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**CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH**

Original Application No.180/00243/2018

Wednesday, this the 26th day of September, 2018

C O R A M :

**HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER
HON'BLE Mr.ASHISH KALIA, JUDICIAL MEMBER**

P.K.Devaraj, S/o.late V.Hariharan,
Accounts Assistant,
O/o.Sr. Divisional Finance Manager,
Southern Railway, Palghat Division.
Residing at Gurukripa, Santhinagar,
N.S.S.Engineering College P.O., Palghat.Applicant

(By Advocate – M/s.Varkey & Martin)

V e r s u s

1. Union of India represented by the General Manager,
Southern Railway, Park Town, Chennai – 600 003.
2. The Divisional Railway Manager,
Southern Railway, Palghat Division,
Palghat – 678 002.
3. Senior Divisional Finance Manager,
Southern Railway, Palghat Division,
Palghat – 678 002.Respondents

(By Advocate – Mrs.Girija K Gopal)

This applications having been heard on 12th September 2018, the
Tribunal on 26th September 2018 delivered the following :

O R D E R

Per : Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER

The O.A is filed by Shri.P.K.Devaraj, Accounts Assistant aggrieved
by the action of the 3rd respondent vide Annexure A-4 Memorandum to
initiate and continue with departmental inquiry proceedings against him in

relation to his involvement in a chit fund business from November, 2013 onwards wherein he failed to refund the chit amount to the members and also for having joined as a member of the chit fund without obtaining permission and in contravention of Railway Service Conduct Rules 1966.

The same issue is the subject matter of a case at the Hemambika Nagar Police, Palghat wherein Crime 802 of 2015 has been registered and transferred to CBCID, Kottayam. The reliefs sought by the applicant reads as follow :

1. Call for the records leading to the issue of Annexure A-4 and quash the same.
2. Direct the respondents not to proceed with the departmental enquiry proposed to be conducted in pursuant to Annexure A-4 charge memo till the final outcome of the criminal proceedings.
3. Award costs of and incidental to this application.
4. Pass such other orders or directions as deemed fit.

2. The brief facts of the case is that the applicant was initially appointed in Railways as a Peon in the year 1981 and was working as Accounts Assistant. Based on a complaint by a Railway employee, the applicant was arrested on 27.12.2015 by the Hemambika Nagar Police in a crime registered under Section 420, 34 of IPC and Section 76 of Chit Funds Act, 1982. He was the second accused in the said case. On being arrested he was suspended from service by the 3rd respondent. Vide Annexure A-2 the said authority ordered that since the matter is pending with the Court, action will be initiated based on the outcome of the case. It is submitted that the matter was transferred to CB CID, Kottayam for

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investigation and filing the charge sheet since the matter involves relates to Section 76 of Chit Funds Act and defrauding the public. The matter rests there.

3. The statement of Articles of Charges framed against the applicant reads as under :

Shri.P.K.Devaraj, (PF No.02589199) while working as Accounts Assistant, in Sr.DFM/O/PGT had committed grave misconduct, in that :

He had collected the monthly chit amount from April 2013 to November 2015 from members (contravening Rule No.15.1(a) of the Railway Services (Conduct) Rules, 1966 for the chit fund business at Palghat and failed to return the chit amount to the members from December 2015 onwards.

He has joined the Chit fund without obtaining the permission required under the Conduct Rules as per the Railway Ministry's Decision 8 under Rule No.18 of Railway Services Conduct Rules, 1966.

Thus, Sri.P.K.Devaraj by the aforesaid acts, had failed to maintain absolute integrity and acted in a manner unbecoming of a Railway servant, contravening the provisions of Article 3(1)(i), (iii) & Rule 15.1(a) & Railway Ministry's Decision 8 under Rule No.18 of the Railway Services Conduct Rules, 1966.

4. Applicant submits that he was shocked to receive the Memorandum and was disturbed by the charges leveled against him. He denies the same and requested the 3rd respondent to drop the proceedings. It is stated that without seeking the opinion of the Legal Advisor of the Railways the issuance of Annexure A-4 was not in accordance with the statutory rules and therefore the same is unsustainable and invalid. The applicant relies on Rule 705 of Indian Railway Establishment Code (Vol.I) which reads thus :

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705. The fact that a case is under police or judicial investigation shall not preclude a railway administration from making departmental inquiries with the object of either modifying the procedure which has given rise to the fraud or taking any disciplinary action, provided that such departmental inquiries do not hinder or prejudice any police or judicial investigation in progress. **Before instituting departmental inquiries the Legal Adviser of the railway concerned shall invariably be consulted.**

(emphasis supplied)

5. As grounds the applicant submits that though departmental proceedings and criminal proceedings can proceed simultaneously, if they are based on identical and similar set of facts and the charges in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of fact it would be desirable to stay the departmental proceedings till the conclusion of the criminal case [**Cyrill D'Souza v Vijaya Bank & Ors. reported in 2000 (4) LLN 1083**]. The applicant also submits that the alleged act has nothing to do with the official duties. He therefore prays for quashing Annexure A-4 memo of charges.

6. Per contra the respondents in their reply statement submitted that under Rule 5(1)(c) of Railway Servants (D&A) Rules, 1968 a Railway servant may be placed under suspension, were a case against him in respect of any criminal offence is under investigation, inquiry or trial. Further as per Rule 5(2)(a) a Railway servant shall be deemed to have been placed under suspension by an order of the competent authority with effect from the date of his detention if he is detained in custody, whether on criminal charge or otherwise for a period of 48 hours. Accordingly, the applicant was placed under suspension with effect from 27.12.2015 forenoon and the suspension was subsequently revoked on 25.2.2016

forenoon. Vide Annexure R-2 the applicant admitted that he was collecting chit amount monthly from the subscribers assisting the first accused in the fraud in which he was also a subscriber and that he has not obtained permission from the Railway Administration for joining the above chit fund. It is submitted that the innocence of the applicant in the case has not yet been proved and the onus of proving innocence in the criminal case rests with him.

7. The Disciplinary Authority has received many complaints regarding the involvement of the applicant in the said crime. The applicant in connivance with the first accused swindled the money from his colleagues and is thus jointly and severally responsible for the crime. Respondents further submitted that there need be no connection between criminal proceedings and departmental proceedings. The disciplinary proceeding is for misconduct and violation of Conduct Rules and the criminal case is for the offences relating to a chit fund fraud. Criminal proceeding and Departmental inquiry are not substantially one and the same and they are independent of each other. Departmental inquiry is conducted independently of the criminal proceeding and the outcome of the departmental inquiry will in no way affect the judicial proceeding. Respondents submitted that the departmental proceedings are in the process of finalization and if aggrieved the applicant can seek review of the order of the Disciplinary Authority if any penalty is imposed.

8. Heard Shri.Martin G Thottan, learned counsel for the applicant and Smt.Girija K Gopal, learned standing counsel for the Railway. All pleadings, oral and documentary, were perused.

9. Shri.Martin G Thottan, learned counsel for the applicant argued that the question whether departmental action may be instituted when criminal proceedings are pending has been gone into in the judgment of the Hon'ble High Court in **Cyrill D'Souza v Vijaya Bank & Ors. reported in 2000 (4) LLN 1083** wherein it has been ruled :

“15. The law in relation to continuance of parallel proceedings has been explained by the Hon'ble Supreme Court in various cases, starting from Kushal Bhan case [AIR 1960 SC 806] to the case of Depot Manager, Andhra Pradesh State Road Transport Corporation v. Mohd. Yusuf [1997 (2) LLN 19], wherein the principles laid down in the earlier cases were reiterated, namely, that departmental enquiry is to be stayed only if it causes serious prejudice to the employee in his defence in the criminal trial.

16. The said principle was crystallised in Capt. M.Paul Anthony case [1999 (2) LLN 640] whereon consideration of the earlier pronouncements in the various cases, the Hon'ble Supreme Court came to the following conclusions, in Para 22, at pages 647 and 648 :

(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

(emphasis supplied)

(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 chargesheet.”

10. He further argued that the applicant will be put to disadvantage as defence arguments that he will be called up to submit in the departmental proceeding will reveal the line of defence that he is taking in the criminal proceedings. This would hamper his defence in the criminal proceedings.

11. Smt.Girija K Gopal, learned counsel for the respondents, on the other hand, argued that the applicant had indulged in criminal misconduct under the veneer of being a railway employee and cheated several persons including his colleagues. He had taken no permission from the respondents for indulging in this business. She called to her assistance the judgment of the Hon'ble Supreme Court in **Noida Entrepreneurs Association v. Noida & Ors. reported in 2007 (10) SCC 385** which had the following observations :

“12. The purpose of departmental enquiry and of prosecution is 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 (in short the '[Evidence Act](#)'). 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 department 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.”

12. In the said judgment it is emphatically stated that the disciplinary proceedings for misconduct can proceed even if an employee is acquitted in a criminal proceeding. Learned counsel for the respondents also cited the judgment of the Hon'ble Apex Court in **Chief Commercial Manager, South Central Railway, Secunderabad & Ors. v. G.Ratnam & Ors. reported in 2007 (8) SCC 212** wherein it is stated thus on the inviolability procedures contained in Vigilance Manual :

“19. We are not inclined to agree that the non adherence of the mandatory Instructions and Guidelines contained in paragraphs 704 and 705 of the Vigilance Manual has vitiated the departmental proceedings initiated against the respondents by the Railway Authority. In our view, such finding and reasoning are wholly unjustified and cannot be sustained.”

13. Learned counsel for the respondents in order to further strengthen her argument on this point also relied on judgment of the Hon'ble Supreme Court in **State Bank of Patiala & Ors. v. S.K.Sharma reported in 1996 (3) SCC 364.**

14. After examining all documents and pleadings, we are of the view that the applicant has conducted himself in a manner unbecoming of an employee of a large public utility. However we are here on the legality involved in departmental proceedings instituted while criminal proceedings are underway on the same set of alleged misconduct. A criminal case has

been booked against him and is now pending. As is evidenced in the arguments and judgments submitted by the learned counsel for the respondents the existence of a criminal case in no way is a bar to the departmental proceeding. Further the applicant stands to benefit if he energetically defends himself in the departmental inquiry. We are of the view that the O.A is found lacking in merit and is liable to be dismissed. We proceed to do so. No order as to costs.

(Dated this the 26th day of September 2018)

ASHISH KALIA
JUDICIAL MEMBER

E.K.BHARAT BHUSHAN
ADMINISTRATIVE MEMBER

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List of Annexures in O.A.No.180/00243/2018

1. **Annexure A1** – True copy of the FIR registered by the Hemambika Nagar police along with English translation.
2. **Annexure A2** – True copy of the letter bearing No.P.227/PGT/Admn. Dated 22.8.2016 issued by the third respondent.
3. **Annexure A3** – True copy of the COB message No.D1/3856/EOW-II/KTM/2016 dated 7.6.2016 issued by Superintendent of Police, CB-CID.
4. **Annexure A4** – True copy of the charge memorandum No.P.227/PGT/ADMN/VII dated 14.11.2017 issued by the third respondent.
5. **Annexure A5** – True copy of the order No.P.227/PGT/Admn/VII dated 13.12.2017 issued by the 3rd respondent.
6. **Annexure R1** – True copy of the relevant portion of the Railway Servants (D&A) Rules, 1968.
7. **Annexure R2** – True copy of the Statement given to Vigilance dated 27.2.2017.
