

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PATNA BENCH, PATNA**

**O.A. 050/00547/2014**

**Reserved on- 20.02.2018.  
Date of pronouncement 27.02.2018**

**CORAM**

**Hon'ble Shri A.K. Upadhyay, Member [ A ]  
Hon'ble Shri J.V. Bhairavia, Member [ J ]**

1. Dr. Harihar Prasad S/o late Lohra Sahu, Resident of village & P.O.- Chandwey, P.s.-Pithoria, Kake, District- Ranchi (Jharkhand).

.....Applicant

**By Advocate :** Shri Goutam Bose

Versus

1. The Union of India through the Director General, Nehru Yuva Kendra Sangathan, Vikas Marg, Delhi.
2. The Director General, Nehru Yuva Kendra Sangathan, 2<sup>nd</sup> Floor Core-IV, scope Minar, Laxminagar, Vikas Marg, New Delhi-110092.
3. The Additional Director (Personnel), Nehru Yuva Kendra Sangathan, Vikas Marg, New Delhi-110092
4. The Zonal Director, Nehru Yuva Kendra Sangathan, P-257, P.C. Marg, Rajendra Nagar, Patna-16 (Bihar).
5. The Joint Director (G&V) Nehru Yuva Kendra Sangathan, Ministry of Youth Affairs & Sports, Government of India, New Delhi.
6. The Deputy Director (G&V), Nehru Yuva Kendra Sangathan, Ministry of Youth Affairs & Sports, Government of India, New Delhi.

.....Respondents

**By Advocate:** Shri Bindhyachal Rai

**ORDER**

**Per Jayesh V. Bhairavia, M [J ]:** In the present OA, the applicant has sought relief for quashing of charge memorandum dated 23.1.2014, alternatively, he has sought directions to the respondents not to conduct the departmental inquiry till the final decision in a criminal proceedings which is pending before the Special Court, CBI, Patna.

2. The brief facts of the case are as under:

( i ) That , while the applicant was working as a District Youth Co-ordinator under Nehru Yuva Kendra Sangathan in the

District West Champaran, Bihar, on 24.6.2009, a team of Central Bureau of Investigation (CBI), conducted a raid at the office of the applicant, following which the applicant was taken into custody. The applicant was arrested in connection with special case no. 10/09 under section 7 of the Prevention of Corruption Act, 1988.

( ii ) That, the applicant was placed under suspension on 26.6.2009 due to his arrest and the Institution of a criminal case against him by the Director General Nehru Yuva Kendra, Delhi, as per the provision of sub-rule 10 ( 1 ) CCS (CCA) Rules, 1965

( iii ) That, on 30.7.2010, the CBI had filed the charge sheet against the applicant in said special case no. 10 /09 i.e. RC Case No. 0232009A0018 before the CBI court, special Judge, (North Bihar) at Patna under Section 7 and 13 (2) read with 13 ( 1 ) (d) of the Prevention of Corruption Act, 1988. ( Annexure A/5 refers).

(iv ) That the applicant had moved before this Tribunal by filing OA 632 of 2011 against the subsequent extension of suspension order dated 23.5.2011, seeking direction for enhancing the suspension allowances. The said OA was stated to have been disposed.

( v ) The applicant was issued charge memorandum dated 23.1.2014 by the Director General, NYKS, The charge levelled against the applicant as per the Article of Charge –I is that " the applicant, while working as district Youth coordinator during the year 2008-09 is alleged to have demanded Rs. 4000/- (Four thousand only) from one Shri Jagmohan Kumar for issuing a cheque amounting to Rs. 12,800/- as stipend for the work done

by him as NSV for the year 2008-09 and accept a bribe of Rs. 2000/- from Shri Jag Mohan Kumar NSV on 24.6.2009. By this aforesaid act, the applicant failed to maintain absolute integrity, devotion to duties and acted in a manner unbecoming of an employee of NYKS, thereby violated Rule 3 (1) (i) of CCS (Conduct) Rules, 1964" [ Annexure A/1 series).

( vi ) On receipt of the charge memorandum along with all the documents, including list of witnesses, the applicant had submitted his reply/defence dated 24.2.2014 in response to the said charge memo. (Annexure A/6 ).

( vii ) That, the applicant had denied the charges levelled against him and contended that the charges levelled by the disciplinary authority which is based on the same incident for which the a criminal case has already been lodged against the applicant by the CBI. The charge levelled by the CBI in a criminal case and by the disciplinary authority in their charge memo dated 23.1.2014 are identical and presently, the said criminal case is pending for adjudication before the Special Judge, CBI Court, therefore, the departmental proceedings may be kept in abeyance till the final decision in the Criminal case. However, the respondents have not considered the request of the applicant and it is stated that the respondents are keen to continue with the departmental inquiry; hence the present OA .

3. The learned Senior Counsel, Shri G. Bose for the applicant submitted that the charges levelled against the applicant by the respondents are same and similar to the charges levelled by the CBI in the Criminal Case pending before the CBI special Court. The list of documents of departmental proceedings clearly indicates that the same are identical to the documents attached to the charge sheet filed by the CBI against the applicant. The

witnesses cited by the disciplinary authority are also the same. Till date, the criminal trial has not been concluded and the main complainant of the CBI case, Shri Jag Mohan Kumar had appeared for examination –in-chief but did not appear for cross-examination on several dates, there are other witnesses which are yet to be examined and cross-examined in the pending criminal proceedings before the Trial Court i.e. the Special Court, CBI. The disciplinary proceedings initiated against the applicant is based on the same set of CBI case and the documents as well as witnesses cited by the disciplinary authority are common, therefore, if the disciplinary proceeding is ordered to continue, in that case, the continuance of the disciplinary proceedings is likely to prejudice his defence before the Criminal court. The learned Senior counsel for the applicant further submitted that the allegations and charges levelled against the applicant are grave in nature and substantial complicated question of law is involved in the present case, therefore, stay of the disciplinary proceedings may be advisable course for the ends of justice. The learned Senior Counsel placed reliance on various judgments passed by Hon'ble Supreme Court i.e. ( i ) Delhi Cloth and General Mills Limited vs. Kushal Bhan, AIR 1960 ( SC ) 806, ( ii ) Tata Oil Mills co. Limited vs. Workmen, AIR 1965 (SC) 155, ( iii ) Capt. M. Paul Anthony vs. Bharat Gold Mines Limited and Anr, 1999 SCC (L&S) 810 and State Bank of India and Ors vs. Neelam Nag and Anr, reported in 2016 ( 9 ) SCC 491.

4. In contra, the learned counsel for the respondents submitted that there is no bar in conducting disciplinary proceedings simultaneously with criminal case. The departmental proceedings are based on preponderance of probability and the criminal case has to be proved beyond doubt. The initiation and expeditious conclusion of disciplinary proceedings is in the interest of delinquent. In the present case, the applicant has also submitted his reply / defence on 24.2.2014 and denied the charge levelled

against him by explaining it in details. Moreover, the applicant had submitted one representation dated 28.1.2013 to the Deputy Director, Vigilance and stated his explanation with regard to incident as well action taken by the CBI. Therefore, it is not correct that the explanation or defence of the applicant during the disciplinary proceedings will prejudice the pending criminal case against him. The criminal case is pending in Special Court, CBI since 2009-10 and the disciplinary proceedings were initiated in 2014, therefore, it is not proper to delay the disciplinary proceedings for indefinite period. The learned counsel for the respondents, Shri Bindhyachal Rai also placed reliance on the judgment passed by Hon'ble Supreme Court (supra) and also placed reliance on the order passed by CAT, Mumbai Bench of this Tribunal in the case of Guru Prasad vs. UOI & Ors.

5. Heard the learned counsel for both the parties and perused the records and the judicial rulings cited by the parties.

6. The issue for adjudication whether the departmental proceedings and the criminal proceedings can run simultaneously and the whether the disciplinary proceedings be kept in abeyance if the charges levelled against the delinquent /accused in both the proceedings are based on common material / evidence till the conclusion of the criminal case. The said proposition of law is no more res-integra in view of various judicial pronouncement of Hon'ble Apex court. It is appropriate to notice that in the case of the State of Rajasthan vs. B.K. Meena and Ors, reported in 1996 SCC (L&S) 1455, it is held that stay of disciplinary proceedings till the conclusion of criminal trial cannot be as a matter of course, it is in the interest of administration and the delinquent that the proceedings be concluded expeditiously. In the case of Capt. M. Paul Anthony (Supra), the Hon'ble Apex Court held as under:-

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

( ii ) if the departmental proceedings and criminal case are based on identical and similar set of facts and the charge in criminal case against the delinquent employee is of grave nature which involves complicated question of law and facts, it is desirable to stay the departmental proceedings till conclusion of the criminal case;

( iii ) whether the nature of charge in a criminal case is grave and (sic), complicated question of fact and law are involved, in that case, will depend upon the nature of the offence, the nature of the case launched against the employee on the basis of evidence and the material collected against him during investigation or as reflected in the charge-sheet;

( iv ) factors mentioned at ( ii ) and ( iii ) above cannot be considered in isolation to stay departmental proceedings but due regard has to be given to the fact that departmental proceedings cannot be unduly delayed;

( v ) if the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, if they were stayed on account of pendency of a criminal case, can be resumed and proceeded with so as to conclude them in early date. The purpose is that if the employee found not guilty, his honour may be vindicated and in the case he is found guilty, administration may get rid of him at the earliest.

7. In the case of *Stanzen Toyotetsu India Pvt. Ltd vs. Girish V.* (2014) 3 SCC 636 , the Hon'ble Apex Court held in para 16 that " suffice it to say that while there is no legal bar to the holding of disciplinary proceeding and the criminal trial simultaneously, stay of the

disciplinary proceedings may be an advisable course in cases where the criminal charge against the employee is grave and continuance of the disciplinary proceedings is likely to prejudice their defence before the criminal court. Gravity of the charge is, however, not by itself enough to determine the question unless the charge involves the complicated question of law and fact. The court examining the question must also keep in mind that the criminal trial get prolonged indefinitely especially where the number of accused arraigned for trial is large as the case at hand and so are number of witnesses cited by the prosecution. The court, therefore, has to draw a balance between the need for a fair trial to the accused on the one hand and the competing demand for an expeditious conclusion of the ongoing disciplinary proceedings on the other. **An early conclusion of the disciplinary proceedings has itself been seen by this Court to be in the interest of the employee"** The Hon'ble Apex court in the said judgment in para 18 further held that " ..... the disciplinary proceedings cannot remain stayed for an indefinitely long period. Such inordinate delay is neither in the interest of the Appellant Company nor the respondents who are under suspension and surviving on subsistence allowance."

It may also be noted that the Hon'ble Apex Court, after referring the above cited judgments in the case of SBI vs. Neelam Nag (supra), observed in para 18 that " in the peculiar facts of the present case, therefore, we accede to the contentions of the appellant that the pendency of the criminal case against the respondents cannot be the sole basis to suspend the disciplinary proceedings initiated against the respondent for an indefinite period; and in larger public interest, the order as passed in Stanzen case be followed even in the fact situation of the present case, to balance the equities."

8. Considering the above stated law laid down by the Hon'ble Apex Court, it is apt to note that in the instant case, the criminal case was instituted against the applicant in 2009-10 and till date it is stated that the it is pending for examination of the witnesses. The disciplinary proceedings was initiated against the applicant on 23.1.2014. The applicant had submitted his detailed replies to the charge memorandum on 24.2.2014, of course with a liberty to file or to submit additional reply / defence. The applicant has already disclosed his defence by giving detailed explanation while denying the allegation of demanding gratification from one Jag Moham Kumar. Therefore, it cannot be said that the continuance of the disciplinary proceedings will be prejudicial to the interest of the applicant in pending trial case. Moreover, It can be seen that inordinate delay has already occurred in completion of criminal trial and till date the disciplinary proceedings also could not be proceeded with further. There is no complicated question of fact and law involved in the charge levelled against the applicant.

9. In the facts and circumstances of the present case, as also the law laid down by the Hon'ble Apex court as cited above, there is no bar to conduct disciplinary proceedings and criminal case simultaneously. continuance of disciplinary proceedings will not be prejudicial to the fair trial. The disciplinary proceedings cannot be kept in abeyance for an indefinite period as held by Hon'ble Apex in the above cited judgments.

Therefore, in view of what is stated hereinabove, we are of the considered opinion that disciplinary proceedings initiated against the applicant needs to be concluded at the earliest, as it will be in the interest of the delinquent employee as well as employer. The relief sought by the applicant is hereby declined. However, the respondents are directed to complete the disciplinary proceedings within a time frame, preferable within six months from the date of receipt of this order. The applicant is also



directed to co-operate with the respondents for early conclusion of the disciplinary proceedings.

10. In the result, the OA stands dismissed with the direction as given in the preceding para of this order. No order as to costs.

(J.V. Bhairavia) M [ J ]

(A.K. Upadhyay] Member [ A ]

/mks/