

THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR
ORDER SHEET

APPLICATION NO.: 354/2013

Applicant (S)

Advocate for Applicant (S)

Respondent (S)

Advocate for Respondent (S)

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

22/05/2014

O.A. No. 354/2013

Mr. Amit Mathur, counsel for the applicant.
Mr. V.K. Pareek, counsel for the respondents.

Heard the learned counsel for the parties.

Order Reserved.

M. Nagarajan
(M. Nagarajan)
Member (S)

Anil Kumar
(Anil Kumar)
Member (A)

V.

29/5/2014

Order pronounced today in the open
Court by the aforesaid Bench.

Chief
29/5/2014
CSO

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

ORIGINAL APPLICATION No. 354/2013

ORDER RESERVED ON 22.05.2014

DATE OF ORDER : 27.05.2014

CORAM :

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER
HON'BLE MR. M. NAGARAJAN, JUDICIAL MEMBER

Anand Kumar Jain son of Late Shri Sundar Lal Jain, aged around 40 years, resident of 96, Vishwakarma Nagar II, Maharani Farm, Durgapura, Jaipur (Rajasthan).

... Applicant

(By Advocate: Mr. Amit Mathur)

Versus

1. The Chief Commissioner, Central Excise, Jaipur Zone, Statue Circle, Jaipur (Rajasthan).
2. The Commissioner, Central Excise, Jaipur -I, Statue Circle, Jaipur (Rajasthan).

... Respondents

(By Advocate: Mr. V.K. Pareek)

ORDER

PER HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

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

- (i) the present original application may kindly be allowed and departmental proceedings in pursuant to the memorandum Annexure A/1 dated 12.04.2013 may kindly be kept in abeyance till the completion of the criminal proceedings.
- (ii) any other order or direction which deem fit and proper in the facts and circumstances of the case may also be passed in favour of the applicant.
- (iii) Cost of this original application also may be awarded in favour of the applicant.

Anil Kumar

2. The brief facts of the case, as stated by the learned counsel for the applicant, are that the applicant is an Inspector in the Department of Central Excise & Customs, Jaipur. He was served with a memorandum dated 12.04.2013 under CCS (CCA) Rules, 1965 (Annexure A/1).

2. That a complaint was made against the applicant that he is demanding Rs.2000/- from the complainant for clearing an assignment to be sent to Melbourne, Australia. Anti Corruption Bureau, Jaipur conducted a raid and alleged recovery of Rs.1000/- was made from the applicant. In this matter, one FIR was also registered on the complaint of Shri Gaurav Kukreja and subsequently Challan has been filed in criminal court of law by Anti Corruption Bureau (Annexure A/2).

3. The learned counsel for the applicant submitted that the disciplinary proceedings initiated on the same charge against the applicant be stayed till the disposal of the criminal proceedings. He submitted that total number of 15 witnesses in the criminal case are to be examined which also include forensic experts and further those witnesses who have to establish the contents of FSL Report. That no officer of FSL department has been included in the list of witnesses in the departmental inquiry, meaning thereby that the FLS Report, which is listed as documentary evidence cannot be proved or exhibited in the departmental inquiry.

4. The learned counsel for the applicant further submitted that at this stage if the departmental inquiry is permitted to continue

Anil Kumar

then it will adversely affect the defense of the applicant and in case the departmental inquiry is conducted at this stage then the applicant is bound to disclose his defense.

5. The learned counsel for the applicant also submitted that the list of witnesses includes seven members of the ACB team and one complainant. That all the documents, which have been enclosed along with the charge sheet, are the documents related to the trap.

6. That criminal proceedings and the departmental proceedings are grounded on the same set of facts and circumstances. The nature of charge is such that it can be proved only in the criminal proceedings. The evidence is required to be established through experts. The outcome of the criminal case would prove whether the applicant has committed any guilt or not. The great prejudice would be caused to the applicant if the applicant disclosed his defense in cross examination. However, it would be necessary for the applicant because otherwise the respondents will proceed ex parte in the departmental proceedings. Therefore, in the interest of justice, the respondents be directed to keep departmental inquiry in abeyance till the completion of the criminal case. In support of his contentions, he referred to the following judgments of the Hon'ble Supreme Court:-

1. State of Rajasthan vs. B.K. Meena & Others
Civil Appeal No. 12568 of 1996 decided on 27.09.1996
2. Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd.
Another AIR 1999 SCC 1416
3. G.M. Tank vs. State of Gujarat and Another.

Anil Kumar

2006 SCC (L&S) 1121

7. The respondents have filed their reply. The learned counsel for the respondents submitted that standard of proof required in the criminal proceedings is different from that of departmental inquiry. The departmental inquiry is based on the preponderance of the charges which can be held as proved whereas in the Court proceedings, allegations are required to be proved beyond doubt. Further, FSL Report has not been included in Annexure III to the memorandum dated 12.04.2013 as such forensic expert has not been included in the list of witnesses.

8. The learned counsel for the respondents further submitted that the ACB has filed challan against the applicant with the competent court of law under the provisions of Indian Penal Code and Prevention of Anti Corruption Act for the alleged mis conduct whereas the department has initiated departmental proceedings for applicant's failure to comply with the CCS (Conduct) Rules, 1965. There is no legal bar to initiate departmental disciplinary action under the rules applicable to the delinquent public servant where criminal prosecution is already in progress. In criminal cases, the proof required for conviction has to be beyond reasonable doubt, whereas in departmental proceedings, proof based on preponderance of probability is sufficient for holding the charge as proved.

9. The learned counsel for the respondents submitted that the Hon'ble Apex Court in plethora of judgments has held that

Amal Kumar

departmental action is not vitiated for the only reason that a criminal case on the same ground of conduct is pending in a criminal court and that the principles of natural justice do not require that the employer must wait for the outcome of the criminal case. To support his arguments, he referred to the following cases:-

1. Delhi Cloth & General Mills Ltd. vs. Kushal Bhan
AIR 1960 SC 806
2. Tata Oil Mills Co. v. Workmen
(1964)/63 SCR 555 : AIR 1965 SC 155
3. J.K. Cotton Spg. & Wvg. Co. vs. Workmen
2 LLJ (SC) 153
4. Jang Bahadur vs. Baij Nath Tewari
1969 (1) SCR 1334: AIR 1969 SC 30
5. Tukaram Gaokar vs. R.N. Shukla
AIR 1968 SC 1050

10. The learned counsel for the respondents also argued that the Hon'ble Supreme Court has held that merely because a criminal trial is pending, the departmental inquiry involving the very same charges as is involved in the criminal proceedings is not barred. That the approach and objective in the criminal proceedings and the disciplinary proceedings are altogether distinct and different. In support of his contentions, he referred to the following case laws:-

1. State of Rajasthan vs. B.K. Meena & Others
1996 (6) SCC 417
2. Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd.
1993 (3) SCC 679
3. Kendriya Vidyalaya Sangathan & Others vs. T. Srinivas
2004 (6) SCALE 467
4. Noida Entrepreneurs' Association vs. Noida
JT 2007 (2) SC 620

Anil Kumar

11. The learned counsel for the respondents further submitted that this Tribunal in the case of **Atulesh Sharma vs. Union of India & Others** (OA No. 472/2009 decided on 21.04.2011) has also held that departmental proceedings and criminal proceedings can be held simultaneously. Therefore, the OA has no merit and it should be dismissed with costs.

12. Heard the learned counsel for the parties, perused the documents on record and the case law referred to by the learned counsel for the parties. The prayer of the applicant is that since a criminal case is pending against the applicant, therefore, departmental proceedings initiated by the respondents on the same facts & witnesses be stayed till the disposal of the criminal case. If the departmental proceedings are not stayed then the applicant's defense would be adversely affected. We have carefully perused the judgment of the Hon'ble Supreme Court in the case of **State of Rajasthan vs. B.K. Meena & Others** (supra), referred to by the learned counsel for the applicant. Even in this judgment, the Hon'ble Supreme Court has held that the approach & objective in the criminal proceedings and the disciplinary proceedings altogether distinct and different. Para Nos. 17, 18 & 19 of the judgment are quoted below:-

"17. 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

Anil Kumar

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.

18. We must make it clear that we have not cast, and we should not be understood to have cast, any reflection on the merits of either party's case. What we have said is confined to the question at issue, viz., the desirability or advisability of staying the disciplinary proceedings against the respondent pending the criminal proceedings/case against him.

19. For the above reasons, it must be held that the Tribunal was in error in staying the disciplinary proceedings pending the criminal proceedings against the respondent. The appeal is accordingly allowed with cost. The order of the Tribunal is set aside. The disciplinary proceedings against the respondent shall go on expeditiously without waiting for the result of the criminal proceedings. The costs of the appellant are estimated at Rs.5000/-."

Thus the Hon'ble Supreme Court quashed the order of the Tribunal staying the disciplinary proceedings pending the criminal proceedings against the respondents.

13. In the case of **Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd. & Anr. (supra)**, the Hon'ble Supreme Court in Para No. 22 as observed as under:-

"22. 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 conclusion of criminal case.

Anil Kumar

(iii) Whether the nature of a charge in a criminal case is grave and whether complicated 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 as 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."

14. In the case of **Kendriya Vidyalaya Sangathan & Others vs. T. Srinivas**, 2004 SCC (L&S) 1011, the Hon'ble Supreme Court has also considered the case of **Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd. & Anr. (supra)** which has been relied upon by the applicant. Having considered the ratio decided by the Apex Court in the case of **Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd. & Anr.**, the Hon'ble Supreme Court has observed as under:-

"8. On a reading of M. Paul Anthony case it is noted that there is consensus of judicial opinion on the basic principle that proceedings in a criminal case and departmental proceedings can go on simultaneously, however, this Court noticed that certain exceptions have been carved out to the said principle.

15. We have carefully perused the judgment of the Hon'ble Supreme Court in the case of **Noida Entrepreneurs Association**

Anil Kumar

vs. Noida & Others, JT 2007 (2) SC 620. In Para No. 12 & 15 of the judgment, the Hon'ble Supreme Court has held that:-

"12. The purpose of departmental enquiry and the prosecution is two different and distinct aspect. 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 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.....

15. There can be no straight jacket formula as to in which case the departmental proceedings are to be stayed. There may be cases where the trial of the case gets prolonged by the dilatory method adopted by delinquent official. He cannot be permitted to, on one hand, prolong criminal case and at the same time contend that the departmental proceedings should be stayed on the ground that the criminal case is pending.

The Hon'ble Supreme court in this case has also considered the judgments of the Hon'ble Supreme Courts in the cases of (i) **State of Rajasthan vs. Shri B.K. Meena & Others** and (ii) and **Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd. & Anr.**

16. We have perused the judgment of the Hon'ble Supreme Court in the case of **G.M. Tank vs. State of Gujarat & Others**, 2006 SCC (L&S) 1121, referred to by the learned counsel for the applicant. We are of the opinion that under the facts & circumstances of the present OA, the ratio decided by the Hon'ble Supreme Court is not applicable. In the case of G.M. Tank vs. State of Gujarat & Others, the appellant was held guilty in the departmental proceedings and the order of dismissal was passed

Amil Kumar

on 15.10.1982 whereas the Criminal court acquitted him on 30.01.2002. Therefore, the Hon'ble Supreme Court set aside the order of dismissal without back wages. However, the Hon'ble Supreme Court has held that until such acquittal, there was no reason or ground to hold the dismissal to be erroneous. Therefore, any relief monetarily can only be w.e.f. 30.01.2002 whereas in this case the applicant has neither been punished in the departmental inquiry nor any decision has been taken by the Criminal Court. Moreover, in the present OA, the number of witnesses in the departmental proceedings are eight whereas in the Criminal case, the number of witnesses are fifteen. The charges are also not identical. Therefore, the ratio decided by the Hon'ble Supreme Court in the case of G.M. Tank vs. State of Gujarat & Others would not be applicable under the facts & circumstances of the present case.

17. On the other hand, the Hon'ble Supreme Court in the case of **Avinash Sadashiv Bhosale (D) Thr. LRs. Vs. Union of India & Others** (Civil Appeal No. 7005/2012 arising out of SLP (C) No. 20394/2005 decided on 25.09.2012 has considered both the earlier judgments of the Hon'ble Supreme Court in the cases of (i) Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd. & Anr. and (ii) G.M. Tank vs. State of Gujarat & Another and after considering the earlier judgments of the Hon'ble Supreme Court on the subject has held in Para 45 that in view of the aforesaid legal principles enunciated and reiterated by this Court, we cannot accept that because the appellant had been prosecuted, the departmental proceedings could not have been continued

Anil Kumar

simultaneously. The Hon'ble Supreme court in Para Nos.45, 46 & 47 has held that:-

"45. In view of the aforesaid legal principles enunciated and reiterated by this Court, we cannot accept that because the appellant had been prosecuted, the departmental proceedings could not have been continued simultaneously. As pointed out by Mr. Dwivedi, the charges against the appellant in the criminal trial related to the commission of criminal offences under Sections 120(B), 420, 467, 468, 471 and 201 of Indian Penal Code. The proof of criminal charges was depended upon prosecution producing proof beyond reasonable doubt relating to the culpability of the appellant alongwith other persons. In the departmental proceedings, the basic charge was that the appellant whilst posted as Branch Manager of Washi Turbhe Branch, failed to discharge his duties with utmost integrity, honesty, devotion and diligence to ensure and protect the interest of the Bank and acted in a manner unbecoming of a Bank Officer. The aforesaid charge clearly related to the manner in which the appellant performed the duties as the Manager of the Branch of the Bank. It had nothing to do with any criminal liability attaching to such conduct. It must be emphasized that Bank officials act as trustees of funds deposited by the public with the Bank. They have an obligation to earn the trust and confidence of not only the account holders but also the general public. The standard of integrity required of the Bank officials, particularly the cashiers, accountants, auditors and the Management at all levels, is like the caesar's wife, they must be above suspicion. Mr. Bhosale failed to maintain such high standards of integrity. He, therefore, acted in violation of Rule 50(4) of the 1992 Rules. We, therefore, do not find any merit in the aforesaid submission of Mr. Jain.

"46. Mr. Dwivedi, in our opinion, has rightly pointed out that the conduct of the criminal trial was in the hands of the prosecuting agency. Having registered the First Information Report, the Bank had little or no role to play, apart from rendering assistance to the prosecuting agencies. In our opinion, the failure of the prosecution in producing the necessary evidence before the trial court can not have any adverse impact on the evidentiary value of the material produced by the Bank before the Inquiry Officer in the departmental proceedings....."

47. The findings recorded by the Enquiry Officer cannot be said to be based on no evidence. In such circumstances, the appellant cannot take any advantage of the findings of innocence recorded by the criminal court. The 'clean chit' given by the learned Magistrate was influenced by the failure of the prosecution to lead the necessary evidence. No advantage of the same can be taken by the appellant in the departmental proceedings."

Anil Kumar

18. Moreover, this Tribunal in the case of **Atulesh Sharma vs. Union of India & Others** (OA No. 472/2009 decided on 21.04.2011) in Para Nos. 13 & 14 has held that departmental proceedings can continue even if criminal trial is pending. Para Nos. 13 & 14 of the order are quoted below:-

"13. The Full Bench at CAT-Principal Bench in OA No. 2816/2008 vide its judgment dated 18th February, 2011 has thoroughly considered the cases of Delhi Cloth and General Mills Ltd. vs. Kushal Bhan [AIR 1960 SC 806]; Deputy Director of Collegiate Education (Administration) Madras vs. S. Nagoor Meera [AIR 1995 SC 1364] and also the judgment in the cases of Capt. M. Paul Anthony as well as Kendriya Vidyalaya Sangathan vs. T. Srinivas (Supra) and after considering each and every aspect and thoroughly examining the cases referred made the following observations:-

"9. In view of the discussion made above, we hold that there is no bar, express or implied, in the Rules of 1980 for holding simultaneous criminal and departmental proceedings. However, in case departmental proceedings may culminate into an order of punishment earlier in point of time than that of the verdict in criminal case, and the acquittal is such that departmental proceedings cannot be held for the reason as mentioned in rule 12, the order of punishment shall be re-visited. The judicial verdict would have precedent over decision in departmental proceedings and the subordinate rank would be restored to his status with consequential relief.

10. In view of our findings on the first issue, there would be no need to put on hold the final orders in departmental proceedings awaiting the decision of criminal court."

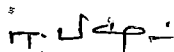
14. Having considered the ratio decided by the Supreme Court in the case of NOIDA Entrepreneurs Association and Kendriya Vidyalaya Sangathan vs. T. Srinivas and the decision dated 18.2.2011 of the Full Bench at CAT-Principal Bench, New Delhi, we are of the view that departmental proceedings can continue even if criminal trial is pending and, therefore, in view of the ratio decided by the Supreme court in the case of NOIDA Entrepreneurs, Kendriya Vidyalaya Sangathan and by the Full Bench at CAT Principal Bench, we find no merit in this OA and the same is dismissed with no order as to costs."


Anil Kumar

While deciding this case, this Tribunal also considered the judgment of the Hon'ble Supreme Court in the cast of **Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd. & Anr.** and **G.M. Tank vs. State of Gujarat & Others** (supra).

19. On the basis of above discussion, we are of the opinion that the applicant has failed to make out any case for interference of this Tribunal in the present OA. Thus, we are of the view that there is no need to keep the departmental proceedings in abeyance in pursuant to Memorandum dated 12.04.2013 (Annexure A/1) till the completion of criminal proceedings.

20. Consequently, we find no merit in this OA and the same is dismissed with no order as to costs.


(M. NAGARAJAN)
MEMBER (J)


(ANIL KUMAR)
MEMBER (A)

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