

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**MUMBAI BENCH, MUMBAI.**

**ORIGINAL APPLICATION No.44/2019**

Dated this Tuesday the 5<sup>th</sup> day of February, 2019

***CORAM: DR.BHAGWAN SAHAL, MEMBER (A)***  
***R.N. SINGH, MEMBER (J)***

Shri Jayendra Baburao Hardi,  
 Age 58 years, Occu- Service.  
 O/o Central Excise & Service Tax  
 Sangli Division at Miraj Kolhapur 416 001. ... *Applicant*  
*(By Advocate Shri Amol Jadhav )*

*Versus*

1. Union of India,  
 Through the Secretary,  
 Department of Revenue,  
 Ministry of Finance, Raisina Hills,  
 New Delhi 110 001.
2. The Commissioner,  
 CGST, Kolhapur Commissionerate,  
 Kolhapur – 416 001.
3. Dr. Chandrakant Kedar,  
 Asst. Commissioner and Inquiry Officer,  
 CGST, Kolhapur Commissionerate,  
 Kolhapur 416 001. ... *Respondents*

*Reserved on : 15.01.2019.*

*Pronounced on : 05-02-2019.*

**ORDER**  
*Per : R.N. Singh, Member (J)*

Heard Shri Amol Jadhav, the learned  
 counsel for the Applicant.

2. The Applicant who is working as  
 Superintendent, on being promoted in the  
 year 2008 under the respondents has

approached this Tribunal by way of the aforesaid OA challenging the order dated 05.12.2018 (Annex.A-1) vide which the respondents have rejected the request of the applicant to keep the departmental proceedings in abeyance till the decision of the learned Session Court, Sangli in the criminal prosecution of the applicant. The learned counsel for the applicant submits that the applicant joined the Customs & Excise Department as Inspector in the year 1987 on being recruited through Staff Selection Commission and was promoted to the post of Superintendent in the year 2008. He further submits that the applicant while being posted as Superintendent, Service Tax Cell at Sangli, a compliant against him was made by CBI, Pune.

3. On the basis of such complaint, a regular criminal case No.RC Pune/2013/A0011 of CBI/ACB/Pune was registered by the CBI u/sec.120B of IPC and Sec.7,& Sec.13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988 on 08.05.2013 and after investigation the CBI has filed the Challan/Final Report Under Section 173

Cr.P.C. (Annex.A-3) in the Court of learned Special Judge, PC Act Cases, Sangli at Sangli on 30.08.2013 and the charges have been framed by the learned Special Judge vide order dated 03.01.2019. In the said case, the applicant was arrested on 08.05.2013 and he was released on bail on 13.05.2013. Learned counsel for the applicant further submits that in the said criminal case, matter is fixed for 16.02.2019 for prosecution evidence. Learned counsel for the applicant further submits that the Disciplinary Authority has issued a Memorandum dated 15.02.2018 initiating disciplinary proceedings against the applicant under Rule 14 of the Central Civil Services (classification, control and appeal) Rules, 1965 (Annex.A-4).

**4.** The learned counsel for the applicant argues that the aforesaid criminal case as well as the departmental proceedings are based on same set of evidence and on the basis of Statement of Witnesses and therefore departmental enquiry before concluding of the criminal prosecution will certainly hamper defence of the applicant in

the criminal proceeding and the same shall be in violation of the provisions of para 7.8.1, 7.8.2 and 7.8.3 of Vigilance Manual, 2017. The Applicant has annexed an extract of such Vigilance Manual with his representation dated 20.11.2018 (Annex. A-7) and the same reads as under:

**"Vigilance Manual 2017**

**7.8 PROSECUTION vis-à-vis DEPARTMENTAL PROCEEDINGS**

*7.8.1 Prosecution should be the general rule in all cases which are found fit to be Vigilance Manual 2017 Chapter - VII Disciplinary Proceedings and Suspension 128 sent to Court after investigation and in which the offences are of bribery, corruption or other criminal misconduct involving loss of substantial public funds. In other cases, involving less serious offences or involving malpractices of a Departmental nature, Departmental action only should be taken and the question of prosecution should generally not arise. Whenever there is a difference of opinion between the Department and the CBI whether prosecution should be resorted to in the first instance, the matter should be referred to the CVC for advice.*

*(MHA O.M No. 39/8/64-Ests (A) dated 04.09.1964 regarding prosecution or Departmental action according to seriousness of the offence in the cases of bribery, corruption or other criminal misconduct)*

*7.8.2 There is no legal bar to the initiation of Departmental disciplinary action under the rules applicable to the delinquent public servant where criminal prosecution is already in progress and generally there should be no apprehension of the outcome of the one affecting the other, because the ingredients of delinquency / misconduct in criminal prosecution and Departmental proceedings, as well as the standards of proof required in both cases are not identical. In criminal cases, the proof required for conviction has to be beyond reasonable doubt,*

whereas in Departmental proceedings, proof based on preponderance of probability is sufficient for holding the charges as proved. What might, however, affect the outcome of the subsequent proceedings may be the contradictions which the witnesses may make in their depositions in the said proceedings. It is, therefore, necessary that all relevant matters be considered in each individual case and a conscious view taken whether disciplinary proceedings may not be started alongside criminal prosecution. In a case where the charges are serious and the evidence strong enough, simultaneous Departmental proceedings should be instituted so that a speedy decision is obtained on the misconduct of the public servant and a final decision can be taken about his further continuance in employment.

(CVC Circular No. 1K/DSP/3 dated 03.02.1981 regarding starting of Departmental proceedings along with prosecution)

7.8.3 *The Supreme Court in the case of Delhi Cloth and General Mills Ltd. vs. Kushal Bhan (AIR 1960 SC 806) observed that it cannot be said that "principles of natural justice require that an employer must wait for the decision at least of the criminal trial court before taking action against an employee". They however, added that "if the case is of a grave nature or involves questions of fact or law, which are not simple, it would be advisable for the employer to wait the decision of the trial court, so that the defence of the employee in the criminal case may not be prejudiced".*

5. In the aforesaid circumstances, the applicant has challenged the impugned order dated 05.12.2018 (Annex.A-1) and has prayed for direction to the respondents to keep the departmental enquiry initiated vide the aforesaid Memorandum dated 15.02.2018 in abeyance till disposal of the aforesaid criminal case pending before the learned

Special Judge, PC Act Cases, Sangli at Sangli. On perusal of the aforesaid Vigilance Manual, it is evident that the same provides that there is no legal bar to the initiation of Departmental disciplinary action under the rules applicable to the delinquent public servant where criminal prosecution is already in progress and generally there should be no apprehension of the outcome of the one affecting the other, because the ingredients of delinquency/misconduct in criminal prosecution and Departmental proceedings as well as the standards of proof required in both cases are not identical. The said provisions of the Manual also provide that in a case where the charges are serious and the evidence strong enough, simultaneous departmental proceedings should be instituted so that a speedy decision is obtained on the misconduct of the public servant and a final decision can be taken about his further continuance in employment. The only exception which has been carved out for staying or keeping the departmental proceedings in abeyance when criminal case

is going-on is where the case is of a grave nature or involves questions of fact or law, which are not simple, so that the defence of the employee in the criminal case may not be prejudiced.

6. On perusal of the criminal charge, referred herein above, it is alleged that a trap was laid wherein on the instructions of one Shri Jayendra Baburao Hardi (the applicant herein the OA), the complainant handed over the bribe amount of Rs.20,000/- to Shri Rajendra Mahadev Medhekar in his office and the same was recovered from the pants pocket of said Shri Medhekar in the presence of independent witnesses as recorded in the Post Trap Panchanama dated 08.05.2013.

7. We have perused the charges made against the applicant in the criminal case and also as levelled against him in the departmental enquiry. We find that though the allegations in the criminal charge and in the departmental enquiry under Article II are similar. However, allegations as in the Article I in the departmental enquiry are not as in the criminal charge.

Article I of the Charge Memo dated

15.02.2018 reads as under:

**"ARTICLE-I**

*Shri Jayendra Baburao Hardi, Superintendent while posted and functioning as Superintendent, Service Tax Cell in the office of the Assistant Commissioner of Central Excise and Service Tax, Sangli Division at Miraj, in connivance with Shri Rajendra Mahadev Medhekar, Inspector of Central Excise & Service Tax, Central Excise Sangli Division at Miraj, visited the office of Chintamani Shankar Gulwani, owner of the construction firms in the name and style of M/s. United Developers and M/s. Aditya Construction without the prior permission of his senior. This act on the part of Shri J.B. Hardi, Superintendent was in violation of the instructions issued by CBEC vide letter issued under F.No.137/26/2007 CX-4 dated 15.12.2008 and with an ulterior motive to carry out an illegal and corrupt act."*

**8.** No other point has been argued by the learned counsel for the applicant. Law on the issue has been settled by the Hon'ble Apex Court in catena of cases including in ***Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. And Anr., (1999) 3 SCC 679***, para 22 thereof reads as under:

*"..22. The conclusions which are deducible from various decisions of this Court referred to above are:*

*(i) Departmental proceedings and 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 the criminal case are based on identical and similar set of facts and the charge in the criminal case against*

*the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.*

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

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

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

9. From the aforesaid facts, it is evident that FIR was registered way back on 08.05.2013 and the charges have been framed only in January 2019 and still the prosecution evidence has not started though six years have passed. The departmental proceeding was initiated vide Memorandum dated 15.02.2018 and still the departmental proceeding is at the initial stage.

Therefore, there may not be any illegality at the end of the respondents in refusing to keep the departmental proceedings in abeyance till disposal of the criminal case against the applicant. In this regard, we may refer and rely upon the law laid down by the Hon'ble Apex Court in ***Hindustan Petroleum Corporation Ltd. & Ors. Vs. Sarvesh Berry, (2005) 10 SCC 471***, para 14 whereof reads as under;

*“...14. That being the position, the High Court was not justified in directing stay of the departmental proceedings pending conclusion of the criminal charge. As noted in Capt. M. Paul Anthony's case (supra) where there is delay in the disposal of a criminal case the departmental proceedings can be proceeded with so that the conclusion can be arrived at, an early date. If ultimately the employee is found not guilty, his honour may be vindicated and in case he is found guilty, the employer may get rid of him at the earliest.”*

**10.** We further find that the aforesaid CVC Manual as well as the law laid down by the Hon'ble Apex Court clearly provide that continuation of both the proceedings i.e. criminal proceeding and the departmental proceeding is the rule whereas to keep the departmental proceedings in abeyance is an exception in the facts and circumstances depending upon case to case basis. In the facts and circumstances, we do not find the

case of the applicant falling under such exception as laid down by the Hon'ble Apex Court in **Capt. Paul Anthony (supra)**.

Moreover, in the present case, Article I in the departmental proceedings initiated vide Memorandum dated 15.02.2018 is not only different from that of the allegations made against the applicant in criminal proceeding but also the fact that mere demand of the applicant for illegal gratification would be sufficient for the respondents to initiate and proceed against him in the department proceedings. In this regard, we may refer and rely upon the law the judgment of the Hon'ble High Court of Delhi in **Brahma Prakash Kalra Vs. National Thermal Power Corporation & Ors.**, para 11 to 13 whereof reads as under:-

“11. I have considered the submission advanced on behalf of the learned counsel for the parties. It is not disputed that the criminal proceedings and the departmental proceedings operate in different and distinct areas. The Supreme Court has in the case of Capt. M. Paulanthony case (supra), referred to the desirability of expeditious disposal of departmental proceedings which are initiated and meant not really to punish the guilty but to keep the administrative machinery unsullied by getting rid of the bad elements. It is in the interest of the delinquent officer so that there is prompt conclusion of the departmental proceedings. The Supreme Court has succinctly set out this aspect in the case of Depot Manager, A.P. State Roadways

Corporation (*supra*), by holding that while crime is an act of commission in violation of law or of omission of public duty, the departmental enquiry is to maintain discipline in the service and efficiency of public service.

12. In view of the aforesaid it has to be considered whether the petitioner's case really falls within the "little exception" as contended by the learned counsel for the petitioner. In my considered view the answer to this question would be in the negative.

13. There is force in the submission of the learned counsel for the respondents that a reference to the statement of charge itself would show that so far as the respondents are concerned, if the petitioner has even demanded a illegal gratification, the same would be sufficient to proceed against the petitioner. If the petitioner is aggrieved by violation of any provisions of Prevention of Corruption Act, 1983, it would be open for him to agitate that issue before the Criminal Courts. It may be good ground for defense in the criminal proceedings but it is not an aspect to be considered in the present proceedings. The very nature of charge is such that exigency of good administration requires the disciplinary proceedings to be concluded expeditiously."

11. In view of the facts and circumstances and law as discussed above, we do not find any merit in the present OA filed by the applicant and accordingly the same deserves to be dismissed. We order accordingly.

(R.N. Singh)  
Member (J)

(Dr. Bhagwan Sahai)  
Member (A)

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