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CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. OA 351/00068/2016

Present: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Ms. Jaya Das Gupta, Administrative Member

KUNJI MOHAMMAED

VS

POLICE (A & N)

For the applicant : Mr.S.K.Dutta, counsel

For the respondents : Mr.S.K.Ghosh, counsel

Order on : 10.8.2016.

O R D E RMs. Bidisha Banerjee, J.M.

In this OA the applicant, a Sub Inspector of Police has sought for quashing of the order dated 27.7.16 issued by the Director General of Police, A&N Police, the Disciplinary Authority lifting the stay on the departmental enquiry proceedings initiated against the applicant which stay was granted due to pendency of a criminal case. Ld counsel for the applicant submitted that the charge memo was issued on 21.5.07 on his prayer to stay the departmental enquiry pending finalisation of a case under Section 302, 342, 280, 201 IPC was stayed by the Disciplinary Authority vide its memo dated 23.7.08. On 27.8.15 the order dated 21.5.07 was revoked. The applicant preferred a representation on 25.11.15 seeking further stay but by the detailed order dated 11.12.15 the prayer was rejected by the Disciplinary Authority. On 14.12.15 the Enquiry Officer was appointed by a memo dated 19.11.15 asking the applicant to engage a Defence Assistant.

2 Ld. Counsel for the respondent vociferously submitted that assailing the memo dated 11.12.15, OA 232/15 was filed which was disposed of on 21.12.15 with a direction upon the authorities to pass a reasoned and speaking order in the light of the decisions in *M/s Stanzen Toyotetsu India P. Ltd. -vs Girish*

V. rendered by the Hon'ble Apex Court, in WPCT 15194(W)/13 by the Hon'ble High Court at Calcutta etc. On 27.1.16 by a detailed reasoned and speaking order the Disciplinary Authority found that the charges framed in the charge memo dated 21.5.07 was different from the criminal charges initiated vide Crime No. 51/07 dated 25.4.07 under Sections 302/342/218/201 IPC. However, the applicant has been finally charge sheeted under Sections 306/330/342/281/201 IPC vide CS No. 224/10 dated 28.2.10. The authority was also of the opinion that since the departmental enquiry was initiated in 2007 it should not be kept pending even after a lapse of 08 (eight) years as in **State of Rajasthan -vs- B.K.Meena [1996 (6) SCC 417]** Hon'ble Apex Court held that "an early conclusion of disciplinary proceedings has itself been seen by this Court to be in the interest of the employees". As also in **Depot Manager, Andhra Pradesh State Road Transport Corporation -vs- Mohd. Yousuf Miyan [1997 (2) SCC 699]** the Hon'ble Court held,

"The interest of the delinquent officer as well as the employer clearly lies in a prompt conclusion of the disciplinary proceedings (iv) departmental proceedings can go on simultaneously to the criminal trial, except where both the proceedings are based on the same set of facts and the evidence in both the proceedings is common."

Therefore there was no reason to stay the departmental enquiry proceedings till the conclusion of criminal case.

3. Ld. Counsels were heard and materials on record were perused.
4. We had directed the matter to be considered in the light of **M/s Stanzen Toyotetsu India P. Ltd. -vs Girish V.** wherein it was held that an early conclusion of disciplinary proceeding was in the interest of the employees. In the matter referred to being WPCT 15194(W)/13 Hon'ble High Court stayed the departmental enquiry till conclusion of criminal case having found similarity in the accusation/nature of charges, make it abundantly clear that in the event it is found that the trial is being protracted due to reasons directly attributable to the petitioner, it shall be open to the respondents to set the ball in motion by resuming the departmental enquiry without obtaining permission from this Court. However, such resumption could be challenged by the petitioner, if so advised in appropriate proceedings in accordance with law. Therefore in view of

the fact that the departmental proceedings were already stayed for 08 (eight) long years and not all the witnesses or evidences, or accusations in both the proceedings are similar, and we had already noted that there was a factual dispute whether these were similar, due to which speaking order was directed to be issued, we find no infirmity with the authorities' action to proceed with the departmental enquiry pending criminal trial.

4. Accordingly the OA is dismissed. No order is passed as to costs.

Jw
(JAYA DAS GUPTA)
MEMBER (A)

(BIDISHA BANERJEE)
MEMBER (J)

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