

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

**Original Application No.021/00986/2016 &
MA 21/133/2017**

Reserved on : 05.10.2018

Order pronounced on: 09. 10.2018

Between:

C. Jeelani Basha, S/o. C.Md. Haneef,
Aged 47 years, Occ: Chief Loco Inspector,
O/o. The Chief Crew Controller,
South Central Railway, Purna,
Nanded Division, Maharashtra.

... Applicant

And

1. Union of India, rep. by
The General Manager,
Rail Nilayam, South Central Railway,
Secunderabad.
2. The Senior Divisional Mechanical Engineer (C&W),
South Central Railway, Guntakal Division, Guntakal.
3. The Senior Divisional Mechanical Engineer (C&W),
South Central Railway, Nanded Division,
Nanded, Maharashtra State.

... Respondents

Counsel for the Applicant	...	Mr.K.R.K.V. Prasad
Counsel for the Respondents	...	Mr. D. Madhava Reddy, SC for Railways

CORAM:

<i>Hon'ble Mr. B.V. Sudhakar</i>	...	<i>Member (Admn.)</i>
<i>Hon'ble Mr. Swarup Kumar Mishra</i>	...	<i>Member (Judl.)</i>

ORDER

{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.)}

The OA has been filed against the proceedings issued vide Memo. No. G/M 227/DAR/GY/CJB, dated 25.01.2016 r/w. Order No. GTL/V/2015030021/M-01/16-17/JB dated 06.09.2016 in regard to the appointment of Inquiry Officer to inquiry into certain charges levelled against the applicant.

2. Brief facts of the case are that when the applicant was working in Nanded Division of the respondent organization, CBI of Hyderabad Branch registered a case vide RC 01(A)/2015-CBI/Hyderabad against him for allegedly demanding bribe. The CBI investigated the matter and filed a report under Section 173 Cr. P.C. in Hon'ble III Additional Special Judge for CBI Cases, Hyderabad and the case was taken cognizance of in CC No. 20 of 2015 U/s. 384 r/w. 109 IPC and 13(2) r/w. 13(1)(d) of Prevention of Corruption Act, 1988. Based on the same grounds, the respondents initiated disciplinary proceedings against the applicant vide Memo dt. 25.01.2016. The applicant claims that since he has denied the charges, and he being innocent, issue of the proceedings appointing the inquiry officer will impair his defence in the criminal case pending before the CBI Court. Therefore, he has approached this Tribunal in the present OA.

3. This Tribunal has granted an interim order directing the respondents to stay the departmental proceedings initiated vide Memo. dt. 25.01.2016 until further orders.

4. The applicant contends that he is innocent and that he has been trapped on a baseless complaint given by one Sri G. Ramesh Babu, R/o. Guntakal. When his case is being adjudicated in the CBI Court, the respondents proceeding against him on the similar grounds, which he firmly believes, will weaken his defence before the criminal court and thereby, serious prejudice will be caused to him. Hence, his only plea is that the respondents can proceed against him after the outcome of the CBI case. The applicant claims that this is the practice in cases filed against the employees in criminal courts and the same may be extended to him in the interest of justice. Hence, he approached this Tribunal challenging the

Memo. dated 25.01.2016 and 06.09.2016 and accordingly, a stay order was passed by this Tribunal on 19.09.2016.

5. The respondents claim that an alleged trap was laid by the CBI, Hyderabad and the case was filed in CC No. 20/2015 before the Hon'ble Principal Special Judge for CBI Cases, Hyderabad. Moreover, it is a case under the Prevention of Corruption Act, 1988. Railway Board's letters No. E(D&A)98/RG/6-37 dated 31.12.1998 and No. E(NG)I-98/TR/11 dt. 02.11.1998 specify that officials who indulge in malpractices should be transferred on inter-divisional basis. The official was accordingly transferred to Nanded division. The allegation against the applicant is that he demanded a bribe of Rs.1,50,000/- from Sri G. Ramesh Babu. The government servant indulging in such activities is heinous. Therefore, the respondents have proceeded against him under Rule 9 of Railway Servants (Discipline & Appeals) Rules, 1968. The applicant can avail this opportunity to defend himself and which may on the contrary assist him in his CBI case.

6. Heard learned counsel and perused the documents on record.

7. Learned counsel for the applicant has pleaded that the applicant is innocent. He has to be given fair chance to prove his innocence. The respondents proceeding against him on the same charge is unfair. If the official were to appear in the departmental proceedings, such material could be used against him in the criminal proceedings as well and this will cause serious prejudice to the applicant. Learned counsel for the applicant has relied upon judgment of the Hon'ble Supreme Court in *State Bank of India & Others Vs.*

Neelam Nag & Another, 2016 (9) SCC 491, as well as order of this Tribunal in OA No.679/2017 dt.20.04.2018 in support of his claim.

8. Learned counsel for the respondents has stated that employees indulging in corruption should be dealt with severely and to do so, disciplinary action under Rule 9 of Railway Servants (D & A) Rules has been initiated. Preventing such action will create indiscipline among the ranks of the Railway servants and therefore sought vacation of the stay granted by this Tribunal and dismissal of the OA.

9. The facts of the case indicate that the applicant was trapped by the CBI and a case was lodged against him in the CBI Court in CC No. 20/2015. The CBI court is hearing the case and would obviously take to its logical conclusion over a period of time. In the meanwhile, the respondents have issued disciplinary proceedings vide Memo.G/M 227/DAR/GY/CJB, dated 25.01.2016. Further, it is noticed that the charges are similar in the disciplinary proceedings initiated by the respondents as also in the criminal case registered by the CBI. Therefore, it is possible that the defence of the applicant in the disciplinary proceedings could be used against him in the criminal case which is being adjudicated by the CBI court. In this regard, the Hon'ble Supreme Court in ***State Bank of India & Others Vs. Neelam Nag & Another*** (supra) has held as under:

“Accordingly, we exercise discretion in favour of the respondent of staying the ongoing disciplinary proceedings until the close of recording of evidence of prosecution witnesses cited in the criminal trial, as directed by the Division Bench of the High Court and do not consider it fit to vacate that arrangement straightaway. Instead, in our opinion, interests of justice would be sufficiently served by directing the criminal case pending against the respondent to be decided expeditiously but not later than one year from the date of this order. The trial court shall take effective steps to ensure that the witnesses are served, appear and

examined on day-to-day basis. In case any adjournment becomes inevitable, it should not be for more than a fortnight when necessary. “

Similarly, this Tribunal has dealt with a similar case in OA No. 679/2017 and its findings are as under:

“4. The respondents contended in their reply statement that as per some judgments rendered by the Hon’ble Supreme Court, the trial of the criminal case as well as the disciplinary proceedings can be proceeded with simultaneously. Some judgments were also cited by the respondents. As a general principle, the trial of the criminal case as well as the disciplinary proceedings can be proceeded with simultaneously and there is no legal bar. This has been laid down by the Hon’ble Supreme Court in some judgments. But, the exception carved out by the Hon’ble Supreme Court in some of its judgments is that if the charges are grave in nature and in the course of the trial, if the complicated questions of law and fact would arise for consideration, the court or tribunal may exercise its discretion to stay the disciplinary inquiry till the conclusion of the criminal proceedings against the applicant if both the proceedings are in respect of the very same charges and the same witnesses are proposed to be examined in both the proceedings. “

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“7. Therefore, departmental enquiry proposed against the applicant vide the impugned Charge Memo dated 16.06.2017 is stayed for a period of one year. If within one year the trial of the criminal case is not completed, the respondents are at liberty to move an application before the Tribunal seeking permission to proceed with the departmental enquiry. It is needless to mention that if the criminal case is disposed of at an early date, the Department can initiate departmental enquiry if there are grounds to initiate the same. “

10. The respondents also cited judgment of the Hon’ble Supreme court in the ***State of Rajasthan Vs. Shri B.K. Meena & others, 1996 (6) SCC 417***, wherein it was observed that stay of disciplinary proceedings pending criminal proceedings, to repeat, should not be matter of course, but a considered decision. In the present case, the charges levelled against the applicant in the criminal case as well as the disciplinary proceedings are not only same but grave. It is possible that the defence presented by the applicant in the departmental proceedings could

be material for adjudication before the Hon'ble CBI Court. The apprehension of the applicant does have credence. The Hon'ble Supreme Court in the State Bank of India case (supra) also held so.

11. In our considered opinion, in order to meet the ends of justice and considering the genuine claim of the applicant, to prove his innocence, the respondents are directed to consider deferring the disciplinary proceedings for a period of one year from the date of receipt of this order. In case, the criminal proceedings are completed before this period, it is open to the respondents to proceed on disciplinary grounds as per the Memo dt. 25.01.2016.

12. The OA is thus allowed to this extent. Consequently, MA stands disposed. No order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (JUDL.)

(B.V. SUDHAKAR)
MEMBER (ADMN.)

Dated, the 9th day of October, 2018

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