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CENTRAL ADMINISTRATIVE TRIBUNAL KOLKATA BENCH

OA/350/547/2011

Date of Order: 10.9.18

M.A/350/412/2012

Coram : Hon'ble Ms. Bidisha Banerjee, Judicial Member

Hon'ble Dr. Nandita Chatterjee, Administrative Member

Partha Sarath Bose, son of Late Labanya Kumar Bose, aged about 57 years, Deputy Superintendent of Police, CBI, Special Crime Branch, Kolkata under Superintendent of Police, CBI, SCB, Kolkata, DF-Block, CGO Complex, Salt Lake, Kolkata-700064 (under Suspension), residing at Flat No. 160, Block-12, Hudco Housing Estate, 95, Bidhan Nagar Road, Kolkata-700054, PS. Maniktala.

---Applicant

-Versus-

1. Union of India through the Secretary to the Govt. of India, Ministry of Personnel Public Grievances & Pensions, Department of Personnel & Training, North Block, New Delhi – 110001.
2. Deputy Secretary, Govt. of India, Ministry of Personnel Public Grievances & Pensions, Department of Personnel & Training, North Block, New Delhi – 110001.
3. Director, CBI, CGO Complex, Block-III, Lodhi Road, New Delhi-110003.

4. Superintendent of Police, CBI, Special Crime Branch, Kolkata, DF-Block, CGO Complex, Salt Lake, Kolkata-700064.
5. Sri Apurba Banerjee, Inquiry Officer, Superintendent of Police, CBI-EOW, DF Block, CGO Complex, Salt Lake, Kolkata-64.
6. Union Public Service Commission, through the Secretary, Union Public Service Commission, Dholpur House, Shahjahan Road, New Delhi-110069.

----Respondents

For the Applicant(s) : Mr. M.S.Banerjee, Mr. J.R.Das

For the Respondent(s) : Mr. M.Bhattacharyya, Mr. A.K.Chattpadyay

Per Ms. Bidisha Banerjee, Judicial Member

This O.A. was filed in order to seek the following reliefs:

"a) An order quashing and/or setting aside the impugned Office Memorandum dated 4th October, 2010 (Annexure-A-3), communication dated 18.1.2011 as well as the communication dated 25.04.2011 including a decision dated 18.4.2011 and further directing the respondents not to proceed with the inquiry on the basis of the Memorandum of Charge Sheet dated 4th October, 2010 which by itself is illegal and further directing the concerned respondents to reconsider the matter regarding stay of the departmental inquiry/departmental proceedings in the light of the guidelines laid down by the Hon'ble Apex Court in the case of M.Paul Anthony in its proper perspective dealing with all the guidelines in seriatim and the respondents may kindly be directed not to proceeding with the inquiry and/or with the inquiry any further

pending criminal trial against the applicant on the basis of charge sheet dated 27.9.10.

b) An order directing the respondents to produce/cause production of all relevant records/documents as to this Hon'ble Tribunal may seem fit and proper for the purpose of effective adjudication of the case.

c) Any other order....."

2. When the matter was listed on 21.02.2012, the Bench admitted the O.A. while taking note of the following:

"The applicant had come to this Tribunal by filing O.A.No. 547/2011 challenging the charge sheet issued against him. The O.A. was dismissed for lack of jurisdiction. The matter was challenged before the Hon'ble High Court in COCT.10/2011 and the Hon'ble High Court set aside the orders of the Tribunal and directed the Tribunal to hear the matter on merits."

3. At hearing, it transpired that the proceedings initiated vide charge memo dated 04.10.2010, impugned in the present O.A., has ended into an inquiry report. However, no final order has been issued by the Disciplinary Authority on the same, as yet. No stay order subsists as on this date.

4. In the written notes of argument, the applicant has alleged that the representation seeking stay of proceedings ought to have been considered by the Disciplinary Authority, the President.

5. Applicant's Counsel sought for stay of the proceedings due to pendency of criminal trial and consideration of representation by the appropriate authority.

6. The Respondents have contended as under:

"No stay has been granted by the Hon'ble Tribunal Calcutta restraining the Respondents to hold further inquiry. This fact was highlighted in the order sheet of even dates and the copy of the said was communicated to the C.O.

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with a direction to attend the Enquiry. Since the C.O. did not attend the enquiry, the enquiry was conducted ex-parte. The allegation in the charge sheet filed under Section 173(2) of criminal procedure code pending before the concerned court and the Memorandum of Article of charges issued by the competent authority are completely different in nature and, as such, the prayer made in this application is liable to be rejected. In Civil Appeal No. 7980 of 2004 arising out of SLP (Civil) No. 24560 of 2003 by the Hon'ble Apex Court in Hindustan Petroleum Corporaton Ltd. & Ors. -Vs- Sarvesh Berry, the Hon'ble Apex Court decided that departmental enquiry and criminal trial can go simultaneously.

7. We noticed that although no final order has been issued, the witnesses have already been examined in connection with the Departmental Proceedings. Therefore, the need to get the departmental proceedings stayed, pending criminal trial, no more survives.

8. Accordingly, we dispose of the O.A. with a liberty to the Disciplinary Authority to pass a final order in the proceedings.

No costs.

(Dr. Nandita Chatterjee)
Member (A)

(Bidisha Banerjee)
Member (J)

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