

Central Administrative Tribunal Principal Bench

OA No.2412/2014

New Delhi, this the 14th day of November, 2018

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Pradeep Kumar, Member (A)**

Subhash Chandra Singh, Aged about 47 years
S/o Shri Inderjeet Singh
The then Additional Chief Engineer (Electrical)
Bharat Sanchar Nigam Limited (BSNL)
Jodhpur, Rajasthan.

Presently posted as Additional General Manager (BS-Electrical)
ALTTC, Ghaziabad
Uttar Pradesh-201002.
R/o Type-V/16, Yamuna Block
ALTTC, Ghaziabad,
Uttar Pradesh-201002. ...Applicant

(By Advocate: Shri K.K. Srivastava)

Versus

1. Chairman-cum-Managing Director
Bharat Sanchar Nigam Limited(BSNL)
Govt. of India Enterprises
H.C. Mathur Lane
Janpath, New Delhi-110001.
2. Shri M.A. Khan, Inquiry Officer &
Chief Engineer(Civil)
Bharat Sanchar Nigam Limited(BSNL)
Govt. of India Enterprises
Rajasthan Civil Zone, 2nd Floor
Administrative Building
Jhalana Doongri
Jaipur-302004.Respondents

(By Advocate: Ms. Sapna Sinha)

ORDER (ORAL)**Justice L. Narasimha Reddy:-**

The applicant is working as Superintending Engineer in the BSNL. He was arrested on 05.05.2012, on the ground that he demanded a sum of Rs.40,000/- towards bribe for clearing three bills to a contractor. He was released on 26.06.2012. He is being tried for the offences in the court of Special Judge, CBI, Jaipur for the offences punishable under Section 120B IPC, Section 7 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988.

2. The department initiated disciplinary proceedings against the applicant by issuing a charge sheet dated 30.09.2013. This OA is filed challenging the memorandum of charge dated 03.09.2013. The applicant contends that he cannot be subjected to two separate proceedings simultaneously on the same set of allegations. It is pleaded that both the proceedings are based on the same set of allegations and even the list of witnesses and list of documents are similar in both the proceedings.

3. The respondents filed a counter affidavit opposing the OA. According to them, there is no bar in law for proceeding with the charge memorandum and the parameters for determination of the proceedings in the criminal case on the one hand and departmental proceedings on the other hand are substantially different. Reliance is placed upon the judgments of the Supreme Court in **Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. and Anr.** (1999) 3 SCC 679 and **State (NCT of Delhi) v. Ajay Kumar Tyagi** (2012) 9 SCC 685.

4. We heard Shri K.K. Srivastava, learned counsel for the applicant and Ms. Sapna Sinha, learned counsel for the respondents.

5. An FIR was registered against the applicant on receipt of a complaint alleging that the applicant is demanding bribe. The applicant was arrested and thereafter released. On the spot the department initiated departmental proceedings under the relevant service rules.

6. The law in this regard is fairly well settled. There is no bar against the initiation and continuation of

departmental proceedings simply because the employee is facing a criminal case in respect of the same allegations. However, if both the proceedings are based on the same set of allegations and the material relied upon by the prosecution in the criminal case on the one hand and department on the other hand are almost similar, the law requires that the departmental proceedings be kept pending so that the employee is not compelled to reveal his defence in the departmental proceedings. In such a case, there is every likelihood of his suffering prejudice in the criminal case. This, however, is subject to another rider that if the criminal proceedings are pending for an unduly long time, the department can resume its proceedings. The same can be discerned from the judgment of the Hon'ble Supreme Court in **M. Paul Anthony's** case, where it was held 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 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 honour may be vindicated and in case he is found guilty, administration may get rid of him at the earliest."

7. It is not in dispute that both the proceedings in the instant case are based on the same set of allegations and even the witnesses that are cited in the proceedings are almost similar. Obviously, for this

reason, the Tribunal passed an interim order way back on 04.08.2014 by referring to the judgment of Supreme Court in M. Paul Anthony's case. Four years have elapsed since then. It is brought to our notice that the trial in the criminal case has commenced and about six witnesses have been examined.

8. In this scenario, we dispose of the OA directing that:

- (a) the disciplinary proceedings shall be kept pending till march 2019;
- (b) whether or not the criminal case is disposed of by that time, it shall be open to the respondents to proceed with the departmental inquiry.

9. There shall be no order as to costs.

(Pradeep Kumar) (Justice L. Narasimha Reddy)
Member(A) Chairman

/v b/