

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...
ORIGINAL APPLICATION NO.060/00712/2019
Chandigarh, this the 16th day of July, 2019

...
CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)
HON'BLE MR. A.K. BISHNOI, MEMBER (A)

...

Gurdev Singh Retd., Superintendent (Group B) aged about 62 years
son of Sohan Singh resident of House No. 01, Lane No. 9, Ranjit
Avenue, Loharka Road, Amritsar.

....Applicant

(Present: Mr. J.S. Thakur, Advocate)

Versus

1. Union of India through Revenue Secretary Department of Commissioner of Customs (Preventive) Commissionerate, Near IGI Airport, New Custom House, Indra Gandhi International airport, New Delhi – 110037.
2. Office of the Assistant Commissioner of Customs Land Customs Station Rail Cargo, Amritsar, Pin Code – 143001.
3. Sh. Paras Ram, Additional Commissioner of Customs (Preventive) Commissionerate, Amrtisar-cum-Inquiry Officer, Pin Code – 143001.

..... Respondents

(Present: Mr. Sanjay Goyal, Advocate)

ORDER (Oral)

SANJEEV KAUSHIK, MEMBER (J)

1. Applicant, by way of this O.A. has prayed for quashing of charge sheet dated 27.08.2014 (Annexure A-2) and order dated 13.05.2019 (Annexure A-6).
2. At the very outset, learned counsel submitted that he restricts his prayer to the extent that the respondents be directed to postpone the departmental proceedings against the applicant till he discloses his defence in the criminal proceedings. He argued that if he discloses his defence in the departmental proceedings, it would prejudice his right

in the criminal proceedings, therefore, the departmental proceedings be not proceeded further until the delinquent put forth his defence before the Criminal Court. In support of his plea, he has placed reliance upon judgments of the Hon'ble High Court of Punjab and Haryana in CWP No. 9033/2013 **Union of India & Others Vs. C.A.T & Others**, decided on 30.07.2013, in CWP No. 3726/2006 **Jarnail Singh Vs. State of Punjab and Others** decided on 16.01.2017 and of Hon'ble Apex Court in the case of **Capt. M Paul Anthony Vs. Bharat Gold Mines Ltd**, reported as 1999 AIR (SC) 1416.

3. Issue notice to the respondents.

4. At this stage, Mr. Sanjay Goyal, Sr. CGSC, appears and accepts notice. He also endorses the view taken by the Hon'ble High Court on the issue.

5. We have heard learned counsel for the parties and gone through the record. The question whether the applicant should be compelled to disclose his defence in the domestic inquiry needs to be considered on the premise that as per the statement of learned counsel for the applicant the prosecution in the criminal case and the departmental action initiated against him, are founded upon identical set of allegations. What should be the fate of the departmental proceedings in a case where the criminal as well as disciplinary proceedings are based on the same charges and same evidence or witnesses, was elaborately dealt with by the Hon'ble Supreme Court in the case of Captain M. Paul Anthony (supra). The principles culled out in that decision were in para 20 of the report are to the following effect

"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. In subsequent decision, the High Courts, including the Jurisdictional High Court in the case of Jarnail Singh' case (supra) and in the case of Union of India & Others Vs. C.A.T. & Others (CWP NO. 9033/2013 decided on 30.07.2013), have followed these principles.

7. In the wake of the above judicial pronouncements, we are left with no option but to go with the above cited decision. Accordingly, we direct the respondents to re-examine the plea of the applicant by re-examining the charges against him in the criminal case as well as departmental inquiry, and if both are identical then they will not proceed in the matter of departmental proceedings till the applicant discloses his defence before the Criminal Court.

8. The O.A. stands disposed of in the above terms. No costs.

(A.K. BISHNOI)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)
Dated: 16.07.2019

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