

**Central Administrative Tribunal  
Principal Bench, New Delhi**

O.A.No.4537/2017

Thursday, this the 21<sup>st</sup> day of December 2017

**Hon'ble Mr. Justice Permod Kohli, Chairman  
Hon'ble Mr. K.N. Shrivastava, Member (A)**

Shri Naresh Agarwal, 61 years  
Lib. Inf. Officer  
s/o late Shri J S Agarwal  
r/o A-252, Sector 19  
NOIDA – 201 301

(Mr. Bharat Bhushan, Advocate)

..Applicant

Versus

1. Director General  
Indian Council of Medical Research (ICMR)  
Ansari Nagar, New Delhi – 110 029
2. The Secretary  
Union of India  
Department of Health & Family Welfare,  
Nirman Bhawan, New Delhi
3. The Director  
National Institute of Medical Statistics (NIMS)  
c/o Indian Council of Medical Research  
Ansari Nagar, New Delhi – 110 029

..Respondents

**O R D E R (ORAL)**

**Mr. K.N. Shrivastava:**

Through the medium of this O.A. filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the following main reliefs:-

“Direct the Respondent to stay the departmental proceedings pending investigation of the criminal complaint vide FIR 970/2015, P.S. Hauz Khas, New Delhi;

Declare that the departmental proceedings are not complete and therefore non east;”

2. The factual matrix of the case, as noticed from the records, is as under:-

2.1 The applicant was working as Assistant Librarian in National Institute of Medical Statistics (NIMS) – respondent No.2, which is an Institute of Indian Council of Medical Research (ICMR) – respondent No.1. He was placed under suspension vide order dated 04.06.2015 of Senior Deputy Director General (Administration) and Chief Vigilance Officer for an alleged shortage of books in the library whose estimated value was ₹4,38,591/- then.

2.2 Respondent No.3 also wrote Annexure A-2 letter dated 19.05.2015 to the Station House Officer (SHO), Police Station, Hauz Khas, New Delhi for registration of an FIR against the applicant. In the said letter, it is stated that an internal inquiry was conducted in which the applicant was not able to produce the requisite journals / books and many of them were found missing. It is alleged therein that the applicant has indulged in the acts of misappropriation and fraud in regard to purchase of books and journals and payment therefor. The Police registered an FIR No.970/2015 on 05.09.2015 (Annexure A-3) in this regard.

2.3 Parallelly, disciplinary proceedings were also set in motion by issuing charge memo dated 27.11.2017 for imposition of major penalty under Rule 14 of CCS (CCA) Rules, 1965. The applicant superannuated on 28.02.2017. He had requested the respondents to stay the departmental inquiry

proceedings pending investigation of the criminal complaint, vis-à-vis, FIR No.970/2015.

As the said request of the applicant has not been given due consideration by the respondents, he has filed the instant O.A. praying for the reliefs as indicated in paragraph (1) above.

3. In support of the reliefs claimed, the applicant has pleaded the following grounds:-

3.1 The substantive materials of both the departmental and criminal proceedings are the same. Hence, if the departmental inquiry proceedings are allowed to continue, the case of the applicant in the criminal proceedings will get prejudiced.

3.2 The applicant has retired from service, hence no prejudice is going to be caused to the respondents if the departmental inquiry proceedings are kept in abeyance till the conclusion of the investigation in the criminal matter. This would also be in the interest of principle of natural justice.

4. It is seen from the records that the applicant had approached the Hon'ble High Court of Delhi in Crl.M.C. No.3354/2016 seeking quashment of FIR No.970/2015 dated 05.09.2015 and for grant of stay against the criminal proceedings, vis-à-vis, *ibid* FIR. The plea taken by the applicant therein was that he has been subjected to departmental inquiry proceedings also on the same facts and hence no useful purpose would be served in continuing with the criminal investigation in the FIR. The Hon'ble High Court of Delhi noted that the FIR relates to investigation into the

misappropriation of funds allotted for the library purposes. The High Court dismissed the above mentioned Crl. M.C. No.3354/2016 with the following observations:

“4. The above noted FIR relates to investigation into the misappropriation of the funds allotted for the library purposes at National Institute of Medical Statistics and without any proper investigation there into at this stage merely because departmental inquiry is pending against the petitioner, the investigation in the above noted FIR cannot be stayed.”

5. The case was considered at the admission stage on 21.12.2017. Mr. Bharat Bhushan, learned counsel for applicant, besides reiterating averments made in the O.A., also placed reliance on the judgment of the Hon’ble High Court of Calcutta in the case of **Jayati Banerjee v. United Bank of India**, 2004 (4) CHN 376 wherein, placing reliance on the judgments of Hon’ble Supreme Court in **Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. & another**, (1999) 3 SCC 69 and **The Delhi Cloth and General Mills Ltd. v. Kushal Bhan**, AIR 1960 SC 806, the departmental inquiry against the petitioner therein was stayed during the pendency of criminal proceedings. Paragraph 11 of the said judgment reads as under:

“11. As pointed by Mr. Bandopadhyay, a safeguard has been provided by the Hon’ble Supreme Court in the decision cited by him. In the event the investigation in the criminal proceeding or the criminal proceeding itself is delayed for some reasons or the other, it will always be open to the authorities of the bank, as indicated hereinabove, to apply to have the order of stay vacated so that the departmental proceeding can be proceeded with, In such circumstances and considering the line of decisions rendered by the Hon’ble Supreme Court right from the decision in the case of Delhi Cloth and General Mills Ltd. vs. Kushal Bhan, , we are of the view that the departmental proceedings should for the present be stayed while the investigation in the criminal case is pending. Such stay, however, will not prevent the investigating agency in the criminal complaint

from proceeding with the investigation and/or filing the chargesheet, if thought fit on the materials collected. The departmental enquiry is accordingly stayed during the pendency of the criminal proceeding with liberty to the bank to mention the matter in terms of subparagraph (v) of paragraph 22 of the decision in Capt. M. Paul Anthony's case for vacation of such stay should it become necessary to do so in case of delay in the criminal proceeding. The order of the learned Single Judge impugned in the appeal is set aside. Since nothing further remains in the appeal, the same is also treated as on day's list and is disposed of in terms of this order, but we make it clear that in the event it becomes necessary to do so, the bank and its authority will be at liberty to apply before this Court for variation and/or vacating the order of stay herein granted."

6. We have considered the arguments of learned counsel for applicant and have also perused the pleadings in the O.A.
7. The law has been settled by the Hon'ble Apex Court in its judgment in **Capt. M. Paul Anthony's** case (supra) that criminal and departmental proceedings against a government servant can be started simultaneously. The Court has observed therein that in case of criminal proceedings, the charge against the delinquent government servant has to be proved beyond any reasonable doubt, whereas in the case of departmental proceedings preponderance of evidence in relation to the articles of charge would be sufficient to prove the charge. The Hon'ble Apex Court in the case of **Kendriya Vidyalaya Sangathan & others v. T Srinivas**, 2004 (2) SC SLJ 201 has further clarified the ratio of law on this issue as under:-

"We think the above ratio of law laid down by this Court applies aptly to the facts of the present case also. It is also to be noted that in Capt. M. Paul Anthony case (supra), this court has accepted the principle laid down in Rajasthan case (supra) As stated above, in the case in hand, both the tribunal and the High Court proceeded as if a departmental enquiry and a criminal trial could not proceed simultaneously, hence, they stayed the departmental enquiry which by itself, in our opinion, is contrary to the principles laid down in the above cited cases. We are of the opinion that both the tribunal and the High Court proceeded on an erroneous legal principle without taking

into consideration the facts and circumstances of this case and proceeded as if the stay of disciplinary proceedings is a must in every case where there is a criminal trial on the very same charges, in this background it is not necessary for us to go into second question whether atleast charge No.3 by itself could have been permitted to be decided in the departmental enquiry as contended alternatively by the learned counsel for the appellant. For the reasons stated above, this appeal succeeds. The impugned order of the tribunal and the High Court are set aside. The appeal is allowed.”

8. In the instant case, we find that the charge against the applicant is with regard to an alleged generation of forged invoices and encashment of cheques of NIMS against such bills. Such misdemeanor on the part of the applicant is stated to have caused a loss of over ₹4 lakhs to the library of NIMS. Applicant's plea before the Hon'ble High Court of Delhi for stay of the criminal proceedings during the pendency of the departmental proceedings, has already been rejected by the Court.

9. Given the facts of this case, we are of the view that both the departmental and criminal proceedings can continue against the applicant simultaneously. Hence, we do not find any merit in this O.A. It is accordingly dismissed in *limine*.

**( K.N. Shrivastava )**  
**Member (A)**

**( Justice Permod Kohli )**  
**Chairman**

**December 21, 2017**  
/sunil/