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CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
KOLKATA

OA No.220 of 2012

Date of hearing : 20.06.2016
Dated of order : 24.06.2016

Present:

The Hon'ble Mr. Justice V.C.Gupta, Judicial Member
The Hon'ble Ms. Jaya Das Gupta, Administrative Member

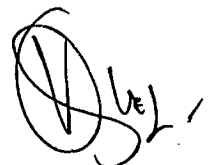
.....
MANOJ MALAVIYA, Son of Giridhar Malviya, working as
Inspector General of Police, Forest Protection,
Government of West Bengal, residing at 5,
U.N.Brahmachari Street, Kolkata-700 017.
.....Applicant

VERSUS

1. UNION OF INDIA, Service through the Secretary,
Ministry of Home Affairs, Govt. of India, North Block,
New Delhi-110 001.
2. The Government of West Bengal through the Secretary
(Home), Writers' Building, Kolkata-700001.
3. Chief Secretary to the Government of West Bengal,
Writers' Building, Kolkata-700001.
.....Respondents

Counsel for the Applicant : Mr.M.Malhotra, Advocate

Counsel for the Respondents : Mr.M.Bhattacharyya, Advocate



ORDERJUSTICE V.C.GUPTA, JM:

The Applicant has filed this Original Application Under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

"....(a) To quash the Memorandum being No. 26011/27/2011-IPS.II dated 9th January, 2012 issued by the Under Secretary to the Government of India, Ministry of Home Affairs;

(a-1) To call for the records of the case;

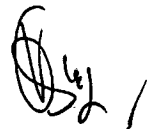
(b) Award cost of the litigation and/or;

(c) Pass any order or orders, direction and/or directions which this Hon'ble Tribunal may deem fit and proper in the interest of justice."

2. The brief facts of this case are that when the Applicant was working as Additional Commissioner in the Civil Aviation Secretary under the Ministry of Civil Aviation, Government of India, on deputation basis, an FIR was lodged against him, on 18th May, 2010, by the CBI, Mumbai vide RC No. 18 (A)/2010 under Prevention of Corruption Act alleging therein that the Applicant had availed pre accommodation provided by the airline operators during the official visit whereby committed an offence as against this FIR, Criminal

(4)

Application No. 2796/2010 was filed by the Applicant before the Hon'ble High Court of Bombay and the Hon'ble High Court of Bombay vide order dated 18th June, 2010 granted the stay on the FIR. Further, on 28th July, 2010, the Hon'ble High Court of Bombay directed that no coercive action be taken against the Applicant. However, the CBI to investigate the matter but charge sheet shall not be filed until further orders to be passed by the Court. Before passing this order on 28th July, 2010, another FIR was filed and registered as RC No. 28 (A)/2010 on 27th July, 2010 against the Applicant on the allegation of possession of disproportionate asset by the applicant to his known source of income. As against this FIR, the applicant filed Criminal Application No. 4642/2010 before the Hon'ble High Court of Bombay in which as an interim measures, on 16th December, 2010, direction was issued not to arrest the applicant. However, liberty was also granted to the CBI to carry out the investigation but the charge sheet shall only be filed after taking leave of the Court. After conclusion of investigation, the Ministry of Civil Aviation (in short 'MCA') granted sanction to prosecute the Applicant in so far as first



FIR is concerned. Thereafter, the CBI filed an application before the Hon'ble High Court of Bombay, seeking necessary leave to file the charge sheet but no such leave was granted on the ground that the main applications are yet to be disposed of and further directed to list the main application for disposal on priority basis. Simultaneously, in the second FIR after investigation, the CBI obtained the prosecution sanction to prosecute the applicant on the basis of the charge sheet and, thereafter, the CBI moved an application before the Hon'ble Bombay High Court for grant of leave to file the charge sheet. This time also similar order was passed for listing the matter for early disposal and did not grant any such leave to file the charge sheet. Since then what happened to the CAs which was filed and alleged to have been pending before the Hon'ble High Court of Bombay has not been brought on record. It has simply been averred that both the CAs are still pending before the Hon'ble High Court of Bombay.

3. The Department also intended to proceed against the Applicant departmentally and as such, Memo of Charge dated 9th January, 2012 was served upon the Applicant who



received the same on 24.02.2012 wherein 10(ten) days time was granted to the Applicant to submit his reply, if any. On 2nd March, 2012, the Applicant submitted his reply and also filed this OA with the aforesaid prayer.

4. The Tribunal did not grant any interim protection of staying the Departmental Proceedings as prayed for by the Applicant and liberty was granted to the applicant to move the Disciplinary Authority for staying of the Departmental Proceedings by an order dated 12.4.2012. As against the said order of this Tribunal, the Applicant filed WPCT No. 123/2012 before the Hon'ble High Court, Calcutta and vide order dated 11th June, 2012, the Hon'ble High Court of Calcutta directed the Applicant to make a representation to the competent authority praying for stay of the departmental proceedings. In pursuance of the said order of the Hon'ble High Court of Calcutta, the Applicant submitted representation on 26th June, 2012. The Writ Petition was finally disposed of on 18th February, 2013 with direction to this Tribunal to decide the question of stay of the disciplinary proceedings as an interim measure and on admission of this OA on the basis of the

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changed circumstances, during this period, the applicant was also permitted to file supplementary affidavit and this Tribunal was directed to consider the question of admission of this OA and the prayer for interim relief as prayed for by the applicant. Thereafter, this Tribunal vide order dated 16.04.2013 considered and rejected the prayer for grant of interim relief.

5. The Applicant filed another OA no. 622 of 2012 with regard to his promotion. As the said case has no bearing to the present case, we refrain from dealing with the facts of the said case in the present matter.

6. The Applicant filed another Writ Petition No. 189 of 2013 before the Hon'ble High Court of Calcutta which was disposed of on 14.05.2013 directing the Respondents to decide the representation dated 26th June, 2012 made by the applicant for staying the departmental enquiry till the evidence is collected/recorded by the criminal court. It was further directed that if any adverse order is passed on the representation then the applicant would be at liberty to



challenged the said adverse order before the Tribunal by preferring a Miscellaneous Application.

7. In pursuance of the order of the Hon'ble High Court, the representation of the applicant was considered and disposed of on 03.07.2014 declining to stay the disciplinary proceedings. Thereafter, the applicant moved a miscellaneous application which was disposed of on 3.3.2016.

8. This OA was listed for orders on 01.06.2016 and the learned counsel for the Respondents submitted that there is no need to submit reply on behalf of the Respondents. Consequently, the matter was posted for final hearing today.

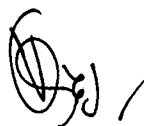
9. Heard the learned counsel for both sides and perused the records.

The learned Counsel for the Applicant fairly conceded that the prayer of quashing the charge sheet cannot be ordered in the light of this case in view of settled legal position and therefore he limits his argument in the change circumstances for the relief of stay of departmental proceedings. The court in such circumstances may grant the relief of stay of departmental proceedings.




10. It has been contended by the learned counsel for the applicant that disclosure of defence before the IO in the disciplinary proceedings prior to culmination of the criminal case, the interest of the applicant will be highly jeopardised to his detriment and, therefore, the disciplinary proceedings are to be stayed till finalization of the criminal case. In this connection, the learned counsel for the applicant has placed reliance on the decision of the Hon'ble Apex Court in the case of **Capt. M. Paul Anthony vs Bharat Gold Mines Ltd and Another** reported in AIR 1999 SC 1416. The learned counsel for the applicant has also relied upon another judgment of the Hon'ble High Court at Calcutta dated 26th August, 2013 in WP No. 15194(W) of 2013 in the case of **Sri Firoz Ahmed vs Union of India and Others**. Relying upon para 18 of the said judgment, it was submitted by the learned counsel for the applicant that disclosure of defence in the disciplinary proceedings would necessarily prejudice the interest of the Applicant in the criminal case.

11. In a recent decision rendered by the Hon'ble Apex Court, considering all earlier decisions on the subject, including



the decision rendered in the case **Capt. M. Paul Anthony (surpa)**, in the case of **M/s. Stanzen Toyotetsu India P Ltd vs Girish V & Ors**, (SLP (C) Nos. 30371-20276 of 2012 disposed of on 21st January, 2014 has held that there could be no legal bar for both the proceedings to go simultaneously and every case has to be judged on his own facts and circumstances. However, there is no absolute bar that departmental proceedings cannot be stayed. Only in appropriate case of grave nature involving complicated question of fact and law the Courts after considering the facts and circumstances of the case can pass order staying departmental proceedings.

12. The learned counsel for the applicant also relied upon another judgment of the Hon'ble Apex Court rendered in the case of **State Bank of India and others vs R.B. Sharma**, AIR 2004 SC 4144. In this case also the case of **M. Paul Anthony (surpa)** was considered. The Hon'ble Apex Court also considered the three judge Bench decision of the Hon'ble Apex Court rendered in the case of **Depot Manager, A.P. State Road Transport Corporation v. Mohd. Yousuf Miya**

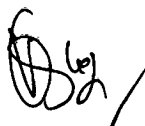


and Ors, reported in 1997 (2) SCC 699 and also the decision rendered in the cases of **State of Rajasthan v. B.K. Meena** (1996 (6) SCC 417) and ruled that there can be no straightjacket formula as to in which case departmental proceedings are to be stayed.

13. Having considered all the decisions rendered by the Hon'ble Apex and the Hon'ble High Court at Calcutta, it is incumbent upon this Court to examine the peculiar facts and circumstances of this case.

14. It is no doubt true that the charges which are being faced by the Applicant in the Disciplinary Proceedings are identical to the charges levelled against him in the Criminal case. But only for the simple reason, the Departmental proceedings cannot be stayed. This Court has to see as to whether the charges are grave in nature involving complicated question of fact and law.

15. So far as the charges are concerned, it is no doubt true that the charges are grave in nature affecting the whole service career of the applicant, if found proved.



We have now to see whether there is any complicated question of fact and law involved. The charges against the applicant are mainly under the Prevention of Corruption Act. The charge is that the applicant has availed of the accommodation facility while on tour provided by the airline operators. The second charge is that the applicant possessed the disproportionate asset to his known source of income. It is the case of the applicant that disclosure of defence in the disciplinary proceedings will prejudice his interest while defending his case in criminal case.

16. The learned Counsel for the applicant has tried to substantiate that staying in the accommodation provided by the airline operators was by virtue of the authority given to him by the concerned ministry. If it is so, it is open to the applicant to disclose this fact not only before the IO in the Disciplinary Proceedings but also in the Criminal Case. In view of the above, the burden to establish this fact will be on the accused in the criminal case and upon the Charged Officer in the Disciplinary Proceedings. Therefore, so far as the first charge is concerned, we are of the firm view that disclosure of

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defence in such a situation shall not cause any prejudice to the applicant in any manner during the course of prosecution in criminal case.

17. So far as second charge is concerned, this charge is relating to disproportionate asset to the known source of his income. In such type of cases, the burden lies on the accused to substantiate in course of trial as to how the assets was acquired are through his known source of income. This part of defence is solely based on evidence to be given by the applicant because the burden to prove would be on accused in the criminal charge and CO in the disciplinary proceedings.

18. Apart from it, so far as the charge under Prevention of Corruption Act are concerned, Section 20 of Prevention of Corruption Act, 1988 is very important section which needs to be taken into consideration. It reads as under:

"20. Presumption where public servant accepts gratification other than legal remuneration.—

(1) Where, in any trial of an offence punishable under section 7 or section 11 or clause

(a) or clause (b) of sub-section (1) of section 13 it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain for himself, or

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for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in section 7 or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

(2) Where in any trial of an offence punishable under section 12 or under clause (b) of section 14, it is proved that any gratification (other than legal remuneration) or any valuable thing has been given or offered to be given or attempted to be given by an accused person, it shall be presumed, unless the contrary is proved, that he gave or offered to give or attempted to give that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in section 7, or as the case may be, without consideration or for a consideration which he knows to be inadequate.

(3) Notwithstanding anything contained in sub-sections (1) and (2), the court may decline to draw the presumption referred to in either of the said sub-sections, if the gratification or thing aforesaid is, in its opinion, so trivial that no inference of corruption may fairly be drawn.

19. The presumption under section 20 not only applies after a charge is framed against the accused but also is applicable at the stage when the court is considering the

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question whether a charge should be framed or not As held in the case of R.S.Nayak v A.R. Antulay, AIR 1986 SC 2045.

20. Therefore, in view of the nature of accusation levelled against the Applicant both in Criminal as well as Disciplinary Proceedings, we are of the view that disclosure of defence in disciplinary proceedings would not in any way prejudice the interests of the applicant during the trial in criminal case because the burden in such cases would be on the accused to satisfy the court by adducing the evidence to rebut the presumption.

21. In view of the above, we do not find any merit in this OA which is accordingly dismissed by leaving the parties to bear their own costs.

(Jaya Das Gupta)
Member (Admn.)

(Justice V.C.Gupta)
Member (Judl.)