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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION No.46/2019

Dated this Tuesday the 5th day of February, 2019

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

Shri Pankaj Vanmalidas Patel
 Age-52 years, Occ – Service.
 Permanent R/at House No.1494/3,
 Satyam Anjali Park, Dunetha, Nani
 Daman – 396 210.
 O/at Working as Jt. Engineer PWD (Mech)
 with additional charge as Motor Vehicle
 Inspector Transport Dept, RTO Complex,
 Airport Rd, Nani Daman – 396 210.

... *Applicant*

(By Advocate Shri A.D. Joshi)

Versus

1. Union of India,
 Ministry of Home Affairs
 Office Add: Ministry of Home Affairs,
 North Block, Central Secretariat,
 New Delhi 110 001.
2. The Administrator
 Union Territory of Daman & Diu and
 Dadra & Nagar Haveli. Secretariat,
 Moti Daman, Pin Code – 396 220.
3. Mr. Harminder Singh or his successor
 The Inquiry Officer,
 Union Territory of Daman & Diu
 Office of the Collector, Collectorate,
 Dholar, Moti Daman,
 Pin Code – 396 220.

... *Respondents*

Reserved on : 15.01.2019.
Pronounced on : 05.02.2019.

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

Heard Shri A.D. Joshi, learned counsel for the Applicant.

2. The Applicant who is stated to be working as Junior Engineer, PWD under the respondents 1 & 2 has filed the present OA on being aggrieved by the order dated 25.05.2018 (Annex. A-1) vide which the request of the applicant vide his letter dated 31.05.2017 (Annex.A-10) for stay of the departmental inquiry proceeding has been rejected. The Applicant has prayed for the following reliefs and Ad-interim order in the aforesaid OA;

“8.a This Hon'ble Tribunal be pleased to direct the respondents to call for the entire records related to case of the applicant.

8.b This Hon'ble Tribunal be pleased to pass an appropriate order/directions thereby restrain the Respondent No.2 and 3 from proceeding further with ongoing departmental inquiry proceeding against the applicant till final disposal of criminal case/Trial already started against him.

8.c The Hon'ble Tribunal be pleased to impose cost of this original application on the respondents.

8.d Any other relief in the nature and the circumstances of the case as this Hon'ble Tribunal deems fit and proper may be granted.”

“9. Interim/Ad-Interim Order:

The Applicant has made out a prima facie case, balance of convenience is in favour of the applicant and irreparable loss would be caused if the following ad-interim and or interim reliefs are not granted in favour of the applicant.

A) Pending the hearing and final disposal of this OA the Hon'ble Tribunal be pleased to stay the impugned order.

B) Pending the hearing and final disposal of this OA the Hon'ble Tribunal be pleased to pass an appropriate ad-interim and or interim order/directions thereby restrain the respondent no.2 and 3 from proceeding further with ongoing departmental inquiry proceeding against the applicant till final disposal of criminal case/Trial already started against him."

3. On the basis of contentions made in the OA, the learned counsel for the applicant submits that written complaint by one Shri Nilesh Ashok Nandwana alleging therein a demand of bribe of Rs.1,00,000/- by one Shri Krishnan, RTO and Shri Pankaj V. Patel (the applicant herein) working as RTO, Daman for registration of 10 new Ashok Leyland Vehicles @ Rs.10,000/- each per vehicle with the RTO Daman was received by the CBI and after receipt of such complaint and preliminary investigation, the CBI has lodged FIR bearing No.RC/BA1/2015/A0002 with CBI, ACB Mumbai Under Section 120-B of IPC r/w Section 7, 13(2) r/w Section 13(1) (d) of

Prevention of Corruption Act, 1988. In view of the aforesaid criminal case, the applicant was suspended vide order dated 15.04.2015 by the respondent no.2 as per Rule 10(1) of CCS(CCA) Rules, 1965 and the CBI, ACB, Mumbai after completion of investigation in the aforesaid case FIR, has filed a charge-sheet/Challan under Section 173 Cr.P.C. before the learned Special Court/Judge at Daman on 28.10.2015 as Special Criminal Case - POC No.2/2015 under Section 120-B of IPC and Section 7,13(2)r/w 13(1)(d) of the PC Act, 1988. In such criminal case, relevant part/pages annexed as Annex. A-5 reads as under:

"CHARGE"

That Shri Hari Krishan Premi, Dy. Director (Transport) and Shri Panka Vanmalidas Patel, Inspector of Vehicle, both being public servants, while posted in the office of Transport Department, Daman abused their official position in as much they demanded illegal gratification of Rs.80,000/- from Shri Nilesh Nandwana, Prop.of M/s Seabox Logistics for registration of 10 vehicles of M/s Seabox Logistics with Transport Department Office, Daman.

2. That Shri Nilesh Nandwana is in the business of transportation in the name of M/s Seabox Logistics and the written complaint was filed by him on 06.02.2015 with CBI/ACB/Mumbai against Shri Hari Krishan Premi and Shri Pankaj Patel for registration of 10 vehicles of M/s Seabox Logistics with Transport Department Office, Daman.

3. That the allegations of the said complaint were verified by the CBI team on 07.02.2015 in the presence of 2 independent panch witnesses. During the said proceeding Shri Hari Krishan Premi, Dy. Director (Transport) and Shri Pankaj Patel, Motor Vehicle Inspector demanded bribe of Rs. 80,000/- from Shri Nilesh Nandwana for registration of 10 vehicles of M/s Seabox Logistics with Transport Department Office, Daman.

4. That case No. RC BA1/2015/A0002 was registered on 09.02.2015 against Shri Hari Krishan Premi, Deputy Director (Transport) and Shri Pankaj Patel, Motor Vehicle Inspector of Transport Department, Daman u/sec.120-BIPC r/w scc. 7 of P.C. Act, 1988 on the basis of complaint dated 06.02.2015 and Panchnama dated 07.02.2015.

5. That on 28.02.2015 Shri Narendra Bhathela @ Nandu was caught red handed by CBI team while accepting bribe of Rs. 71,000/- from Shri Mahesh Tandel on behalf of Shri Hari Krishan Premi, Dy. Director(Transport)and Shri Pankaj Vanmalidas Patel, Motor Vehicle Inspector of Transport Department, Daman."

4. The Respondent No.2 has initiated disciplinary proceeding under Rule 14 of CCS (classification, control and appeal) Rules, 1965 by issuing Charge Memorandum dated 19.07.2016 to the applicant and a statement of Articles of charge framed against the applicant vide such Memorandum reads as under:

"Article-I

1. That, Shri Pankaj V. Patel, Junior Engineer, PWD, Daman while holding the charge of Motor Vehicle Inspector, Transport Department, Daman during the year 2015, a written complaint dated 06.02.2015 was made by Shri Nilesh Ashok

Nandwana, Proprietor of M/s. Seabox Logistics, 22, S.V. Road, Near Piramal Nagar, Goregaon (West) Mumbai-62 to the Superintendent of Police, CBI, ACB, Mumbai alleging therein that Shri Pankaj V. Patel, Junior Engineer, PWD, Daman and Shri Hari Krishan Premi, DANICS, Dy. Director of Transport, Daman demanded a bribe of Rs.1,00,000/- for registration of 10 new Ashok Leyland Vehicles @ Rs.10,000/- per vehicle, as illegal gratification for registration of vehicles.

2. *That based on the said written complaint dated 06.02.2015, a case bearing RC No.BA1/2015/A0002 dated 09.02.2015 was registered by CBI, ACB, Mumbai under Section 7 and 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988 against Shri Pankaj V. Patel, Junior Engineer, PWD, Daman and Shri Hari Krishan Premi, DANICS, Dy. Director of Transport, Daman.*
3. *That the aforesaid act on the part of Shri Pankah V. Patel, while functioning as Government Servant and discharging his duties as I/c. Motor Vehicle Inspector, Daman failed to maintain absolute integrity and devotion to his duties and acted in a manner unbecoming of a Government Servant in contravention of the provisions of Rule 3(1)(i), (ii) and (iii) of the Central Civil Services (Conduct) Rules, 1964.*

sd/-

*(Vikram Dev Dutt)
Administration/Disciplinary Authority
Daman & Diu and Dadra & Nagar Haveli”*

5. Learned counsel for the applicant submits that the aforesaid two proceedings that is one the criminal case proceeding and the other disciplinary proceeding against the applicant are based on the same set of allegations against him and the names of witnesses listed at Annex. A-4 to the memo of departmental charge-sheet are

identical to the list of witnesses mentioned in the charge-sheet filed in criminal case i.e. evidence in both the proceedings is the same/identical. The learned counsel for the applicant further submits that the charges levelled against the applicant are grave and also the same involves the complicated questions of law and facts. Accordingly, the learned counsel for the applicant prays that impugned order dated 25.05.2018 vide which the applicant's request for stay of the departmental proceeding till the conclusion of the criminal proceeding is rejected may be declared as illegal and contrary to law and the relief prayed and as noted above may be granted.

6. To substantiate his arguments, the learned counsel for the applicant relies upon the order/judgment ***dated 26.08.2013 of Hon'ble High Court at Calcutta in WP No.15194 (w) of 2013 in Sri Firoz Ahmed Vs. Union of India & Ors.***, and also an interim order dated 26.09.2018 passed by this Bench of the Tribunal, Camp at Nagpur in ***OA No.211/00210/2018 S.S. Jadhav Vs. Ministry of Finance & Ors.***

In ***Sri Firoz Ahmed (supra)*** the Hon'ble High Court

in para 11 & 17 has held as under;

"...11. Capt. M. Paul Anthony (*supra*) considered all the previous decisions of the Supreme Court on the point of stay of disciplinary proceedings pending criminal trial based on identical or similar charges including the decision in *Mohd. Yousuf Miya* (*supra*) and the law was summarized in the following words :

"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, administration may get rid of him at the earliest.

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...17. Now, the question that is to be addressed is whether the charge is of grave nature involving complicated questions of fact and law are not. The alleged offences with which the petitioner has been charged are, without doubt, grave in nature. Whether it involves complicated questions of fact and law, however, is a grey area. It is largely dependent on one's perception and it may vary from individual to individual. It may not be safe to hold on the basis of the materials on record, in exercise of writ jurisdiction, that complicated questions are or are not involved. I, therefore, refrain from examining that aspect."

7. On query, the learned counsel for the applicant submits that before the learned Special Court the applicant has filed application for discharge and the same is pending adjudication and charges have not been framed against him till date and the matter is fixed for hearing on his application/framing of charge on 16.01.2019. A copy of the application so moved by the applicant before the learned Special Judge has not been placed on record. However, it may be noted that if the applicant has moved such application to discharge him in the criminal case at the stage of framing of charges against him, he must have explained

in detail as to how the said prosecution is not maintainable and therefore he might have disclosed his defence by way of explaining his case. It is also worth noting that though the FIR was lodged on 09.02.2015, sanction order for prosecution of the applicant has been issued by the concerned authority on 15.10.2015. However, till date the criminal prosecution has not proceeded beyond consideration on framing of charges or discharge of the applicant from the said criminal case. It is further worth noting that in view of as to what has been provided in para 22(iv) by the Hon'ble Apex Court in **M. Paul Anthony (supra)** and noted herein above, it is settled that to stay the departmental proceedings, due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

8. In the present case, it is admitted case that the criminal prosecution even after lapse of more than 3 year is still at the stage of consideration on discharge of the applicant/framing of charges against him and the departmental proceeding which was

initiated by the Memorandum dated 19.07.2016 is also not proceeding ahead and the matter is at the stage of defence evidence and is stated to be fixed for 21.01.2019 though the IOs and POs were appointed vide order dated 19.05.2017 (Annex.A-8 colly). 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.”

9. We have also perused the list of documents i.e. Annex.III and list of

witnesses i.e. Annex. IV to the Charge Memo dated 19.07.2016 and the list of documents and list of witnesses attached with the charge-sheet filed by the CBI before the learned Session Court. Though many of them may be common in both the proceedings, they are found to be all documentary evidence and nature of evidence required in both proceedings is different i.e. in departmental proceeding it is preponderance while in criminal proceedings it has to be beyond doubt. Besides the case in hand does not appear to be a matter of complicated questions of fact and law. It is settled law 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 imitated 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."

10. We are of the view that in the facts and circumstances, the judgment in the *Sri Firoz Ahmed (supra)* does not help the case of the applicant. So far the reliance of the

applicant on interim order dated 26.09.2018 of this Bench in *S.S. Jadhav (supra)* is concerned, the said interim order is passed in particular facts and circumstances and the same is not a binding law.

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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