

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.1676 OF 2014

New Delhi, this the 3rd day of August, 2017

CORAM:

**HON'BLE SHRI SHEKHAR AGARWAL, ADMINISTRATIVE MEMBER
AND
HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER**

.....

Vivekanand Sharma, SREO/Ad hoc DANICS,
R/o Flat No.3C, Block No.62,
Kalibari Marg,
New Delhi 110002

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Applicant

(By Advocate: Shri P.C.Mishra)

Vs.

1. Lt. Governor through Chief Secretary,
Govt. of NCT of Delhi,
5th Level, Delhi Secretariat,
I.P.Estate,
New Delhi 110002
2. Director Employment,
Govt.of NCT of Delhi,
Employment Exchange Building,
IARI Complex, Pusa,
New Delhi.
3. Director, Directorate of Vigilance,
Govt.of NCT of Delhi,
Delhi Secretariat,
I.P.Estate,
New Delhi 2

4. Secretary, Delhi Subordinate Services Selection Board,
Karkardooma Institutional Area,
Karkardooma,
New Delhi 110092 í í í í Respondents

(By Advocate: Shri Vijay Pandita)

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ORDER

Per RAJ VIR SHARMA, MEMBER(J):

In this Original Application 8.5.2014, the applicant has prayed for the following reliefs:

- õi) quash the departmental proceeding initiated vide charge memo No.F.7(A)/09/DOV/3092 dated 17.4.2014 or
- ii) issue permanent injunction against the departmental proceeding pertaining to the event of 31.5.2009.
- iii) or any other order or directions as deemed fit in the facts and circumstances of the case may be passed.ö

1.1 During the course of hearing, the learned counsel appearing for the applicant did not press the relief vide clause (i) of paragraph 8 of the O.A.

2. We have carefully perused the pleadings of the parties and have heard Shri P.C.Mishra, the learned counsel appearing for the applicant, and Shri Vijay Pandita, the learned counsel appearing for the respondents.

3. Brief facts giving rise to the present O.A. are as follows:

3.1 The applicant had initially joined as Inspector (Sales Tax) in Delhi Administration in the year 1988. After earning promotions to different higher grades, he was appointed to the Delhi, Andaman & Nicobar Civil

Service (DANICS) on *ad hoc* basis. At the relevant point of time, he was posted as Value Added Tax Officer (VATO), Trade & Taxes Department, Government of NCT of Delhi. In May 2009, he was deployed as an Observer-cum-Coordinator for the recruitment examination conducted by the Delhi Subordinate Services Selection Board (DSSSB) for the posts of Warder and Matron. On 31.5.2009, at about 7.50 A.M., the examination material in sealed/packed condition meant for Examination Centre No.1, Government Sarvodaya Bal Vidyalaya, D-Block, Janakpuri, was handed over to the applicant for delivering the same to the Principal of the said school. Sh.Abhay Kumar Singh, LDC, Services Department, was deputed with him as Assistant Observer, and Sh.Brijesh Singh Rathore, Home Guard, was deputed with him for security. The applicant used his personal vehicle for delivering the examination material to the Examination Centre.

3.2 On 31.5.2009, Shri G.C.Lohani, Deputy Secretary (CC-II), DSSSB, lodged a complaint at Mayapuri Police Station that on 31.5.2009, at about 8.00 A.M., the examination material meant for the Examination Centre No.01 in G.S.B.V., D.Block, Janakpuri, was handed over to the applicant for delivering the same to the Principal of the said school. Sh.Abhay Kumar, LDC, Assistant Observer and Shri Brijesh Singh Rathore, Home Guard, were also deputed with him. Around 8.30 A.M. the DSSSB received a telephone call from Shri Abhay Kumar that the box containing Question Booklets was being tampered. On receipt of the message, the Secretary, DSSSB, directed him to visit the school and check whether there

was any tampering with the seal in the box and its contents. Simultaneously, the DSSSB directed the Principal of the school to check the seal before taking delivery of the examination material from the applicant and to report the matter to the DSSSB. Shri Virender Singh was assigned the work of Observer and he with the Assistant Observer was despatched to the school with a new set of Question Booklets. Shri Virendra Singh reached the school with new Box containing Question Booklets, and the examination process started. On his reaching the school, he and Sh.Manjeet Singh and Sh.M.K.Sharma, staff of the DSSSB, checked the seal in presence of the Principal and the Chief Invigilator. The seal was found tampered and the cloth bag of seal was loosely placed around the lock. The cloth bag which was detachable was removed and the lock was open and it was found that out of 15 packets of question booklets, one packet bearing No.21014-210144 was found open and paper seal of Question Booklet 210121,210122 & 210123 was broken.

3.3 On the basis of the said complaint of the Deputy Secretary (CC-II), DSSSB, FIR No.61 dated 31.5.2009 was registered for commission of offences under Sections 409 and 420 IPC, and the investigation ensued.

3.4 In contemplation of departmental proceedings, by order No.267, dated 17.6.2009, the Government of NCT of Delhi placed the applicant under suspension with immediate effect. By order dated 16.12.2010, the Government of NCT of Delhi revoked the suspension of the applicant with effect from 9.12.2010.

3.5 The applicant made a representation dated 17.6.2009 (Annexure A/6) before the S.H.O., Police Station Mayapuri, Delhi Police, in connection with FIR No.61/09 (ibid). The said representation dated 17.6.2009 is reproduced below:

17.06.2009

To
S.H.O.,
Police Station-Mayapuri,
Delhi Police.

Subject: Representation of Sh.Vivekanand Sharma.

Ref: Case FIR No.61/09 U/S 409/420 IPC Lodged in
P.S.Mayapuri, South West, New Delhi.

1. This representation of undersigned is being made in connection with the case FIR referred above.
2. I, Vivekanand Sharma, aged 43 years, hereby state that I had joined my service as Inspector (Sales Tax) in the year 1988 in Delhi Administration, Delhi. Since then, I have been performing my duty sincerely, honestly and to the complete satisfaction of my senior offices. There has been no complaint against me in my past career. In addition there have been no instances of any charge sheet or penalty issued to me. In 1996, I was promoted as Gazetted officer and entrusted with the duty of Superintendent Education. Thereafter in 2007, I was appointed as DNICS Officer/Senior Superintendent and given the charge of Juvenile Jail in Govt. of NCT. Subsequently during the same year I was elevated to the post of Sub Divisional Magistrate and am presently posted as Value Added Tax Officer (VATO) since last one year. I have always remained honest in my career and there have been no complaints or blame on me.
3. On 29.05.2009, I received a telephone call from Sh.R.N.Sharma, Assistant Director, Delhi Subordinate Selection Board Karkardooma Delhi at about 2.30 P.M. that I had been appointed/entrusted the duty of Observer cum coordinator to conduct the test for the post of Jail Warden and I was asked to report to the Board's Office at 6.30 A.M. on 31.05.2009. No written communication/Order were however given to undersigned. I was also advised to take my car with me for duty and accordingly hire a driver for the job. I was told that the DSSSB shall pay Rs.1000/- towards fuel expenses/driver charges etc. For this purpose, I requested Sh. Sanjay Rana who was a casual acquaintance and an employee of Delhi Fire service, Sector 5, Rohini Fire Station (Mobile Nos.9015594747

and 9268343386) to provide me a driver for 31.05.2009. On my request, Sh.Sanjay Rana agreed for the same and provided the driver to me.

4. On 30.05.2009 which was holiday, I went to attend the marriage of my nephew Sh.Vikash Sharma S/o Sh. Brij Kishor Sharma (My sister's son) at Muzaffar Nagar (UP) and I had given Bhat at my sister's residence at Shradhapuri, Meerut Cantonment at about 4 PM on the way. I started from Muzaffarnagar at about 12.30 A.M.to Delhi and reached Delhi early in the morning on 31.05.2009 at about 3 AM to attend the duty. I reported for duty in time at 6.30 AM at Karkardooma DSSB complex. At about 7.30 AM I was informed by duty clerk that I have been allotted the centre No.1 located at Govt. Boys Senior Secondary School, D block, Janakpuri and I was handed over a Tin Box wrapped in gunny bag containing examination material. Two officials i.e., one assistant observer named Mr.Abhay Kumar LDC and a home guard named Mr.B.S.Rathod were also provided to me by the board for assisting me in the execution of my duty. The labour provided by the board lifted the material and stuffed in the diggy of my car number UP 12L 7799. The diggy was locked by the driver in my presence. I sat in my car in the front seat with the driver. The assistant observer and the home guard sat on the rear seat and we started for centre at 8 AM after receiving directions from Board officials to all observers. While proceeding towards centre, I got nature's call and since my residence was on the way to my allotted duty place, I stopped to attend the call at my residence. I directed the assistant observer and the home guard to look after the exam material kept in the car till I came back. It was drizzling at that time. I along with driver went upstairs whereas Sh.Abhay Kumar along with wireless set and home guard remain seated in the car and I came back within 10 minutes after attending the nature's call. At this stage I found that the assistant Observer was missing with wireless set. On enquiry Home guard and driver told that he is nearby. Thereafter I directed home guard to look for him, but he could not be located for 5 minutes. The diggy of the car was still locked and there was no reason to have any doubts in my mind. Since the material had to reach the centre in time, we proceeded to the centre instead of wasting further time in searching for the Asst. Observer. Since the wireless set had been taken away by Sh.Abhay Kumar, no communication was possible with the control room.
5. Nevertheless, I reached the centre within designated time at 8.45 AM without Asst. Observer. The driver opened the diggy of the car and the staff of the centre took out the Tin Box

wrapped with gunny bag and handed over the same to the Principal. The Principal ordered his staff to open the gunny bag wrapped around the Tin Box containing the exam material. The staff took out box from the gunny bag and also broke cloth seal on the lock of the tin box. At this stage the principal got one phone call. The principal told me that the call was from Mr.R.N.Sharma, Assistant Director DSSB. He had directed the Principal not to distribute the exam papers to the candidates appearing in the exam. The Principal now asked his staff to keep the box containing question papers separately.

6. Soon after another team of Observer headed by Mr.Virender Singh came there along with another set of exam material. He told me that he had been appointed as Observer in my place by Sh.R.N.Sharma. On enquiry he also told me that the assistant observer Mr.Abhay Kumar had complained about tampering of seals of exam material. Thereafter a team of Officers of DSSB headed by Mr.G.C.Lohani Deputy Secretary also reached the centre and informed the same as Mr.Virender Singh had told earlier. At this stage Mr.G.C.Lohani asked me verbally to leave the centre which was shocking for me as I was performing the duty of observer for the first time. No written communication for change of observer as well as leaving the centre was given to me. All exam material was left by me at the centre. Regarding Rs.17000/- (Rs. Seventeen Thousand Only) given to me by the DSSB for the purpose of disbursement to the staff on exam duty, I was advised specifically by Mr.Lohani to deposit with the DSSB's office. By the time I was of definite view that Sh.Abhay Kumar LDC has played a foul play in the entire episode, with the active support and connivance of officials at DSSB because in the past also leakage/malpractices of question paper from DSSB is a routine. Even recently the exam scheduled for Firemen on 14.06.2009 has been cancelled for the same reasons.

Sir, a detailed investigation is necessary to find out as to whom are generally involved in the leakage of question papers in DSSB in past and present. I am again of definite view that it is a high level conspiracy of high officials of DSSB were involved in paper leakage of various examinations conducted by DSSB.

7. I left the centre as per directions by Dy.Secretary DSSB. Thereafter I tried to deposit Rs.17000 with authority letter through my cousin in the Board's Office. But after so many consultations among board officials and wait for more than two hours, the Board officials refused to accept this money and rather asked to deposit the same with Mayapuri police station verbally. I was forced to deposit/send amount of Rs.17000 to

DSSB through money order on dated 13.06.2009 (copy of receipt of money order enclosed). The report regarding this incident and deposit of money has already been submitted to my controlling officer, i.e., Dy.Commissioner Zone IX, Deptt. of trade and taxes through speed post.

8. In the evening of 31.5.09, two constables from Mayapuri police station came to my flat. At that time I had gone to the market. They informed me through phone of my neighbors that a case of leaking paper had been registered against me and asked me to report to SHO Mayapuri. I went to police station on very next day i.e. 1.6.2009 and reported to your good self. On enquiry, I narrated all the facts in presence of Home Guard Sh.B.S.Rathod, who was also with me on exam duty on 31.05.2009. I was made to stay in the police station till night and was asked to come again the next day. These directions apprehended me that the police want to involve me in the case for no fault of myself. I am a respected person in society and innocent.
9. To prove my innocence and for the cause of justice, I would like to inform following facts to you and very humbly request you to kindly look into the matter & investigate the same.

- a) I have performed the duty of observer for exam for the first time in my career with Delhi Administration and had neither prior experience nor intricate knowledge of its systems and procedures.
- b) Instructions regarding my duty as observer were advised to me on phone on 29.5.09 afternoon only and no written communication was made through my controlling officer.
- c) The centre for which duty was assigned to me, was informed to me in morning at around 7.30 AM of 31.5.09 only after I reported for duty at Board's office.
- d) The question papers with other exam materials were handed over in TIN Box wrapped with Gunny Bags to all the observers even though there is no provision of wrapping the Box in Gunny Bag in the instructions issued by Board for the observers. With GUNNY BAG PACKING, it was also not possible for observer to physically verify that the Box provided by Board is sealed or not. In fact the boxes were received by observers and accepted as sealed in good faith only without physical check.
- e) No sample seal was provided to the observers to check the seal at the exam centres.

The role of DSSB officials in violating the Board's instructions in packing of the Boxes raise doubts about their motive and need to be investigated.

- f) I started with my team at 8 AM from Karkardooma Court. In FIR it has been mentioned that around 8.30 AM telephone call was received in Board's office from Sh.Abhay Kumar LDC, who was deputed as assistant observer with the undersigned, alleging that the Box containing question papers was being tampered with.

While the distance of Gole Market from DSSB Karkardooma is about 15 KM, it is not possible to cover this distance within 30 minutes and also do tampering. In these circumstances, how Sh.Abhay Kumar made a call to board office at 8.30, is beyond comprehension of undersigned and can be best explained by him only. In fact, while I had gone in my flat for nature's call, his role in attempting tampering of the material and crying foul cannot be ruled out. It is submitted that the role of Sh.Abhay Kumar and his nexus with DSSB officials may kindly be investigated thoroughly especially regarding number of occasions he has performed the DSSB exam duty earlier.

- g) The instructions regarding my duty were advised by Sh.R.N.Sharma. The instructions regarding change of exam papers were also informed to Principal by the same official. The role of Sh.R.N.Sharma needs to be investigated.
- h) No written advice was given by Sh.Lohani to me to leave the centre. While the exam papers and Box were examined by Police, undersigned was not present and had already left the centre as per verbal instructions.
- i) DSSB has not given any advice to me till date for depositing Rs.17000/- which were handed over to me for distribution to staff at the centre No.1, D Block, Janakpuri. I tried to deposit the same with board on 4.6.09 on my own initiative, but it was not accepted and it was verbally advised that it should be deposited with Maya Puri Police Station. Since this Govt. money was lying with me and there was completely non-cooperation from Board officials, so I was forced to send this money through Money Order and the same was sent on 13.06.2009. (The copy of the receipts of the same are enclosed herewith).
- j) It has been learnt from the official website of the DSSB that the exam of Firemen scheduled on 14.06.2009 has also been cancelled. It is also requested that the role of the board officials may kindly be investigated as regards the Number of exams cancelled by Board previously due to malpractices.

- k) The examination was conducted all over Delhi at 67 centres and more than 20000 candidates had appeared in the examination. However to my knowledge, there is no evidence of any recovery of questions papers in full or in part from any source. DSSB had decided to cancel the entire examination without any investigation raising suspicion about the role of its officials. Only a thorough investigation about the role of DSSB officials can reveal the truth.
- l) It will not be out of place to mention it here that above said wireless set was provided for use to the undersigned as observer and in good faith while going upstairs to attend the nature's call I handed over the wireless set to Sh.Abhay Kumar. Kindly investigate the role of Sh.Abhay Kumar and officials of the board who are actually involved in attempting to tamper the seal and leakage of question papers.

Sir, I am innocent person. I want justice. The entire episode may please be investigated fairly and promptly so that real culprit can be traced and booked in accordance with law.

Sir, I am a witness of above incident and please do not make me the culprit/accused.

Encl: as above.

Thanking you,

Yours faithfully,

Sd/

Vivekanand Sharma

Copy to:

Commissioner of Police, Delhi Police, New Delhi for kind information and judicious action please.ö

3.6 After completion of investigation, the police submitted challan/charge sheet under Section 173 Cr.P.C. on 27.7.2012 against the applicant as accused for commission of offences under Sections 409, 420 and 120B IPC and against one Shri Sanjay Rana as co-accused for commission of offence under Section 120B IPC.

3.7 Memorandum dated 17.4.2014, along with the statement of article of charge, statement of imputation of misconduct, list of documents,

and list of witnesses, was served on the applicant, calling upon him to submit a written statement of his defence and also to state whether he desired to be heard in person.

3.7.1 There was only one Article I of charge, which is reproduced below:

That Sh.Vivekanand Sharma, ad hoc DANICS, while functioning as Observer-cum-Coordinator in the examination conducted by DSSSB for the post of Warder and Matron (Post Code No.13/08 and 14/08) on 31/5/2009, committed grave misconduct by illegally opening the envelope containing the question papers and tampering with the security seal.

By the aforesaid acts of omission and commission, the said Sh.Vivekanand Sharma, ad hoc DANICS, committed grave misconduct, exhibiting lack of integrity and devotion to duty, which is unbecoming of a government servant, thereby violating the provisions of Rule 3 of CCS (Conduct) Rules, 1964.

3.7.2 The statement of imputation of misconduct in support of the said article of charge framed against the applicant is reproduced below:

Examination for the post of Warder (post code No.013/08) in Delhi Prisons, Matron (post code No.014/08) in Delhi Prisons and some posts in Forensic Science Laboratory was scheduled to be conducted by DSSSB on 31/5/2009. Examination for the post of Warder and Matron was to be conducted at 62 Examination Centres (numbered from 1 to 62), and the examination for the posts of FSL was to be conducted on Examination Centre No.63.

As per the prevailing practice, officers of Delhi Govt. are deployed as Observers-cum-Coordinator for the examinations, conducted by DSSSB. On 31/5/2009, necessary examination material in sealed/packed condition was handed over to the Observers-cum-Coordinators of all the 63 Examination Centres. At 7:50 A.M., the examination material meant for examination Centre No.1, in Govt. Sarbodaya Bal Vidyalaya, D-Block,

Janak Puri was handed over to Sh.Vivekanand Sharma, VATO, Trade & Taxes Department, Observer-cum-Coordinator, for handing over the same to Principal, GSBV, D-Block, Janakpuri. Sh.Abhay Kumar Singh, LDC, Services Deptt. was deputed with him as Asstt. Observer and Sh.Brijesh Singh Rathore, Home Guard was deputed with them for security. Sh.Vivekanand Sharma, Observer-cum-Coordinator was having his personal vehicle (UP-12 L-7799) for delivery of examination material. The DSSSB normally provides a vehicle to the Observer-cum-Coordinator at the Board's office for delivery of examination material at examination centre but the Observer-cum-Coordinator can arrange its own vehicle also, for which he is reimbursed the expenditure on this account.

At 8.38 A.M., the examination branch of DSSSB received a telephone call from Sh.Abhay Kumar Singh, LDC who was deputed as Asstt. Observer. Sh. Singh informed that on the way, Sh.Vivekanand Sharma halted at his residence at Kallibari Mandir Marg, N.Delhi on the pretext of easing himself at his residence and invited the Asstt. Observer Sh.Abhay Kumar Singh and the Home Guard for a cup of tea upstairs at his residence. After reaching his residence, Sh.Abhay Kumar Singh noticed that there were some 6-7 young persons looking like students, and some of them started coming out when he went upstairs. Sh.Abhay Kumar found something amiss and he immediately went down to see the safety of question papers. After coming down, he noticed that the question paper box seal was opened by the driver and some other people. They advised him to keep mum and offered him bribe also. Seeing this, he immediately slipped away from the site along with the wireless set No.921HYL2196 which was provided by the Board and was in his possession.

He got in touch with the Board officials and narrated the whole incident and he was advised to come to the Board. He claimed that he ran away from the spot without any delay since the suspicious fellow standing there started chasing him.

After consulting the Secretary, DSSSB and Advisor, another set of papers in sealed box and OMR sheets in packed condition and cash of Rs.17,000/- (Rupees seventeen thousand) were sent to Examination Centre No.1 at GSBV, D-Block, Janakpuri, with the reserved staff, Sh.Virender Kumar,

Observer, VATO, Trade & Tax, along with Sh.Pankaj Narang, UDC(Social Welfare Deptt.), Asstt. Observer, through the vehicle, provided by DSSSB.

In addition to above, a team from the Board, headed by Sh.G.C.Lohani, Dy.Secretary, CC-II, accompanied by Sh.M.K.Sharma, Gr.II (DASS) and Sh.Manjeet Singh, UDC were deputed to Centre No.1 to look into the matter. At the centre, the Principal's statement about receipt of examination material from Sh.Vivekanand Sharma and his findings about the material, was obtained. It was revealed that the seal of Board as put on small cloth bag over the lock on the trunk had been tampered to make the seal detachable from the lock.

Sh.Lohani, Dy.Secretary, CC-II had made a complaint in Mayapuri Police Station for lodging an FIR in the matter, and the Mayapuri Police Station lodged an FIR No.61 dated 31/5/2009 u/s 409/420 IPC.

As per the report of Sh.Lohani, police seized the trunk containing 15 packets of question papers, out of which one packed No.6 had been tampered with and three question booklet bearing No.210121, 210122 and 210123 were tampered, and the red paper seal had also been found broken.

The report of the Principal/Centre Superintendent revealed as under-

öMr.Vivekanand Sharma, VATO, Observer came to the Centre at 9.27 A.M. to hand over the exam. Material. Then we saw that ö

- 1) Jute packing over the box was not intact.
- 2) Green waterproof bag was not on the steel box.
- 3) Stitches of the seal, encircling the lock (the cloth bag containing the seal are not seen/intact).
- 4) Receipt of the material was not taken instead the material was dropped in my office.ö

The Principal further informed that Sh.Vivekanand Sharma did not properly hand over the examination material i.e. question box and just dumped it and did not return back to the school premises. The Principal further reported that the examination was conducted with the help of another question papers sent by an alternative box (reserve set) which was carried by Sh.Virendeer Kumar, replacement Observer.

After conducting investigation in the case, the police filed final form report/challan (u/s 173 CrPC) against the said Sh.Vivekanand Sharma in the court.

By the aforesaid acts of omission and commission, the said Sh.Vivekanand Sharma, ad hoc DANICS, committed grave misconduct, exhibiting lack of integrity and devotion to duty, which is unbecoming of a government servant, thereby violating the provisions of Rule 3 of CCS(Conduct) Rules, 1964.

3.8 In the criminal case, the learned trial court framed charge on 19.4.2014 against the applicant for commission of offence under Section 409 I.P.C. The charge is reproduced below:

øFIR No.61/09
PS M.Puri
19.04.2014

CHARGE

I, Pankaj Arora, MM (West)-01, do hereby charge you Viveka Nand Sharma S/o late Sh.Chander Mohan Sharma as under:-

That on 31.05.2009, being appointed as observer by DSSSB, you have been entrusted with the examination material for the examination of Warden (Central Jail) and you have dishonestly used the said material by tampering with it and thereby you have committed the offence punishable U/s 409 IPC and within the cognizance of this Court.

MM(WEST)-01

The charge is read over and explained to the accused person. He is questioned as under:-

Q- Do you plead guilty or claim trial?

A- I do not plead guilty and claim trial.

(Pankaj Arora)

MM-01(West)/Delhi

19.04.2014

3.9 Hence, the applicant has approached this Tribunal by filing the present O.A. on 8.5.2014.

3.10 The Tribunal, by order dated 22.5.2014, issued notices to the respondents. No interim order has been passed by the Tribunal staying the departmental proceedings.

4. In the above context, it was submitted by Shri P.C.Mishra, the learned counsel appearing for the applicant that the departmental proceedings and the criminal case are based on identical and similar set of facts, and that the charge in the criminal case against the applicant is of a grave nature which involves complicated questions of law and fact. Therefore, the departmental proceedings should be stayed till the conclusion of the criminal case, otherwise the defence of the applicant in the criminal case would be prejudiced.

4.1 During the course of hearing, we were informed by Shri P.C.Mishra, the learned counsel appearing for the applicant, that four prosecution witnesses have been examined, cross-examined and discharged by the learned trial court.

5. *Per contra*, Shri Vijay Pandita, the learned counsel appearing for the respondents, submitted that there is no legal bar to the conduct of the disciplinary proceedings and a criminal trial simultaneously. The purpose of departmental enquiry is distinctly different from that of the criminal prosecution. 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 commission 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. The nature of evidence in criminal trial is entirely different from that of the departmental proceedings. In the former, prosecution is to prove its case beyond reasonable doubt on the touchstone of human conduct. The standard of proof in the departmental proceedings is not the same as of the criminal trial. In the departmental proceedings, it has to be enquired into and found out as to whether or not the applicant, while functioning as Observer-cum-Coordinator in the examination conducted by the DSSSB for the post of Warder and Matron on 31.5.2009, has committed grave misconduct, exhibiting lack of integrity and devotion to duty, by illegally opening the envelope containing the question papers and tampering with the security seal, and has thereby violated the provisions of Rule 3 of the CCS (Conduct) Rules, 1964, which has nothing to do with the culpability of the offences punishable under Sections 409, 420 and 120B of the Indian Penal Code with which the applicant was charged in the criminal case.

5.1 It was also submitted by Shri Vijay Pandita that since four important prosecution witnesses have already been examined during trial in the criminal case, the applicant has almost disclosed his defence while cross-examining those prosecution witnesses. Therefore, the applicant's plea of serious prejudice being caused to his defence in the criminal case in the

event of the departmental proceedings going on and reaching its logical conclusion is untenable.

5.2 It was also submitted by Shri Vijay Pandita that the charge in the criminal case, though appear to be of grave nature, does not involve complicated questions of fact and law. Therefore, as per the law settled by the Honøble Supreme Court, the departmental proceedings should not be stayed till conclusion of the criminal case.

6. After having given our thoughtful consideration to the facts and circumstances of the case and the rival contentions, we have found no substance in the contentions of the applicant.

7. In **Depot Manager, Andhra Pradesh State Road Transport Corporation vs. Mohd. Yousuf Miyan, (1997) 2 SCC 699**, the Honøble Supreme Court declared that the purpose underlying departmental proceedings is distinctly different from the purpose behind prosecution of offenders for commission of offences by them. While criminal prosecution for an offence is launched for violation of a duty that the offender owes to the society, departmental enquiry is aimed at maintaining discipline and efficiency in service. The difference in the standard of proof and the application of the rules of evidence to one and inapplicability to the other was also explained and highlighted only to explain that conceptually the two operate in different spheres and are intended to serve distinctly different purposes.

8. In **State of Rajasthan v. B.K.Meena**, 1996(6) SCC 417, the Honøble Supreme Court reiterated that there was no legal bar for both proceedings to go on simultaneously unless there is a likelihood of the employee suffering prejudice in the criminal trial. What is significant is that the likelihood of prejudice itself is hedged by providing that not only should the charge be grave, but even the case must involve complicated questions of law and fact. Stay of proceedings at any rate cannot and should not be a matter of course. The following passage is in this regard apposite:

14. í ..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, 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 questions as constitution a valid ground for staying the disciplinary proceedings is that òthe defence of the employee in the criminal case may not be prejudicedö. This ground has, however, been hedged in by providing further that this may be done in cases of grave nature involving questions 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 ó and should not be ó 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 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 interests of administration demand that undesirable elements are thrown out and any charge of misdemeanor 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 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 misdemeanor should be continued in office indefinitely, i.e., for long periods awaiting the result of criminal proceedings. While it is not possible to enumerate the various factors, for and against the stay of disciplinary proceedings, we found it necessary to emphasize 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.

15. We are quite aware of the fact that not all the disciplinary proceedings are based upon true charges; some of them may be unfounded. It may also be that in some cases, charges are levelled with oblique motives. But these possibilities do not detract from the desirability of early conclusion of these proceedings. Indeed, in such cases, it is all the more in the interest of the charged officer that the proceedings are expeditiously concluded. Delay in such cases really works against him.

(Emphasis supplied)

9. In **Capt. M Paul Anthony v. Bharat Gold Mines Ltd**, (1999)

3 SCC 679, the Honøble Supreme Court reviewed the case-law on the subject to identify the following broad principles for application in the facts and circumstances of a given case:

õ(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 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 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 honor may be vindicated and in case he is found guilty, administration may get rid of him at the earliest.ö

10. In **HPCL v. Sarvesh Berry**, (2005) 10 SCC 471, the respondent was charged with possessing assets disproportionate to his known sources of income. The question was whether disciplinary proceedings should remain stayed pending a criminal charge being examined by the competent criminal Court. Allowing the appeal of the employer-corporation, the Honøble Supreme Court held thus:

õA 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 a grave nature involving complicated questions of fact and law .. Under these circumstances, what is required to be seen is whether the departmental enquiry would seriously prejudice the delinquent in his defense 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.ö

(Emphasis supplied)

11. The directive of the Central Vigilance Commission that pending a criminal investigation, departmental proceedings are to be held in abeyance, stands superseded by the decision of the Honøble Supreme Court in **Ajay Kumar Choudhary Vs. Union of India through its Secretary & another**, JT 2015(2) SC 487.

12. The principle of law is, thus, well settled that disciplinary proceedings and proceedings in a criminal case can proceed simultaneously in the absence of any legal bar to such simultaneity. It is also evident that while seriousness of the charge levelled against the employee is a consideration, the same is not by itself sufficient unless the case also involves complicated questions of law and fact. Even when the charge is found to be serious and complicated questions of fact and law arise for consideration, the Court/Tribunal will have to keep in mind the fact that departmental proceedings cannot be suspended indefinitely or delayed unduly. In **Capt. M Paul Anthony v. Bharat Gold Mines Ltd** (supra), the Honøble Supreme Court went a step further to hold that departmental

proceedings can be resumed and proceeded even when they may have been stayed earlier in cases where the criminal trial does not make any headway. To the same effect is the decision of the Honøble Supreme Court in **State of Rajasthan v. B.K.Meena (supra)**. Suffice it to say that while there is no legal bar to the holding of the disciplinary proceedings and the criminal trial simultaneously, stay of disciplinary proceedings may be an advisable course in cases where the criminal charge against the employee is grave and continuance of the disciplinary proceedings is likely to prejudice their defense before the criminal Court. Gravity of the charge is, however, not by itself enough to determine the question unless the charge involves complicated question of law and fact. The Court/Tribunal examining the question must also keep in mind that criminal trials get prolonged indefinitely especially where the number of accused arraigned for trial is large and so are the number of witnesses cited by the prosecution. The Court/Tribunal, therefore, has to draw a balance between the need for a fair trial to the accused on the one hand and the competing demand for an expeditious conclusion of the on-going disciplinary proceedings on the other. An early conclusion of the disciplinary proceedings is itself in the interest of the delinquent-employee.

13. The charge framed by the learned trial court in the criminal case against the applicant is under Section 409 I.P.C. This is not an ordinary offence, the punishment for which may extend up to imprisonment for life besides fine. At the same time, seriousness of the charge alone is not the test.

What is also required to be demonstrated by the applicant is that the case involves complicated questions of fact and law. That requirement does not appear to be satisfied in an adequate measure to call for an unconditional and complete stay of the disciplinary proceedings pending conclusion of the trial. The incident as reported in the first information report, challan/charge sheet, etc., does not suggest any complication or complexity either on facts or law. This apart, the challan/charge sheet, it is evident from the record, was filed by the police on 27.7.2012. The charge for offence under Section 409 IPC was framed by the learned trial court only on 29.4.2014. The learned trial court has ever since then examined only four witnesses out of a total of 18 witnesses cited in the charge-sheet. The applicant has already disclosed his defence while cross-examining those four prosecution witnesses. Therefore, we are not inclined to accept the applicant's plea of serious prejudice being caused to his defence in the criminal case in the event of the departmental enquiry going on to reach its logical conclusion. Going by the pace at which the learned trial court is examining the witnesses, conclusion of the trial in the criminal case would take some more years. The disciplinary proceedings cannot remain stayed for an indefinitely long period. Such inordinate delay is neither in the interest of the applicant nor the respondent.

14. After having considered the facts and circumstances of the case as well as the rival contentions in the light of the principles of law laid down by the Honøble Supreme Court in the cases cited supra, we have found no

reason to stay the departmental proceedings till the conclusion of the criminal case. Thus, the OA, being devoid of merit, is dismissed. No costs.

(RAJ VIR SHARMA)
JUDICIAL MEMBER

(SHEKHAR AGARWAL)
ADMINISTRATIVE MEMBER

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