in abeyance during pendency of a criminal case. In para 22, conclusions which are deducible from various decisions were summarized. They are as follows:

"22:... (i) Departmental proceedings and proceeding 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 grave and whether complicated

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questions 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 charge-sheet.

(iv) The factors mentioned at (ii) 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, the administration may get rid of him at the earliest."

Thereafter in para-16, the Apex Court has held as under:-

"16. The standard of proof requires in departmental proceedings is not the same as required to prove a criminal charge and even if there is an acquittal in the criminal proceedings the same does not bar departmental proceedings. That being so, the order of the State Government deciding not to continue the departmental proceedings is clearly untenable and is quashed. The departmental proceedings shall continue."

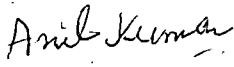
6. Thus, from the law laid down by the Apex Court in the case of NOIDA Entrepreneurs Association (supra) based upon various decisions of the Apex Court, it is evident that even if the person is acquitted in criminal proceedings still even after such acquittal departmental proceedings can be initiated. In the present case, the applicant has not been acquitted in the criminal proceedings. It may be stated here that the main prosecution witness i.e. the complainant has already been examined by the trial court on

different dated w.e.f. 4.5.2009 to 17.5.2009. This being a trap case, only the complainant is main witness whereas the other persons cited as witnesses are listed in order to prove the trap. Admittedly, the enquiry proceedings are at initial stage and no witness cited on behalf of the department has been examined by the Enquiry Officer. As such, in view of the law laid down by the Apex Court, it is not a case of such nature where direction can be given to the respondents not to proceed with the departmental proceedings. As already stated above, the main prosecution witness was not only examined but also appears to have been cross examined by the applicant, as such, no prejudice will be caused to the applicant in the departmental enquiry when the defence of the applicant in criminal trial has already been disclosed on account of examination/cross examination of the material witness i.e. the complainant.

7. The learned counsel for the applicant while drawing our attention to the order-sheet dated 23.10.2009 (Ann.A/1) argued that the applicant has made submission before the Enquiry Officer that he has not received certified copies of the listed documents and statement of witnesses. Perusal of this order-sheet reveals that copy of the listed documents as well as statement of witness were made available to the applicant along with copy of challan, as such, contention of the applicant that he has been prejudiced on that account cannot be entertained, more particularly, when the applicant has not pleaded staying of departmental proceedings on this count. Be that as it may, the enquiry proceedings cannot be

stayed on this ground alone without any pleading to this effect in the OA.

8. For the foregoing reasons, we are of the view that the present OA is bereft of merit, which is accordingly dismissed at admission stage.


(ANIL KUMAR)
Admv. Member


(M.L. CHAUHAN)
Judl. Member

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