

**Central Administrative Tribunal
Principal Bench**

OA No. 1651/2018

Order reserved on : 22.08.2019
Order pronounced on: 29.08.2019

Hon'ble Mr. S.N.Terdal, Member (J)
Hon'ble Mr. Pradeep Kumar, Member (A)

Neeraj
Constable (Ex.) in Delhi Police
PIS No.29102003
Aged about 28 years
S/o Sh. Naresh Kumar
R/o 608/22, Shivji Park,
Gurugram, Haryana.

... Applicant

(By Advocate: Sh. Anil Singal)

VERSUS

1. Govt. of NCT of Delhi
Through Commissioner of Police,
PHQ, IP Estate, New Delhi.
2. DCP/5th Bn. DAP,
NPL, Kingsway Camp, Delhi.
3. Insp. Kehar Singh (EO)
PS Tilak Marg,
New Delhi.

... Respondents

(By Advocate: Sh. Amit Yadav)

ORDER

By Hon'ble Mr. Pradeep Kumar, Member (A)

The applicant is working as a Constable in Delhi Police. An FIR No.112/2016 was filed on 10.03.2016 by Haryana Police and a criminal case u/s 384/ 389/34 IPC was initiated against him under

Police Station, Civil Lines, Gurugram, Haryana. It was alleged that he had made a video film of certain Traffic Police Constables of Haryana taking bribe and he was trying to blackmail those Constables to seek monetary benefits, by threatening to report the matter to higher authorities. A list of 13 number of witnesses was also attached in this FIR. Haryana Police arrested him also.

Thereafter he was suspended by Delhi Police and a departmental enquiry (DE) was also ordered against the applicant vide order dated 15.09.2017. A list of 16 number of witnesses was also attached in this DE. It is seen that 13 names in these two lists of witnesses are common. At that stage, the applicant made a representation to Delhi Police to keep the DE on hold till the matter is decided by the criminal court as he apprehended that disclosure of his defence in DE, will jeopardise his defence in the criminal case. His plea was rejected vide orders dated 03.11.2017.

2. Feeling aggrieved, the applicant had filed the instant OA and following relief has been sought:

“(a) Call for the record of the case and set aside/quash the Order dt. 15.9.2017, Summary of Allegations dt. 6.10.2017 and Order dt. 3.11.2017.

Or alternatively

Direct the respondents to keep in abeyance the departmental enquiry initiated vide order dt. 15.9.2017 during the pendency of the criminal case till the defense of the applicant is disclosed in the criminal case.”

Some other reliefs are also sought.

3. An interim relief has also been sought as under:

“During the pendency of the present application, the Order initiating D.E dt. 15.9.2017 (Ann A-1) be stayed or in the alternative a direction may be given to the respondents to defer cross-examination of ASI Ram Niwas, HC Rajender and Constable Gaje Singh till they are cross-examined in the criminal case.”

4. In the first hearing in the Tribunal on 25.04.2018, the DE vide order dated 15.09.2017 was stayed. This order is still in force.

The applicant pleads that in the interest of justice and as has been held by the Hon’ble Apex Court in the case of **Capt. M.Paul Anthony vs. Bharat Gold Mines Ltd. & Anr.**, (1999) 3 SCC 679, the stay order is required to be continued as the criminal case is still not finalised and any continuation of departmental enquiry shall prejudice his case adversely in the criminal matter.

5. The respondents opposed the OA. It was pleaded that the DE was stayed in keeping with the principles of natural justice and ratio contained in the case of **Capt. M. Paul Anthony** (supra) by Hon’ble Apex Court. The observations made by the Hon’ble Apex Court in the case of **Capt. M. Paul Anthony** (supra) read as under:

“xxx xxx xxx

This question, as observed earlier, is of a perennial nature and has arisen more often than not in spite of the judicial pronouncements, specially by this Court, having settled the question and provided the answer. Still, the problem is raised either by the employer or by the employee in one or the other form. In the instant case, the order of dismissal had already been passed before the decision of the criminal case which ultimately resulted in the acquittal of the appellant.

Whether the acquittal coupled with other circumstances, specially ex-parte proceedings, of the case, will have the effect of vitiating the departmental proceedings or the order of dismissal passed against the appellant, is the question which is to be considered in this appeal.

As we shall presently see, there is a consensus of judicial opinion amongst the High Courts whose decisions we do not intend to refer in this case, and the various pronouncements of this Court, which shall be copiously referred to, on the basic principle that proceedings in a criminal case and the departmental proceedings can proceed simultaneously with a little exception. As we understand, the basis for this proposition is that proceedings in a criminal case and the departmental proceedings operate in distinct and different jurisdictional areas. Whereas in the departmental proceedings, where a charge relating to misconduct is being investigated, the factors operating in the mind of the Disciplinary Authority may be many such as enforcement of discipline or to investigate the level of integrity of the delinquent or the other staff, the standard of proof required in those proceedings is also different than that required in a criminal case. While in the departmental proceedings the standard of proof is one of preponderance of the probabilities, in a criminal case, the charge has to be proved by the prosecution beyond reasonable doubts. The little exception may be where the departmental proceedings and the criminal case are based on the same set of facts and the evidence in both the proceedings is common without there being a variance.

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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.”

6. It was pleaded that the instant DE and the criminal case, the two cannot be said to be on exactly similar basis as the list of witnesses is different.

Further, the respondents brought out the record of proceedings in the criminal case for the period 09.04.2018 to 08.08.2019. It was brought out that the proceedings in the criminal case are getting unduly delayed as the applicant is not taking any interest and is not tendering his argument and is only seeking adjournment. It is seen from the said record that the criminal case has listed the matter for hearing on 09.04.2018, 04.05.2018, 11.06.2018, 25.07.2018, 27.08.2018, 11.09.2018, 25.10.2018, 12.11.2018, 03.01.2019, 18.02.2019, 10.04.2019, 06.06.2019 and 08.08.2019. Out of these 13 hearings, it is seen that it is only on 04.05.2018, that the daily proceedings order reads, “Arguments were partly advanced” and thereafter “Adjournment sought”. In all the other hearings, except for that of the first hearing on 09.04.2018, the common wording reads, “Arguments not advanced, Adjournment sought”.

The record of the proceedings in the said criminal case, is thus a very clear pointer that the applicant is only seeking adjournment and is delaying the finalisation of the case.

In view of these delaying tactics on the part of the applicant in the criminal case, it was pleaded that it is the observation made by the Hon'ble Apex Court in **Capt. M. Paul Anthony** [para 5 supra in sub para (iv)], which is attracted. In this context, it was vehemently pleaded that in the interest of justice, the stay needs to be vacated now.

7. In support of their contention, the respondents also relied upon a judgment by Hon'ble High Court of Delhi in **Vinod Kumar vs. Govt. of NCT of Delhi and others**, CWP No.4116 & 4172 of 1998 decided on 27.04.2002. In this case, Sh. Vinod Kumar had approached the Tribunal that since a criminal case was already on, the departmental proceedings needs to be stayed. The Tribunal did not agree with the pleas of the applicant and the OA was dismissed. The applicant felt aggrieved and had filed a writ before the Hon'ble High Court of Delhi. The question before the Hon'ble High Court was recorded in the judgment and reads as under:

“1. How long a departmental proceeding should remain stayed pending judgment in a criminal trial is the question involved in these writ petitions, which arise out of judgments and orders dated 18.3.1998 and 28.7.1998 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as, ‘The Tribunal’) in the original applications No.3209 of 1992 and 2887 of 1996.”

The Hon'ble High Court relied upon the judgment in **Capt. M. Paul Anthony** (para 5 supra) by the Hon'ble Apex Court as well as another judgment by the Hon'ble Apex Court in **State of Rajasthan vs. B.K.Meena and others**, JT 1996 (8) SC 684. In the case of **B.K.Meena** (supra) the Hon'ble Apex Court has held as under:

“14. One of the contending consideration is that the disciplinary enquiry cannot be - and should not be delayed unduly. So far as criminal cases are concerned, it is well- known that they drag on endlessly where high officials or persons holding high public offices involved. They get bogged down on one or the other ground. They hardly ever reach a prompt conclusion. That is the reality inspite of repeated advice and admonitions from this Court and the High Courts. If a criminal case is unduly delayed that may itself be a good ground for going ahead with the disciplinary enquiry even where the disciplinary proceedings are held over at an earlier stage. The interests of administration and good government demand that these proceedings are concluded expeditiously. It must be remembered that interests of administration demand that the undesirable elements are thrown out and any charge of misdemeanor is enquired into promptly. The disciplinary proceedings are meant not really to punish the guilty but to keep the administrative machinery unsullied by getting rid of bad elements. The interest of the delinquent officer also lies in a prompt conclusion of the disciplinary proceedings. If he is not guilty of the charges, his honour should be vindicated at the earliest possible moment and if he is guilty, he should be dealt with promptly according to law. It is not also in the interest of administration that persons accused of serious misdemeanor should be continued in office indefinitely, i.e., for long periods awaiting the result of criminal proceedings. It is not in the interest of administration. It only serves the interest of the guilty and dishonest. While it is not possible to enumerate the various factors, for and against the stay of disciplinary proceedings, we found it necessary to emphasise some of the important considerations in view of the fact that very often the disciplinary proceedings are being stayed for long periods pending criminal proceedings. Stay of disciplinary proceedings cannot be, and should not be, a matter of course. All the relevant factors, for and against, should be weighed and a decision taken keeping in view the various principles laid down in the decisions referred to above.”

Thereafter, the Hon'ble High Court upheld the decision of the Tribunal.

8. It was pleaded that keeping in view the ratio arrived at in above case wherein the criminal case was getting unduly delayed, it is in the interest of justice that since in the instant case also the reason for undue delay is on account of applicant himself, there is no bar on simultaneous proceedings of the DE also.

9. It was further pleaded that in the form of interim relief, applicant has practically got the final relief sought in the OA. This is against the principles laid down by Hon'ble Apex Court in Appeal No.6510/2004 – **State of U.P. and ors. vs. Ram Sukhi Devi** delivered on 05.10.2004.

Smt. Ram Sukhi Devi was a widow of an employee who had died in harness. Her request for compassionate ground appointment was rejected as she was not eligible under the extant rules of the year 1974. Feeling aggrieved, Smt. Ram Sukhi Devi filed a writ petition No.3334/2002 seeking for a direction to the State of UP to appoint her in any suitable Class-IV post under the Dying-in-harness rules. The learned Single Judge while issuing notice directed the State of UP that the competent authorities shall consider her claim for compassionate ground appointment under the Dying-in-harness rules ignoring the Government order dated 26.10.1998. Legality of this order by the learned Single Judge was challenged before the Division Bench (DB). This was dismissed by the DB and directions were given that Smt. Ram Sukhi Devi should

be given a Class-IV appointment within a stipulated time frame. It was also observed that in the facts of the case, without going into the merits, compassionate ground appointment should be made.

This decision by the DB came to be challenged by way of Civil Appeal No.6510/2004 in Hon'ble Apex Court. Hon'ble Apex Court observed as under:

"To say the least, approach of the learned Single Judge and the Division Bench is judicially unsustainable and indefensible. The final relief sought for in the writ petition has been granted as an interim measure. There was no reason indicated by learned Single Judge as to why the Government Order dated 26.10.1998 was to be ignored. Whether the writ petitioner was entitled to any relief in the writ petition has to be adjudicated at the time of final disposal of the writ petition. This Court has on numerous occasions observed that the final relief sought for should not be granted at an interim stage. The position is worsened if the interim direction has been passed with stipulation that the applicable Government Order has to be ignored. Time and again this Court has deprecated the practice of granting interim orders which practically give the principal relief sought in the petition for no better reason than that of a *prima facie* case has been made out, without being concerned about the balance of convenience, the public interest and a host of other considerations. [See Assistant Collector of Central Excise, West Bengal v. Dunlop India Ltd. (1985 (1) SCC 260 at p. 265), State of Rajasthan v. M/s Swaika Properties (1985 (3) SCC 217 at p.224), State of U.P. and Ors. v. Visheshwar (1995 Supp (3) SCC 590)

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We, therefore, set aside the order passed by learned Single Judge as affirmed by the Division Bench without expressing any opinion on the merits of the case we have interfered primarily on the ground that the final relief has been granted at an interim stage without justifiable reasons. Since the controversy lies within a very narrow compass, we request the High Court to dispose of the matter as early as practicable preferably within six months from the date of receipt of this judgment."

10. It was thus pleaded that Hon'ble Apex Court has held that final relief sought should not be granted at an interim stage (para 9

supra). Keeping in view this ratio, it was vehemently pleaded that the stay needs to be vacated.

11. Matter has been heard at length. Sh. Anil Singal, learned counsel represented the applicant and Sh. Amit Yadav, learned counsel represented the respondents.

12. Facts of the case are not in doubt. A criminal case has already been initiated against the applicant which is still pending. Since he was arrested, the applicant was suspended and a DE was initiated. With a view to avoid jeopardising the defence of the charged official in the criminal case, the judgment by Hon'ble Apex Court in **Capt. M.Paul Anthony** (supra) case has laid down certain guidelines in respect of simultaneous conduct of the DE.

13. In keeping with this, the stay on DE was granted. It is, however, seen that the criminal proceedings are getting unduly delayed and primarily so because the applicant is not arguing the matter there and is seeking repeated adjournments as is absolutely clear from the record of court proceedings from the period 09.04.2018 to 08.08.2019 which was not controverted. Under such circumstances, it is not considered in the interest of justice, as has also been held by Hon'ble Apex Court in the cases of **Capt. M.Paul Anthony** (supra) and **B.K.Meena** (supra), that a DE should be kept on hold indefinitely. The ruling in both these cases, in such circumstances is very clear and indicates to continue DE.

14. Since a DE has already been initiated, the applicant shall have liberty to defend his case and no prejudice will be caused in the given circumstances to the applicant. In view of this, the pleadings by applicant to continue the stay, are not gaining acceptability. In view of the delay being caused by the applicant himself in the finalisation of criminal case, there is force in the arguments of the respondents to resume the DE.

15. Accordingly, the stay is vacated and OA is dismissed being devoid of merit. The applicant shall, however, have liberty to seek his remedies as per law. No costs.

(Pradeep Kumar)
Member (A)

(S.N.Terdal)
Member (J)

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