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CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH

...

MA No. 291/00095/2018  
(In OA No. 291/00459/2017)

Reserved on: 23.02.2018

Date of decision: 21.03.2018

CORAM:

HON'BLE MS. B. BHAMATHI, MEMBER (A)  
HON'BLE MR. SURESH KUMAR MONGA, MEMBER (J)

K. L. Meena s/o Late Shri Ghazi Lal Meena, aged around 51 years, r/o 19-Raj Nagar, Sawaimadhopur (Rajasthan). Presently working as Income Tax Officer (IAP), Kota (Group-B service).

...Applicant.

By Advocate: Mr. Amit Mathur)

Versus

1. Union of India through its Secretary, Ministry of Finance, Department of Revenue, North Block, New Delhi.
2. Principal Chief Commissioner of Income Tax, Department of Income Tax, NCR Building, Statute Circle, Jaipur.
3. Commissioner of Income Tax (Audit), Department of Income Tax, NCR Building, Statute Circle, Jaipur

...Respondents

(By Advocate: Mr. Gaurav Jain)

ORDER

Per: Suresh Kumar Monga, Member (J):

Instant Misc. Application has been filed by the applicant with a prayer to stay the disciplinary proceedings initiated by the respondents against the applicant pursuant to Memorandum dated 30.03.2017.

2. At the very outset, Shri Amit Mathur, learned counsel for the applicant contended that in the criminal case, challan was presented by the prosecution way back in the year 2009 and after about a period of 8 years, the respondents have contemplated disciplinary proceedings against the applicant pursuant to Memorandum dated 30.03.2017 (Ann.A/1). He further contended that many of the witnesses in the criminal trial have already been examined. The key witness, the complainant, Shri Charat Lal Meena has already deposed and he has categorically stated that the applicant never demanded or received illegal gratification. The Investigating Officer, Shri Om Prakash Yadav, is yet to be examined and now the trial is posted to 26.04.2018. In the disciplinary proceedings, only two witnesses have been cited and they are not related to respondent department. Out of those two witnesses, one is the Investigating Officer, Shri Om Prakash Yadav, who investigated the criminal matter and presented the challan before the Court. The contention of the learned counsel for the applicant was that if the Investigating Officer of the criminal case is examined before the Inquiry Officer prior to his deposition before the Criminal Court, the same will seriously prejudice his defence in the criminal case and will defeat his rights as enshrined in Article 21 of the Constitution of India. He, thus, prayed for stay of the inquiry proceedings during the pendency of the Original Application.

3. Per contra, Shri Gaurav Jain, learned counsel appearing for the respondents contended that standard of proof required for departmental proceedings is not the same as required in the criminal proceedings and, therefore, the inquiry proceedings cannot be stayed and the Disciplinary Authority cannot be compelled to wait for the decision of the Criminal Court. In order to support his arguments, he relied upon the following judgments:-

- i) Kendriya Vidyalaya Sangathan and Ors. vs. T.Srinivas, (2004) 7 SCC 442
- ii) NOIDA Entrepreneurs Association vs. NOIDA and Ors., (2007) 10 SCC 385
- iii) Council for Indian School Certificate Examination vs. Isha Mittal and Another, (2000) 7 SCC 521
- iv) State Bank of India and Ors. vs. Neelam Nag and Anr. (2016) 9 SCC 491
- v) Atulesh Sharma vs. Union of India & Ors., DB Civil Writ Petition No.6852/2011 decided by Hon'ble Rajasthan High Court at Jaipur on 24.05.2011.

4. Considered the rival contentions of the learned counsel for both the parties and perused the record.

5. The Investigating Officer of the criminal case, who has been cited as witness in the departmental inquiry, is a material witness and if he is examined in the departmental proceedings prior to his deposition before the Criminal Court; in any case, that will certainly prejudice the defence of the applicant in the criminal case, as the charges in both the proceedings are similar. Though, in view of the law laid down by the Hon'ble Supreme Court, the departmental proceedings can continue simultaneously with the criminal proceedings, but in the case in hand while keeping in view the fact that the complainant himself has turned hostile and the Investigating Officer is yet to be examined in the Criminal Court by the prosecution, his examination in the disciplinary proceedings prior to his deposition

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before the Criminal Court will affect prejudicially the rights of the applicant in the criminal case. During the course of arguments, there was no answer by the learned counsel for the respondents to the query as to what prejudice will be caused to the respondent-department if the Investigating Officer, Shri Om Prakash Yadav, is examined in the inquiry proceedings after his deposition before the Criminal Court.

6. In the facts and circumstances of the case, we are not inclined to stay the whole inquiry proceedings. However, the ends of justice would be met if the Investigating Officer, Shri Om Prakash Yadav, is examined in the inquiry proceedings after his deposition before the Criminal Court, where the trial is now posted to 26.04.2018.

7. Accordingly, instant Misc. Application is disposed of with a direction to the Presenting Officer to examine Shri Om Prakash Yadav before the Inquiry Officer after his deposition takes place in criminal trial.

8. Ordered accordingly.

(SURESH KUMAR MONGA)  
Member (J)

(B.BHAMATHI)  
Member(A)

R/